

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

24409

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2409

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2409**

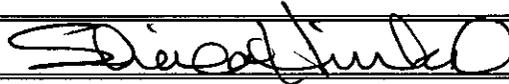
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 31, 2007**

Recorder Job Number: **2412**

Committee Clerk Signature



Referring to cell phone complaints:

S Aaron Krauter – Senator District 31 - In Favor

TESTIMONY # 1 Went over testimony

Pg 3, goes over amendments to adopt rules. Went over bill breakdown. In ND have good service, some have poor service. This is a "Bill of Rights" for cell phone consumers.

S Hacker: Isn't there already a lot taking place in the cell phone companies?

S Krauter: some is provided, but not by ALL companies. Having Public Service Commission would make sure it is done on all companies. As a business with less complaints, it would be good public information.

S Klein: With Federal issues, can we go beyond Federal standards?

S Krauter: there are many issues. Some states have a Bill of rights. FCC starting to understand that states do have rights.

S Wanzek: The problem is in the sign up, you are locked in for 1-2 years, it should be easier for them to cancel to put more power into the consumer hands.

S Krauter: Section F allows for a 15 day change after the first bill.

S Wanzek: The policy is to be locked in for 2 years. Maybe you don't see the problem in the 1st, 2nd or 3rd bill, if you cancel early, you will pay damages. What if you were to limit how long they could write the contracts.

S Krauter: If you want to amend the bill to change ND to have one year, that's your decision. I don't think you want to do that.

S Wanzek: If the program doesn't work, or not what was presented, there would be some ability.

S Heitkamp: What kind of reaction do you get when a constituent gets a map with a colored area that says "this is our area." Then they get dropped calls or there is no service and it is on a map. Do you get calls for that?

S Krauter: Yes. Those are frustration calls, the people are upset, or if I had an emergency call, I'd be out of luck.

S Heitkamp: I'm for promoting economic development, what do you get when someone comes into the state and the cell phone doesn't work in the state? They are told about the technology we have in the state, but can't get service.

S Krauter: They say, "You've told me about all your technology, and yet I can't use my cell phone." That's a negative.

S Klein: So you're forcing them they must set up towers?

S Krauter: That's not part of the bill. The bill once the consumers understand the information, and see the maps that there is no service there, they will lose business....

S Klein: Well, the story about someone coming into your community....

If he came from New York and couldn't get service, he wasn't buying the plan, just using his phone because he uses it in NY.

S Heitkamp: Intent of my question was that if more information gets out as to what areas have coverage and what areas don't, is there the potential then for these cell phone companies to make sure that ALL areas colored on the map , NOW, do have coverage?

S Krauter: Yes, that's the bottom line. If the consumers get that information and they don't buy any phones, or they buy a phone and there's a problem, they contact the PSC, and it sets up a process where the information gets out and pretty soon as the annual report comes out you can see this information and hope that providers would say, "Company A is missing the boat on this one and we can capitalize on it."

S Behm: I understand the problem more in your area than others. The towers are not there, I've been there, more of a problem in your area.

S Potter: I'm fond of the "lemon law," the fact when I see the bill, I think it's a good feature.

Question on the complaint procedures: when you say the burden-of-proof is always going to be on the wireless provider, is that preponderance of proof or reasonable doubt levels of proof? Can you give me other examples, do utility companies have burden-of-proof when people complain?

S Krauter: The burden-of-proof is on the provider. If I complain with the PSC, and they accept that complaint, then it's up to the provider to respond.

S Potter: Statement, on the number of complaints of each provider, to the public, it seems just, I understand the purpose, but it seems a little bit unfair to the dominant carriers, they're naturally going to have more complaints because they have more customers and will show up that they've had more complaints and it's difficult to see if they were valid complains, angry complaints. Seems troubling.

S Hacker: In the complaint process, if I have a dropped call, could that be a valid complaint?

S Krauter: If you had a consistent, monthly, monthly series of dropped calls, that would be a valid complaint, but no, only if consistent.

S Hacker: What about when the cell phone carrier switches to another tower?

S Krauter: If you have a legitimate complaint, it is your right to bring it to the PSC.

Representative Pam Gullickson – In Support

This bill is timely as a legislative body. Cell phones are now a primary phone and you need to make decisions on what works best for them. This would help everybody, it would be most helpful and reliable for consumers. Designate PSC with authority. They had a series of meetings for versions of problems that have been brought up today. People have concerns on purchasing something and haven't had reliable, consistent daily use. They purchase a plan and then have sticker shock when the bill comes. Customers hear they can get all kinds of capabilities for \$39.99, and then get the bill and it's \$80. By then you are bound by a contract.

[explains 27:22m – 39:95m]

S Behm: I had this experience on the first cell phone I had. I used roaming and had shock when I got the bill.

P Gullickson: [Example 29:07]

S Wanzek: Promises are made, pitch is good, but the product doesn't do what it said it would do. I made the decision as a consumer. You need to sign a contract for 1-2 years. Couldn't it be understood as a consumer as a breach-of-contract if I want to cancel the contract without financial penalty, wouldn't that be more effective?.

P Gullickson: I don't disagree. We need to manage concerns.

S Potter: If it was a break-of-contract, don't you worry about other additional issues come up?

FAVOR

Linda Johnson – AARP - In Favor

TESTIMONY # 2 [read testimony]

[Wanted to change time allowed for examining plan from 15 to 20 days for elderly]

Mike Muscha – Brotherhood of Locomotive Engineers & Trainmen ND - In Favor

TESTIMONY # 3 [read testimony]

Would like a complaint procedure.

William Bennett for Commissioner Wefald – Public Service Commission - In Favor

TESTIMONY # 4 [read testimony] These were personal comments, not of her fellow commissioners. Covered sections on concerns on the bill.

S Hacker: You spoke on concerns – any resolutions?

W Bennett: No proposed amendments. Purpose is to point out some already covered.

S Potter: Federal government pre-empted the PSC on “entrance” and how this relates to the “lemon law.”

W Bennett: Entrance relates to the company coming into the state, not the consumer.

OPPOSITION

Tom Kelsch – Alltel’s Corporate Lawyer - Kelsch Law Firm - In Opposition

TESTIMONY # 5 [passed out many examples, copies, testimony. States the bill is unnecessary. Covered 4 testimonies. Tried to prove there are not that many complaints and don’t need the legislation. Alltel’s practice that consumers have a chance to respond within the first billing. They draw up a “draft bill” and explain what will happen if they go over their minutes or text messaging. Feel it is unnecessary as there is a lack on the number of complaints. There are complaints in the rural areas because of the towers. Towers will cover a 20 mile radius and cost \$500,000 for one tower. PSC already has an on-line complaint section called “zap the gap.” This bill cannot force them to put up towers governed by Federal

and FCC for towers. Must get approved before they turn on the towers. We understand the need and also the financial need. National companies having different service than the nation need to raise their costs. Suggested example [53:50m] on phones. There will be no more free phones if this goes through. They get a free phone if they sign up and then in 30 days, if you add 15 days making it 45 days and they get the phone back, it is worthless. [ex 55:09] If you buy a car from a car dealer, you can't take back the car. With a phone, you'd have to pay back the portion you paid in and part of the bill. Went over other points on the bill. Situation went before the courts before and they won and will challenge the bill if it goes through. They don't need to take two years. You can have pay as you go, and buy minutes, or go to another company. It doesn't need legislation. The House has a bill for tax breaks. We don't need road barriers to increase the costs.]

S Klein: We've heard from folks when selling the plan, the representatives are not telling the truth, making the customer unhappy. Shouldn't this custom be addressed, or is it about selling merchandise?

S Potter: [told of a personal situation] How many complaints have there been for Alltel?

T Kelsch: I don't have that number.

S Potter: Maybe should send to PSC. [S. Potter wants a list.]

T Kelsch: I like and need cell service. It makes sense. I'll have a cell phone and I'll participate. If I get a "free" phone, I'll do it.

S Hacker: You presented us with an article on complaints. In Sept. there was a surge, why was there a rise in one day? Where is this from?

T Kelsch: The info was off the FCC website

S Heitkamp: Did you see the map when you went into the store?

T Kelsch: No

S Heitkamp: When you go down the road with the service, when you're unhappy, where do you go?

T Kelsch: The issues won't be settled with bill. If a customer loses service even on interstate, they will get 1 minute in credit.

S Heitkamp: What if you see the map coverage in the store, and you don't get it?

T Kelsch: Take it out and try it.

S Heitkamp: That's the point of the bill. If you put together a system for complaints, someone has to respond, I have no problems when it comes to complaints.

Kent Blickensderfer- Quest Rep - In Opposition

TESTIMONY # 6 [went over testimony]

Covered early termination agreements. Companies produce cheap handsets, early termination is part of the rate structure. Quest does things to mandate the bill.

S Wanzek: If the consumer is lead to believe certain things, is there a resolve to back out of the plan? Early termination?

Kent B: I paid \$400 for my phone because I decided to not go long term.

S Klein: I would think that 7th graders, kids with large cell phone usage could have more complaints.

S Wanzek: Do you think you could see what the future holds?

Kent B: Technology is going super fast.

S Potter: This is a way to separate ND cell phone complaints.

Todd Kranda – Verizon - In Opposition

TESTIMONY #7 Market-driven interest. The market will pick winners and losers. This is a highly competitive industry. [went over testimony] We are already complying with regulations,

what if ND did this and we have plans to go nationwide, how will that affect the company operating in ND.

S Klein: 41 states say they don't have to regulate you, are there any states to adopt something as we're looking at today?.

T Kranda: I don't have it today, I could find out.

S Klein: We'd be one of 9 who have restrictions

S Heitkamp: The number portability, that's federal law, right?

T Kranda: I'm not sure, I thought ND adopted something similar, but yes, it's a Fed law.

S Heitkamp: You really have no choice on that.

T Kranda: I think portability is available across the nation.

S Heitkamp: I struggle with that when we switched, if we could keep our number, so were happy when the Feds switched and I could keep my number.

S Hacker: What happens when you signed up with voluntary compliance. What happens if you don't comply?

T Kranda: You have an agreement, it gets enforced through Attorney General.

NEUTRAL

Tony Clark – Public Service Commissioner – Neutral

[There to answer questions.]

S Potter: Have you seen Sen. Wefald's testimony?

T Clark: Yes

S Potter: What comments do you have?

T Clark: I think the idea of having a local place to turn is a sound one, especially with consistent with Federal laws. Don't want to have restrictions like a patch-work quilt of state regulations that one state is telling cell phone companies they have to have 10.5 point type on

invoices, etc. If they had standardized law, we as a national association have been trying to work on.

S Wanzek: This is quite a competitive market.

T Clark: Telecommunications is an industry that is in transition nationwide.

S Heitkamp: The point I would make is it's a competitive field, but if there is a complaint, where does the customer go?

T Clark: It depends on the complaint. It's about the marketing practices. The most jurisdiction that you're going to find in consumer protection and fraud are enforced by the Attorney General, it's no different than misrepresenting a hammer that you buy at the hardware store or anything else. Suggest Public Service commission instead of Attorney General office.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2409 C**

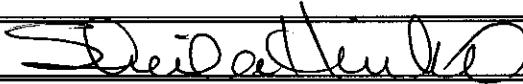
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 7, 2007**

Recorder Job Number: **3032**

Committee Clerk Signature



Cell Phone "Bill of Rights" – part 3:

S Heitkamp: presented his amendments. The Amendments address 2 situations: the 8th Circuit ruling and the philosophical question, if we have a problem in ND, we need to ask, "Who does the problem lie with?" In my opinion it only lies with those individuals who have been taken out of the universal service fund. You're getting money from the Feds to get this done and provide coverage over a blanket area. To me if you're a private company and you're NOT getting money from the Feds and Universal Service fund, then, you know your service and I'm not helping to subsidize, I really don't have much to bitch about.

S Klein: It takes Quest out of the equation.

S Heitkamp: In the instance of Quest, it's pretty narrow in scope.

S Klein: This doesn't affect any other phones.

S Heitkamp: This doesn't address how Alltel and others do business.>

S Klein: The neutral testimony of Commissioner Wefald, wasn't very neutral, so I asked a lot of questions on that. I wanted to see what that really meant. There is either a pre-emption by the Feds, or that they are already on the compliance or complaint side of handling those issues. I think we're already covering complaints through consumer fraud division.

S Heitkamp: Before we get into the argument if the bill should pass, I'll move **THIS** amendment – 0102.

S Potter Second the Motion

S Wanzek: This would make the bill better, I understand the reasoning behind why we're doing this, I don't know if it's going to change the view, but would support the amendment.

S Klein: Why would I want to cut those guys out if they don't participate in the service? The issue concerns with the consumer, we should treat everybody fairly so that the PSC takes a call and hear: "Are you Verizon, or Alltel, or Quest? Oh, you're Quest, then we can't help you." How do we address that?

S Heitkamp: Answer is that you're building a network, you're building everything out there, but if you're not sitting at the Federal spot getting money, I don't really have as much as a complaint there.

RECESS

Rest of committee members arrived.

S Heitkamp: With the amendment 0102 address 2 things, there is another amendment that needs to go on after this which is a clerical amendment for clarity from S Krauter in his testimony. Two provisions in this: 1. Deals with the 8th circuit ruling, that's what the first part of this amendment does on page 3. Page 3, you'd also need to include the exclude "F"

S Klein: So that would be lines 16-23.

S Heitkamp: Right.

S Potter: So that's the right of refusal after you receive the bill? You want to take that out.

S Heitkamp: Right Isn't that what the 8th circuit ruled?

S Klein asked Kent Blickensderfer to take the stand.

Kent Blickensderfer goes to podium.

Kent B: As in my testimony, the 8th circuit and the Feds have clearly pre-empted any type of rate regulation with respect to wireless service. Anything that requires, page 3, # 5, that's pretty much EXACTLY what was struck down in the Minnesota statute. If you look at "F" you are dangerously close to regulating rates when you examine "terms and conditions" trial periods.

S Klein: As you look through this, "dangerously close," section upon section as I visited with the commissioner upstairs, our concern are the pre-emption issues with the Feds.

Kent B: Yes

S Klein: At the end of the day, we have one little section that the Feds would pre-empt us on. How would we even want to move this forward?

Kent B: I stand by my testimony that I gave the other day about us being in opposition in this bill. I believe that conversation went something to the effect of: "you take out all the stuff that's likely to be pre-empted by the Feds." You take out the provisions that the Public Service Commission felt would be so onerous it would be too difficult to implement with respect to some of the bills standards and requirements, I think we were left with page 5. Discussion with page 5 was that that could all be done today without adding further language.

S Heitkamp: My point is we could all determine if we're going to vote against this bill or not. My belief is that these amendments make it better. **I move these amendments.**

S Klein: We already have a second, still in discussion.

S Hacker: FUSF Federal Universal Service Fund, is that large?

Kent B: I don't have the exact figures, it's a lot of money. Quest doesn't receive these funds. If this bill goes forward, that we're clear on, if the amendments if they passed, we don't get any except to the extent that we provide lifeline and linkup for wire line customers and we get some reimbursement there.

S Heitkamp: It is money from the federal government. There is a clear separation between those who are getting federal dollars to get this done. Why kick someone who isn't getting private funds.

S Klein: How many customers do you serve and how many wireless customers are out in ND?

Kent B: I wouldn't feel comfortable sharing Quest's wireless subscriber base, publicly on the record, that is proprietary information. Wireless subscribers, it's a very small number. We tipped over the 300,000 mark a year ago. The wireless companies are bigger than the largest wire line company now, by far.

S Heitkamp: I have one land line, but 4 cell phones.

S Wanzek: I can't recall from the testimony as far as complaints that did come in, were they pretty much directly towards those that were using universal funds, or were some directed at.

Kent B: I would think that people with the most customers have the most complaints, I did not see the latest reports.

S Wanzek: We have the rights to change our views. I'm struggling with when the complaints are filed. Are there those who do not receive universal funds that could potentially have the same complaint. Does the consumer make the distinction?

Roll on Amendments 70756.0102. – 3 – 3 – 1 FAILS ON A TIE

S Potter: In S Krauter's testimony, he proposed some amendments: 0101. I think they were for removing civil penalty.

Move the AMENDMENT 70756.0101 by S Heitkamp

Second by S Potter

S Klein: Page 4, subsection 4, remove procedures... "A" ? [reads from amendment]

Roll on Amendment 0101 – 6 – 0 – 1 PASSES

S Klein: What we've done is page 3 discussion, which removes section 5, after line 10 and "F"

Feb.

S Heitkamp: It goes beyond that. Once you get to page 5 after line 10, that part of the amendment down, goes away. Everything on top, stays.

0102 – in reference, we still need to do that needs to put the bill in the right form.

S Klein: Asked S Heitkamp to fix the amendments and get them ready to bring Monday, to have a better understanding. I want to make sure the amendments are understood.

S Heitkamp: Monday

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2409 B**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 7, 2007**

Recorder Job Number: **3058**

Committee Clerk Signature



Wireless Bill of rights”:

S Potter: I believe all things have been heard, I've heard from both sides saying “just do the right thing.” It must be all over and all the arguments must be over.

S Klein: I don't think that's going to be the issue, I think S Andrist is going to need some time, I think S Heitkamp, can you bring those for Monday?

S Heitkamp: You don't want to do them now Mr. Chairman? Why don't I hand them out now so I don't have to carry them around. [hands out amendment]

What they did was took out any group that did not use the federal universal service fund.

FUSF What we're debating here is if coverage should be provided and if you have a private business that isn't using the Federal funds to build this, I felt they should be excluded. Those were defeated. The other part of the amendment, non-controversial, which deal with the 8th circuit ruling when it comes to regulating bills, I'm not speaking for the other side of opinion, I'm hoping not to send the bill up unless we clean it up, even if comes out with a DO NOT PASS recommendation. I offer the amendments.

S Klein: S Andrist, you'll have an opportunity to see how they fit in. On Monday we will have a few bills and we will do some committee work on Monday to get this bill out.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2409 D**

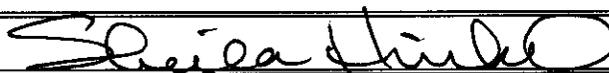
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 12, 2007**

Recorder Job Number: **3401 7:56m**

Committee Clerk Signature



Wireless Phone "bill of rights":

S Heitkamp passed out the Amendments to the bill.

Motion to move the Amendments by S Heitkamp

2nd by S Potter

S Heitkamp: What the amendments do is deal with the 8th circuit issue, they don't go into what we debated the other day on the universal service fund. This removes lines 16-26, Amendment number 70756.0104

Roll for DO PASS AMENDMENTS 70756.0104 – 6-0-1 Passed

S Klein: We've had a lot of discussion on that, everyone's got their minds made up, as this could play out. After visiting with the Public Service Commission, have a lot of problems with the entire bill, so I'm not going to support it whichever way it comes to you.

S Hacker: Are we speaking of the amendments or the bill?

S Klein: the bill

S Hacker: I live on the border and I'm nervous about the effects that companies might stop selling their phones in ND if this passes. Because of the structure of the cancellation policy that we would be enacting, this would be a penalty.

Motion for a DO NOT PASS AS AMMENDED S Wanzek

2nd – S Andrist

S Klein: We're not going to be increasing the amount of towers, this would generally go to some billing that would be required, that billing statements would look the same, I feel the providing consumer protection, this will hurt consumers as we move forward with the deal we currently have with the phones, don't think it's quite right. We're not dealing with a monopoly here.

S Heitkamp: I disagree with that.

S Andrist: I experience some of the frustration in cell phones, everybody does, but it is a vibrant, changing competitive marketplace out there. I see so much merging ahead or so many of these things, perhaps to the point where primary delivery in much of ND's going to be in the hands of telephone cooperatives, who knows. I don't see trying to run these companies.

Roll vote for DO NOT PASS AS AMMENDED: Passed 4-2-1 (nays Heitkamp, Potter)

Carrier: Klein

FISCAL NOTE
 Requested by Legislative Council
 01/23/2007

Bill/Resolution No.: SB 2409

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Provides for rules regarding wireless service and billing, complaint procedures and complaint reporting. We estimate no fiscal impact

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

n/a

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

n/a

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

n/a

Name:	Illona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	01/28/2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2409

Page 3, line 24, remove "The wireless telephone service provider to establish procedures for the notification"

Page 3, remove lines 25 and 26

Page 3, line 27, remove "6." and after "The" insert "rules at least must require the"

Page 4, line 3, replace "7." with "6." and after "The" insert "rules at least must require the"

Page 5, after line 10, insert:

"49-21.2-04. Application. This chapter or a rule adopted to implement this chapter does not apply to a wireless telephone service provider unless the provider receives federal universal service funds."

Re-number accordingly

Heitkamp/Potter

~~DO NOT~~

FAILS

PROPOSED AMENDMENTS TO SENATE BILL NO. 2409

Page 1, line 7, after "law" insert "or rule"

Page 1, line 9, replace "The" with "Unless inconsistent with federal law or rule, the"

Page 3, line 24, replace "to" with "shall"

Page 3, line 27, replace "to" with "shall"

Page 4, line 11, remove "- Civil penalty"

Page 4, line 12, remove "1." and after "procedures" insert "pursuant to chapter 28-32"

Page 4, line 17, remove "The procedures must include, at a"

Page 4, remove lines 18 through 20

Page 4, line 21, replace "b. That the" with "The"

Page 4, line 23, replace "; and" with an underscored period

Page 4, remove lines 24 through 31

Renumber accordingly

JB
2-12-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2409

Page 3, line 11, after the underscored semicolon insert "and"

Page 3, line 15, replace "; and" with an underscored period

Page 3, remove lines 16 through 26

Page 3, line 27, replace "6." with "5." and after "The" insert "rules at least must require the"

Page 4, line 3, replace "7." with "6." and after "The" insert "rules at least must require the"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2409: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2409 was placed on the Sixth order on the calendar.

Page 3, line 11, after the underscored semicolon insert "and"

Page 3, line 15, replace "; and" with an underscored period

Page 3, remove lines 16 through 26

Page 3, line 27, replace "6." with "5." and after "The" insert "rules at least must require the"

Page 4, line 3, replace "7." with "6." and after "The" insert "rules at least must require the"

Renumber accordingly

2007 TESTIMONY

SB 2409

SB 2409
Senate Industry Business & Labor Committee
Senator Klein, Chairman
January 31, 2007

Good morning Chairman Klein and committee member of the Senate IBL Committee. For the record my name is Aaron Krauter State Senator from District 31, which is made up of Grant and Sioux Counties and portions of Hettinger and Morton Counties.

SB 2409 is a positive approach to many of the issues we all hear about wireless service in the state of North Dakota. Dropped calls, no service, and unexpected charges on your monthly billing are just a few of the concerns that many North Dakotan's have.

SB 2409 simply sets up a process where by consumers can receive accurate information so that they can make informed buying decisions. This bill can be referred to as North Dakota's "wireless consumers bill of rights". The legislation allows for basic general information that wireless providers need to make available to the public, so that they themselves can avoid consumer complaints. In fact, Mr. Chairman, SB 2409 promotes competition among wireless provider. The net result is a win win for consumers and providers.

Consumers deserve to know about all the fees charged, they need to have billings that are clear to understand, they need to know where the phone works and have a right to receive their first billing before being locked into a contract that may not meet the service that was honestly anticipated.

SB 2409 will not add or create new layers of bureaucracy and impose new costs that will be passed onto the consumers. The information that would now be required is prepared already but has not been provided consistently and timely to the consumer.

SB 2409 gives the Public Service Commission the authority to work with consumers and providers together. It allows the Public Service Commission to set up the guidelines by which providers must provide the needed customer information. It allows the Public Service Commission to receive complaints and bring them to a resolution for the consumer and the provider and most of all Mr. Chairman an annual report must be prepared of the results of concerns by consumers.

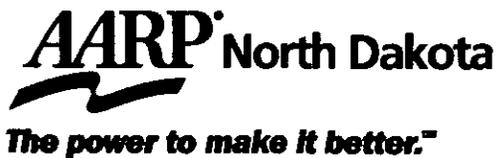
In past year^s the Consumer Division of the Attorney Generals Office has fielded many of the complaints. Consumer complaints they have dealt with are the transfer of service from one company to another and being ^{convinced} with a new higher priced contract. Consumers children that have agreed to a per monthly charge for text messaging and then find an unexpected high billing for incoming text messaging and roaming charges from out of area towers.

Mr. Chairman let me walk you through the bill.

#1
2409

Passage of this bill will make the industry more competitive and responsive to consumer of North Dakota.

pg 2 #1
2409



**Industry, Business & Labor Committee
SB 2409
January 31, 2007**

Chairman Klein and members of the committee, I am Linda Johnson Wurtz, Associate State Director of Advocacy for AARP North Dakota. I am here today representing our 79,600 members.

The number of wireless telephone subscribers in the United States has grown substantially, from 97 million in 2000 to an estimated 158 million today. (Estimate from the wireless telephone industry.)

In a national AARP survey, when asked why they have cell phone service, cell phone users age 18 to 64 are most likely to say it offers the convenience of being able to make calls from anywhere. For cell phone users age 65 and older, however, security in case of an emergency is the most common reason for having a cell phone.

Currently, cell phone service companies are one of the most complained about industries in the United States. In 2004, cell phones received more complaints than any other industry including car dealers, credit card companies, and collection agencies.

The legislation before you provides a common sense approach to providing much needed consumer protections to the ever-changing wireless world and

#2
2409

make it easier for the customer to make informed purchases regarding their cell phone service.

In particular, requiring cell phone companies to disclose fees, surcharges, estimate of total monthly bill, and detailed coverage maps allow consumers to make better choices. Informing consumers of a formal complaint process allows them effective redress and enhances competition. And, requiring companies to disclose the cell phone's enhanced "911" capabilities speaks to the use of cell phones as a security device for emergencies.

Regarding the provision which would allow consumers to cancel their cell phone contracts 15 days after receiving their first bill without penalty, we would prefer that they be given 20 days. The trial period allows subscribers to verify the claims that were made by the provider regarding service quality and billing accuracy. The wireless industry has distinguished itself by requiring long-term commitments, ranging from 1 to 2 years. This industry practice locks customers into a particular provider, limits customer choice, and thereby competitive forces.

To reasonably assess a wireless product, subscribers must experience the product. Subscribers need to experience service in a variety of settings associated with their use patterns to know if they are satisfied with service quality. They should also receive a bill to verify representations regarding calling plan costs.

SB 2409 will provide valuable consumer protections to the citizens of North Dakota and we urge your do-pass recommendation.

#2
2409



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference—International Brotherhood of Teamsters

Chairman Klein, Members of the IBL Committee

My name is Mike Muscha and I represent members of the Brotherhood of Locomotive Engineers and Trainmen across North Dakota. I'm here to today to speak in favor of **SB 2409**. The cell phone is an important piece of equipment in our everyday work place. We need this service to make our lives more normal and to protect our service to the railroads we work for.

We need more customer information when purchasing our plans. I would like to give you just a few examples. As we cross the state of North Dakota while we use our phones, they sometimes grab other towers and we are charged roaming fees. There was a time when we were able to fight these charges but lately, it seems to fall on deaf ears. We need a better process for handling customer complaints.

I had a **Western Plan with Alltel**, which said I would not be charged roaming west of the Mississippi River. While in New Orleans I was charged huge roaming fees while using my phone. They said I was east of the Mississippi. If you have every ever been to New Orleans how would you know if you were west or east of the Mississippi! I argued those charges and I lost.

We also need a different process with intent to terminate.

We need Complaint Procedures and a Compliance Report to the PSC.

I recommend a due pass on this SB 2409.

Thank you,

Mike Muscha, Chairman
BLET North Dakota Legislative Board

#3
2409

S. B. 2409

**Presented by: Susan Wefald, President
Public Service Commission**

**Before: Senate Industry Business and Labor
Honorable Jerry Klein, Chairman**

Date: January 31, 2007

TESTIMONY

Mr. Chairman and members of the committee, I am Commissioner Susan Wefald, President of the North Dakota Public Service Commission. The comments I am making today are my own comments and not those of my fellow commissioners. I am sorry that I cannot be here with you today.

I am in support of giving the Commission jurisdiction over wireless companies for the purpose of customer protection, however, there are specific sections of this bill that cause me much concern.

Commission jurisdiction issues.

At the present time, although the Commission offers *informal* assistance to cellular customers with billing problems and contract issues, the Commission does not have specific authority from the legislature to *formally* address these issues. Also, the federal government has pre-empted the Commission from addressing any issues that relate to entrance and rates for cellular companies. Therefore, at present, the Commission's approach has been to *informally* assist customers with their cellular issues by bringing them to the attention of cellular companies and working toward *voluntary* resolution.

This approach works in many situations. However, because we do not have specific jurisdiction over cellular companies for many of the issues addressed in this bill, the Commission can not consider a formal complaint in these areas at the present time.

For example, lines 9 – 23 on page 1 and 1-9 on page 2 include information that must be included in a written document that is given to the customer. At the present time, if one of these items is not included in the written

#4
2409

information that the customer receives, the Commission would not be able to consider a formal complaint on that issue. If this bill passes, the Commission would look to see if that information is included in the written information given to the customer, and if it is not, the Commission could consider a formal complaint on that matter and could "order" the company to comply with state law.

For another example, please see section 6, page 3, lines 27 through 30. The Commission has a disconnect rule that applies to all wireline carriers, but this section would give the Commission jurisdiction over wireless carriers for this matter as well. It would help if it this section were reworded to refer to existing rules.

Sections that cause me Concern

I have concerns about a number of sections including

- Section g on page 1, line 23.
- Section o on page 2, lines 17 through 20.
- Section 3 on page 2, lines 21 through 29.
- Section a on page 3, lines 1 through 3 and section d on page 3, lines 9 through 11. These sections require the Commission to set up special bill formats just for North Dakota customers. National companies are not willing to set up 50 different bill formats, and this could send companies to the federal government asking them to pre-empt *any* state jurisdiction in this area.
- Section 5 on page 3 lines 24 through 26.
- Sections 1 and 2 on page 4, lines 12 through 31. There are state laws, and the Commission already has administrative rules in place that lay out complaint procedures, adjudication of complaints and financial penalties. It would be better to make reference to these existing sections rather than to make new provisions of law specifically for wireless companies.

Finally, let me draw your attention to the section on "Complaint and compliance report" on page 5, lines 1 through 10. This section is fine since at

#4
2409

the present time, the Commission issues such a compliance report to the public on a yearly basis. It can be found on the Commission web site and each year in the fall the Commission announces its existence through press releases. Our present record keeping system accommodates all information included in this section.

This concludes my comments on Senate Bill 2409.

#4
2409

Chairman Klein, and members of the Senate Industry Business and Labor Committee, my name is Tom D. Kelsch, with the Kelsch Law Firm. I am here today representing Alltel Communications, a wireless telephone company doing business in North Dakota, and in thirty-five states. For those of you who may not know, Alltel is a successor in business to CellularOne.

Alltel is opposed to SB 2409, and urges this committee to recommend a "Do Not Pass" recommendation on this bill.

SB 2409 is an attempt to give the ND Public Service Commission the power to regulate wireless telephone companies.

SB 2409 is unnecessary,

Seeks to impose requirements on wireless carriers that are not imposed on other carriers,

Will result in increased costs in North Dakota, which will result in less capital expenditures, fewer towers and less broadband, and potentially higher prices.

Federal law preempts provisions in this bill.

Federal Preemption.

On page 3, paragraph 5 provides that a wireless telephone provider must notify residential customers at least thirty days in advance of any changes in rates, charges, terms or conditions.

This is preempted by federal law.

The Communications Act of 1934 provides in part:

"No State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...."

In the case of Cellco Partnership v. Hatch, 431 F. 3d 1077, Dec. 2005, The 8th Circuit Federal Court found a Minnesota Statute that mandated that providers "must notify the customer in writing of any proposed change in the contract between the provider and the customer 60 days before the change is proposed to take affect". is considered fixing rates and constitutes impermissible rate regulation preempted by federal law.

There is a reason for regulation on the national level. It is not efficient or cost effective for Companies to have different bill formats for each of the 50 states. Consumers have national plans with national rates, and no roaming, and they can take their numbers with them.

SB 2409 is Unnecessary.

1. According to the FCC report on complaints received the number of complaints have gone down in each month from July through September in all categories. The North Dakota PSC keeps track of all calls it receives from customers of all companies. From

#5
2409

September 2005 to August 2006 the PSC had 59 contacts concerning Alltel. This amounts to less than 0.0295% of the Alltel Customers. Out of approximately 2.4 million monthly bills that were sent out there were only 11 contacts on billing.

2. The FCC has passed "Truth in Billing" legislation that regulates all wireless billing across the country.

3. All of the wireless companies have adopted the CTIA "Consumer Bill of Rights" This guarantees consumers the following rights:

Clear Descriptions and Pricing.

Privacy, Opt-in and Opt-out

Prompt Possession and Satisfaction

Customer Service and Technical Support

Money -Back Refund

Customer Confidence

SB 2409 will Increase Costs to the Consumer.

The wireless industry is a business. A very competitive business, as you all know if you watch the ads on TV, radio and newspapers. If a company isn't providing good service the consumer will switch to a competitor.

If SB 2409 bill is passed the costs of doing business in North Dakota will increase and some of those costs will be passed on to the consumer.

On behalf of Alltel I respectfully urge this committee to give a "Do Not Pass" recommendation on SB 2409.

#5
2409

**Summary of Top Consumer Complaint * Subjects
Processed by the FCC's Consumer & Governmental Affairs Bureau (CGB)
Third Quarter-Calendar Year 2006**

	July	August	September	Quarter Totals
Cable & Satellite Services				
Accessibility Issues	2	0	3	5
Billing & Rates	30	38	32	100
Cable Modem Service	18	24	24	66
Programming Issues	83	184	131	398
Service Related Issues	36	43	41	120
Totals	169	289	231	689

	July	August	September	Quarter Totals
Radio and Television Broadcasting				
Accessibility Issues	5	3	1	9
Programming - General Criticism	261	248	206	715
Programming - Indecency/Obscenity**	179	404	161,587	162,170
Other Programming Issues	84	69	87	240
Totals	529	724	161,881	163,134

	July	August	September	Quarter Totals
Wireless Telecommunications				
Billing & Rates	737	708	587	2032
Carrier Marketing & Advertising	151	162	128	441
Contract - Early Termination	172	142	126	440
Service Quality	248	255	175	678
Telephone Consumer Protection Act	204	194	160	558
Totals	1,512	1,461	1,176	4,149

	July	August	September	Quarter Totals
Wireline Telecommunications				
Cramming	99	104	81	284
Service Quality	133	130	90	353
Billing & Rates	773	810	545	2,128
Telephone Consumer Protection Act - Other Issues	1,274	1,478	1,168	3,920
Telephone Consumer Protection Act-Unsolicited Fax	1,881	2,373	1,487	5,741
Totals	4,160	4,895	3,371	12,426

Notes: (1) See attachment for brief description of subject categories.

* A Complaint is defined as a communication received at CGB's consumer center either via letter, fax, email, internet, or telephone from or on behalf of an individual that: (i) identifies a particular entity under the FCC's jurisdiction; (ii) alleges harm or inquiry; and (iii) seeks relief. The FCC receives many complaints that do not involve violations of the Communications Act or a FCC rule or order. The existence of a complaint does not necessarily indicate wrong doing by the company involved.

** Complaints regarding alleged indecency/obscenity during specific programs are forwarded to the Enforcement Bureau (EB) for appropriate handling. The reported counts reflect complaints received by CGB, complaints received separately by EB, and complaints emailed directly to the offices of the FCC Chairman and the respective offices of the Commissioners. The reported counts may also include duplicate complaints or contacts that subsequently are determined insufficient to constitute actionable complaints. The data within this report account for statistics at the national level as reported to the Commission, and therefore are not necessarily indicative of corresponding state or local trends.

#5 4
2409

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Consumer & Governmental Affairs Bureau

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Understanding Your Telephone Bill

FCC Consumer Facts

Background

Consumers are sometimes confused by the various charges and items on their monthly telephone bills. The Federal Communications Commission's (FCC) Truth-in-Billing rules require telephone companies to provide clear, non-misleading, plain language in describing services for which you are being billed. The company sending you the bill must identify the service provider associated with each charge. If a bill contains charges in addition to basic local service, it must distinguish between charges for which non-payment will result in disconnection of basic local service, and charges for which non-payment will not result in disconnection. Telephone companies must also display, on each bill, one or more toll-free numbers that you can call to ask about or dispute any charge on the bill.

Here is a detailed description of some of the charges or line items that may appear on your traditional wireline telephone bill, your wireless telephone bill, or both.

Charges on Both Wireline and Wireless Telephone Bills

Access Charges

- Access charges are fees charged subscribers or other telephone companies by a local telephone company for the use of its local network.
- The FCC allows local telephone companies to bill customers for a portion of the costs of providing access. **These charges are not a government charge or tax.** The maximum allowable access charges per telephone line are set by the FCC, but local telephone companies are free to charge less or not at all. Access charges for second or additional lines at the same residence are higher than the charges for the primary line. These charges can be described on your telephone bill as "Federal access charge," "Customer or Subscriber Line Charge," "Interstate Access Charge," etc.
- State public service commissions regulate access charges for intrastate (within a state) calls. In some states, a state subscriber line charge may appear on customer bills.

Federal Excise Tax

#5
2409

- The Internal Revenue Service (IRS) recently decided that telephone companies should stop collecting a three percent tax imposed on bundled local and long distance service, and long distance service, billed after July 31, 2006. The IRS decided the tax should no longer be collected because Congress applied the tax to telecommunications services for which charges varied by time and distance when it was imposed in 1898. Today, many individuals and businesses have bundled local and long distance calling plans, or subscribe to wireless service plans that base charges on the length, but not the distance, of the call. Therefore, many courts ordered the IRS to refund taxes collected from such customers that sued to recover them.

The IRS has now decided to credit or refund the taxes paid after February 28, 2003, and before August 1, 2006, by all subscribers with such plans, beginning with the filing of 2006 tax returns in 2007. Individual taxpayers filing for credits or refunds will be able to obtain, with interest, either the amount of tax they actually paid (assuming they have bills to show the actual amount), or a "safe harbor" amount determined by the IRS. The safe harbor amounts set by the IRS based on usage patterns range from \$30 for taxpayers claiming a single exemption to \$60 for taxpayers claiming four exemptions.

Businesses or tax-exempt organizations can obtain the amount of tax paid or estimate their refund by comparing their April 2006 (when the tax was billed) and September 2006 (after the tax stopped being billed) telephone bills to determine the telephone tax paid as a percentage of each.

The IRS will provide more information on claiming the credits or refunds on 2006 tax forms, and is creating a short form for individuals who don't file tax returns to claim the credits or refunds. Subscribers must still pay the tax on local service if it is separately billed. For more information on the credits or refunds, call your local IRS office, or visit <http://www.fcc.gov/fcc-bin/bye?http://www.irs.gov>.

State & Local Taxes

- These taxes are imposed by state, local, and municipal governments on goods and services. They may also appear as "gross receipts" taxes on your bill.

Universal Service Charges

- The Universal Service Fund (USF) provides support to promote access to telecommunications services at reasonable rates for those living in rural and high-cost areas, income-eligible consumers, rural health care facilities, and schools and libraries.
- All telephone companies that provide voice service between states and internationally, including wireless and interconnected Voice Over Internet Protocol (VoIP) providers, must contribute a percentage of their revenues derived from these services to the USF. Some states impose similar requirements for revenues derived from intrastate services.
- Although not required to do so, many service providers choose to pass their contribution costs to the USF on to their customers in the form of a line item on customer bills, often called the "Federal Universal Service Fee" or "Universal Connectivity Fee." The charges on bills may not exceed the provider's actual cost of contributing to the USF.

#5
2409

911, LNP and TRS Charges

- **911** – Charge imposed by local governments to help pay for emergency services such as fire and rescue.
- **Local Number Portability (LNP)** – Fixed, monthly charge assessed by local telephone companies to recover certain costs for providing telephone number portability. Telephone number portability allows residential and business customers to retain, at the same location, their existing local telephone numbers when switching from one telephone service provider to another. This charge is not a tax.
- **Telecommunications Relay Service** – Charge to help pay for the relay center that transmits and translates calls for people with hearing or speech disabilities.

Other Charges

- **Directory Assistance** – Any charges for placing 411 or (area code) 555-1212 directory assistance calls.
- **Monthly Calling Plan Charge** – Charge applicable to any monthly calling plan such as unlimited long distance calling on your wireline bill or unlimited minutes on your wireless bill.
- **Operator Assisted Calls** – Charges for any calls connected by an operator. Rates for these calls generally are higher than rates for unassisted calls.
- **Features Charges** – Both wireline and wireless telephone companies offer features such as call forwarding (transferring incoming calls to another telephone number); three-way calling (holding an incoming call, placing a call to a second number, and allowing three parties to participate); call waiting (providing a signal during an ongoing call to notify that another party is calling the subscriber); voice mail (message service much like an answering machine); and Caller Identification (Caller ID) (allowing the subscriber to view the telephone number of an incoming call on a display screen). With Caller ID, non-listed or non-published numbers may be displayed unless the non-listed or non-published subscriber requests that they not be.

Charges Only on Your Wireline Telephone Bill

- **Minimum Monthly Charge** – A minimum monthly charge assessed by some long distance companies even if you don't make long distance calls.
- **"Single Bill" Fee** – Charge for combining local and long distance charges onto one bill. This fee is not mandated by the FCC and is not an FCC charge. Some companies waive the fee for customers who pay bills online or by credit card. Customers can avoid the charge by arranging for separate billing from their long distance telephone company.

Charges Only on Your Wireless Telephone Bill

Airtime Charges

- Airtime charges are per-minute charges for the time you spend talking on your wireless telephone. Some wireless providers round fractions of minutes to the next highest one, two, or three minutes. For example, if you talk 22 minutes and 28 seconds, it will be counted as 23 minutes for a 1-minute increment plan and 24 minutes for a 2-minute increment plan.

Roaming Charges

- Roaming charges require you to pay for using your wireless telephone outside of the "home" service area as defined by your service provider in your service plan or contract.
- Wireless providers typically charge higher per-minute rates for calls made or received while roaming. They may also apply additional fees, such as a daily access fee.

911 Charges

- Enhanced 911 or E911 service enables wireless telephones used to dial 911 to automatically transmit the caller's geographic position to emergency responders. Wireless service providers are improving their networks to provide E911 capability according to a schedule established by the FCC. The specific requirements and schedules can be found on the FCC Web site at www.fcc.gov/911/enhanced.
- Wireless service providers may choose to pass their costs of providing E911 service on to their customers and this charge may be described as an E911 charge on your wireless telephone bill.

Text Messaging

- This service allows sending of short messages, usually less than one hundred characters in length. Subscribers can be charged either a per-message fee or a flat, monthly fee for unlimited messaging.

Downloading Fees

- These are fees charged for downloading options offered by your wireless service provider, such as ring tones, or, if your service plan includes Internet access, any fees for downloading data from the Internet.

Detailed Billing

- This service provides detailed information such as date, time, duration, type of call (incoming or outgoing), number called, or calling party, for each call.

Billing Complaints

If neither the company sending you the bill nor the company that provided the service in question will remove charges from your telephone bill that you consider to be incorrect, you can file a complaint as follows:

#5
2409

For charges related to telephone services between states or internationally, you can file a complaint with the FCC. File your complaint via the Internet at: www.fcc.gov/cgb/complaints_general.html, or by e-mail, telephone, fax, or in writing:

E-mail: fccinfo@fcc.gov

Telephone: 1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Fax: 1-866-418-0232

Mail:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th Street, SW
Washington, D.C. 20554.

Include the following information in your complaint:

- a **telephone number where** you can be reached during the business day;
- **your name, address, and the telephone number** or numbers involved with your complaint;
- **specific information** about your complaint that describes the dispute in detail, including the names of **all** companies involved;
- **names and telephone numbers** of any company representatives that you contacted;
- **the date** you spoke with these representatives, and any other information that would help process your complaint;
- a **copy of any bill(s)** that relate to the dispute; and
- **the type of resolution** you are seeking, such as a credit or refund or a clearer explanation of the charge(s).

For charges for telephone-related services provided within your state, you should contact your state public service commission. Contact information for your state public service commission can be found at <http://www.fcc.gov/fcc-bin/bye?http://www.naruc.org>, or in the blue pages or government section of your local telephone directory.

For charges on your telephone bill for non-telephone-related services, file your complaint with the Federal Trade Commission (FTC). Call 1-877-FTC-HELP, or use the FTC's online complaint form at [http://www.fcc.gov/fcc-bin/bye?https://m.ftc.gov/pls/dod/wsolcc\\$.startup](http://www.fcc.gov/fcc-bin/bye?https://m.ftc.gov/pls/dod/wsolcc$.startup).

For more information about charges on your telephone bill, contact the FCC's Consumer Center at 1-888-CALL-FCC (1-888-225-5322) voice, 1-888-TELL-FCC (1-888-835-

#5
2409

5322) TTY, or visit the Consumer & Governmental Affairs Bureau Web site at <http://www.fcc.gov/cgb/>.

For this or any other consumer publication in an accessible format (electronic ASCII text, Braille, large print, or audio) please write or call us at the address or phone number below, or send an e-mail to FCC504@fcc.gov.

To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, click on <http://www.fcc.gov/cgb/contacts/>.

This document is for consumer education purposes only and is not intended to affect any proceeding or cases involving this subject matter or related issues.

01/11/07



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2409 #5

Contact_Record Report

693 Records.

9/1/2005 to 8/31/2006

Total
for Subject

Company / Total

<u>License & Rail</u>		<u>106</u>
Ulmer, Randy	1	
Auction / Clerk		
Misrepresented Goods		1
Unity Seed Company	1	
Grain Warehouse		
Price Dispute		1
Variety Marketplace	1	
Auction / Clerk		
Internet Auction		1
Walhalla Bean Company	1	
Grain Warehouse		
Bond Information		1
would not say	1	
Grain Warehouse		
Protein complaint		1

<u>Public Utilities</u>		<u>545</u>
ALLTEL COMMUNICATIONS, INC.	1	
Telecom		
Billing		1
Alltel Corporation	58	
Telecom		
911		1
Billing		10
Cellular Phones		36
Customer Service		4
Lifeline/Link Up		4
Quality of Service		1
Rates Tariffs Rules Regs Contracts		1
Service Extras		1
American Telecom Systems	1	
Telecom		
Billing		1

#5 3/13
2409

January 31, 2007

Honorable Jerry Klein
Chair, Industry, Business, and Labor Committee
North Dakota Senate
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58506-0360

Dear Chairman Klein:

We are writing in opposition to North Dakota Senate Bill 2409, which would require the state Public Service Commission (the "PSC") to adopt rules regulating cell phone contracts and mandating state-specific requirements. This legislation would likely result in increased consumer costs as it would force wireless telephone providers to comply with this first-in-the-nation mandate. If enacted, this legislation would threaten the current wireless framework in North Dakota, which has delivered lower prices, quality service, and convenient national rate plans to consumers in the state.

As of December 2005, seven wireless carriers¹ provided services to approximately half a million subscribers in North Dakota², representing 75 percent of the state's population.³ In just over one year, there were 75,000 new wireless subscribers in the state.⁴ None of this would have been possible if the state burdened the industry with the type of regulatory requirements currently being proposed.

SB 2409 would require the PSC to create a bureaucratic wireless complaint process and subject wireless providers to possible fines. The imposition of this process is wholly unwarranted as the wireless industry has successfully worked with the PSC to quickly resolve consumer complaints without the threat of punitive penalties. In fact, in 2004-2005, the PSC received only 67 complaints from wireless subscribers – a complaint rate of 0.015% - representing approximately 15 complaints for every 100,000 subscribers.⁵ The complaint process outlined in this bill is a solution desperately seeking a problem.

These low complaint rates are due in part to wireless providers adopting the attached CTIA Consumer Code, which was developed to provide consumers with information to help them make informed choices when selecting wireless service and to help ensure that consumers understand their wireless service and rate plans. As stated in the Consumer Code, the wireless industry is committed to ".....respond in writing to state and federal administrative agencies within 30 days of receiving written consumer complaints from any such agency." For its part, for the past five years the wireless industry has voluntarily provided a list of senior carrier contact representatives to the PSC to help in expediting the resolution of the limited number of consumer complaints the PSC receives. It is important to note that these programs were

¹ CTIA-The Wireless Association, Research Data, June 2006.

² Federal Communications Commission, Local Telephone Competition Report, July 2006.

³ US Census Bureau, American Fact Finder, North Dakota Fact Sheet, 2005.

⁴ Federal Communications Commission, Local Telephone Competition Report, July 2006.

⁵ North Dakota Public Service Commission, July 2006.



#5 (2/3)
2409

undertaken and carried out without the onerous regulatory regime being proposed in this legislation.

Moreover, signatories to the Code are committed to providing quality customer service by agreeing to: (1) disclose rates and terms to customers; (2) provide service maps; (3) confirm changes in service with customers; (4) make specific disclosures in ads; (5) allow trial periods of up to 14 days; (6) separately identify provider charges from taxes on bills; (7) allow customers to terminate service when contract terms change; (8) provide ready access to customer service; (9) promptly respond to customer inquires and complaints received from governmental agencies; and (10) protect customer privacy. As you can see, CTIA's Consumer Code already addresses many of the provisions in SB 2409. This type of market-based approach to providing quality customer service is certainly preferable to further government regulation.

In addition, there is no need for the North Dakota Legislature to act, as the Federal Communications Commission has enforcement authority to address consumer complaints and the billing requirements mandated in SB 2409. Furthermore, at the state level, the North Dakota Attorney General currently has the power and authority to enforce the consumer protection laws of the state. By adding another layer of regulation, the state is needlessly jeopardizing the national wireless framework that has served North Dakota consumers so well.

We therefore respectfully urge you to oppose SB 2409.

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#5
2409

CTIA

Consumer Code *for* Wireless Service

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

ONE

DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

For each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no early termination fee will apply.

TWO

MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

Wireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map

#5
2409

usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

THREE

PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE

When a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier will provide or confirm the material terms and conditions of service with the subscriber.

FOUR

ALLOW A TRIAL PERIOD FOR NEW SERVICE

When a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply.

FIVE

PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING

In advertising of prices for wireless service or devices, wireless carriers will disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows: (a) activation or initiation fees; (b) monthly access fees or base charges; (c) any required contract term; (d) early termination fees; (e) the terms and conditions related to receiving a product or service for "free;" (f) the times of any peak and off-peak calling periods; (g) whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas; (h) for any rate plan advertised as "nationwide," (or using similar terms), the carrier will have available substantiation for this claim; (i) whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term; (j) whether any additional taxes, fees or surcharges apply; and (k) the amount or range of any such fees or surcharges collected and retained by the carrier.

SIX

SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS

On customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal state or local governments. Carriers will not label cost recovery fees or charges as taxes.

#5
2409

SEVEN

PROVIDE CUSTOMERS THE RIGHT TO TERMINATE SERVICE
FOR CHANGES TO CONTRACT TERMS

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

EIGHT

PROVIDE READY ACCESS TO CUSTOMER SERVICE

Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

NINE

PROMPTLY RESPOND TO CONSUMER INQUIRIES AND COMPLAINTS
RECEIVED FROM GOVERNMENT AGENCIES

Wireless carriers will respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.

TEN

ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY

Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online.

#5
2409

Presented by
Kent Blickensderfer
Before the Senate
Business, Industry and
Labor Committee

**TESTIMONY OF QWEST CORPORATION ON
SENATE BILL 2409**

Mr. Chairman and committee members, Qwest opposes SB2409. The regulation imposed throughout this bill will be costly, burdensome and in some cases more onerous than regulations placed on companies during the monopoly Bell telephone era.

Without going through each section of the bill, I can say that in many cases, Qwest and others already provide customers most of the mandated items contemplated in SB2409. But because these are highly competitive products and services, it makes no sense to add further regulation. This will only serve to increase costs and discourage investment in newer technologies and better service in North Dakota. In fact, SB2409 does nothing to encourage competition or wireless facilities investment here.

By tampering with early termination fee agreements, the likely result will be a substantial reduction or total elimination of "promotional offer" handsets in North Dakota. Companies offer cheap handsets to customers and then recoup the revenue over the life of the contract. Early termination fees are part of the rate structure of wireless services.

Federal law pre-empts wireless rate regulation. If passed, several parts of this bill may be challenged on those grounds. In Minnesota, while interpreting *Cellco Partnership v. Hatch*, 431 F.2d 1077 (8th Cir. 2005), the Eighth Circuit Court struck down a Minnesota Statute that required wireless providers to:

- Notify a customer in writing of any proposed substantive change in the contract 60 days before the change takes effect; and
- Only make the change effective if the customer affirmatively opts in to the change

The court interpreted 47 USC Sec. 332(c)(3)(A) as prohibiting state statutes that impact rates and market entry. The court invalidated the Minnesota legislation because the provisions described above would have had the effect of changing rates for at least some customers and the effect of changing the effective date for a rate change for others.

#6
2409

Applying this decision to SB 2409, if the rules passed under the statute have any impact on the timeliness or applicability of rates, they would likely be preempted.

Subsection 4 on pages 2 and 3 probably afoul of the Eighth Circuit decision. Sections c, e, and f all appear to impact rates. Subsection 5 impacts rates because it imposes a 30-day notice requirement before changes can be made. This precise requirement was struck down in the Cellco case. Subsection 6 also arguably impacts rates, setting this legislation on a collision course with the courts.

As was said before, in general, Qwest already does many of the things mandated throughout this bill. We don't need more laws or regulations to interfere with the excellent provider-customer relationships we have here. Competition is a much more efficient way to ensure good service and force bad actors from the marketplace.

Please give SB2409 a "DO NOT PASS" recommendation.

**Testimony in Opposition to
SENATE BILL NO. 2409
Senate Industry Business and Labor Committee
January 31, 2007**

Chairman Klein, Senate IBL Committee members, my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of Verizon Wireless to express opposition to SB 2409.

The wireless industry is highly competitive and allows the market to pick winners and losers. Consumers, not regulators, exercise the most effective control when it comes to treating the consumer in a fair manner. Wireless customers will reward positive performance by choosing to continue to do business with companies that they like and punish wireless carriers that provide poor service by refusing to do business with them. With policies like local number portability and Verizon Wireless's pro-rating of early termination fees, it's easier now more than ever to switch providers.

Due to the competitive nature of the wireless market, 29 states and District of Columbia have laws that prevent utility commissions from regulating wireless service; utility commissions in another 12 states have decided not to regulate wireless service either. We have a market driven interest in resolving each and every complaint and inquiry brought to us by our customers in a timely manner to keep them satisfied with our service.

Verizon Wireless has signed the multistate Assurance of Voluntary Compliance agreement with the North Dakota Attorney General (copy attached) and The CTIA Consumer Code (copy attached) to make clear that we hold ourselves to the highest standards when it comes to information disclosure and customer care. We believe that we are already complying with the actions called for in this legislation and that it seeks to burden the wireless industry and the consumer with unnecessary regulation.

Accordingly, I would urge a DO NOT PASS recommendation for SB 2409.

7
2409

IN THE MATTER OF)
CELLCO PARTNERSHIP)
d/b/a VERIZON WIRELESS)

ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance¹ ("Assurance") is entered into by the Attorneys General² (collectively, "Attorneys General") of the States of Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming (collectively, "Participating States"), and Respondent Verizon Wireless.

2. Cellco Partnership is a general partnership formed under the laws of the State of Delaware, with its principal place of business at 180 Washington Valley Road, Bedminster, New Jersey 07921 ("Carrier"). "Verizon Wireless" is the doing business as name by which the Carrier does business in the Participating States.

¹ This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

² Of the states listed, Georgia is represented by the Administrator of the Fair Business Practices Act, who is statutorily authorized to undertake consumer protection functions for the State of Georgia, including acceptance of Assurances of Voluntary Compliance. Hawaii is not represented by its Attorney General. Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. Tennessee is represented by the Attorney General, but the Tennessee Attorney General's Office enters into this Assurance in conjunction with the Tennessee Division of Consumer Affairs. For simplicity purposes, the entire group will be referred to as the "Attorneys General."

#7
2409

BACKGROUND

3. This Assurance follows an inquiry by the Attorneys General and communications between the Attorneys General and Carrier as to whether representations by Carrier in certain of its consumer advertising materials, including but not limited to, television advertising, print advertising, radio advertising, Internet websites, brochures and other consumer handouts, and billboards regarding its wireless voice service and associated data communications services violate the consumer protection and trade practice statutes listed herein at footnote 3 and/or the regulations promulgated pursuant to the same (collectively, "Consumer Statutes").³

4. Carrier provides wireless voice and data communications services and is licensed by the

³ Alabama Deceptive Trade Practices Act, Alabama Code 1975 § 8-19-1, *et seq.*; Arkansas Code Ann. § 4-88-101 *et seq.*; Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2003); 6 Delaware Code § 2511 *et seq.*; Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; Hawaii Rev. Stat. § 480-2 and § 487-5(6); Idaho Code § 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Illinois Uniform Deceptive Trade Practices Act, § 815 ILCS 510/1, *et seq.*; Iowa Consumer Fraud Act, Iowa Code § 714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; Massachusetts Consumer Protection Act M.G.L. c. 93A §§ 1-11; Michigan Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418 (1) *et seq.* (1994); Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1 (Rev. 2000); Montana MCA 30-14-101 *et seq.*; Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601 *et seq.* and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301 *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Hampshire Rev. Stat. Ann. 358-A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; New Mexico Unfair Trade Practices Act, NMSA § 57-12-1 *et seq.*, (1978); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*; North Dakota Century Code (NDCC) Sections 51-15-01, *et seq.*; Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 15 O.S. §§ 751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*; Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*, (West 1993); The Virginia Consumer Protection Act, Va. Code Section 59.1-196 *et seq.*; Wisconsin Statutes §§ 100.18(1) and 100.207; and Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 *et seq.* (2003).

Federal Communications Commission ("FCC") to provide wireless telephone service. Carrier supplements its FCC licensed areas with contractual roaming agreements that it has entered into with third party wireless companies.

5. Carrier runs advertising for its wireless voice and data communications services in different media in many states. Certain of its advertising materials promote different wireless service pricing plans offered in different parts of the country.

6. Carrier distributes advertising materials to Consumers in retail outlets in many states. These materials explain the company's wireless service pricing plans and wireless voice and data communications services.

7. Carrier believes that it is, and at all times has been, in compliance with the Consumer Statutes. Carrier further believes that its advertising materials always have been accurate and complete and always have disclosed all necessary material information, including all material limitations in Carrier's wireless service and all material rate information, clearly and conspicuously. As a matter of corporate policy, Carrier believes it always has adhered, and continues to adhere, to pro-individual consumer and pro-business consumer business practices and follows the highest ethical standards, which constitute best practices in the wireless industry.

8. Carrier believes it has cooperated fully with the Attorneys General throughout their inquiry. Although Carrier denies it has engaged in unlawful or otherwise inappropriate business practices, Carrier agrees to this Assurance so that this matter may be resolved amicably, without further cost or inconvenience to the Participating States, their citizens or Carrier, and to avoid the cost and inconvenience to Carrier that will result if the Participating States subject Carrier to different advertising and business requirements in each Participating State.

#7
2409

TERMS OF ASSURANCE

A. Definitions

For purposes of this Assurance, the following definitions shall apply:

9. A statement is "clear and conspicuous" if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner.

In addition:

- a. A radio disclosure must be delivered in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
 - b. A television disclosure must (i) appear in video in a type size, shade and location, and remain on the screen for a sufficient duration, for a consumer to read and comprehend it, and/or (ii) be delivered in audio in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
 - c. A print or Internet disclosure must appear in a type size, contrast and location sufficient for a consumer to read and comprehend it.
10. "Wireless Service" means any basic voice wireless service offered by a commercial mobile radio service provider.
11. "Enhanced Feature" means any communications service associated with Wireless Service, including without limitation paging, voice mail, wireless Internet, text messaging and personal

information services.

12. "Consumer" means an individual or business, as defined by and in accordance with a Participating State's Consumer Statute, residing in a Participating State.

13. "Sales Transaction" means a transaction in which (i) a Consumer who is not a current customer of Carrier purchases and enters in a contract for Wireless Service from Carrier, or (ii) a Consumer who is a current customer of Carrier renews or extends his or her contract for a fixed term, or changes Wireless Service rate plans, without regard to whether the rate plan change results in a new fixed term. For purposes of this Assurance, "fixed term" refers to a Wireless Service contract with a term of greater than one month.

14. "Telephone Sales Representative" means anyone who makes any representations to any Consumer via a telephone conversation regarding Carrier's Wireless Service for the purpose of inducing the Consumer to enter into a Sales Transaction with Carrier, without regard to whether the telephone conversation originally began as a customer service or billing inquiry.

15. "Agent" means one or more persons, a corporation, a partnership, or other entity as the case may be, who enters into or has a relationship with Carrier where it sells Carrier's services on behalf of Carrier, and any sub-contractor, employee, servant, Affiliate or agent of said party.

16. "Affiliate" means a person, association, partnership, corporation or joint-stock company, trust, or other business entity that is controlled by Carrier by virtue of its ownership or voting interest.

B. Disclosure of Material Rates and Terms During a Sales Transaction

17. Carrier shall during a Sales Transaction or sale of an Enhanced Feature disclose clearly and conspicuously to Consumers all material terms and conditions of the offer to be purchased.

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2409

18. Carrier will implement procedures to provide to Consumers during a Sales Transaction clear and conspicuous disclosures of, at a minimum, the following rates and terms of its Wireless Service rate plans and any Enhanced Features to be purchased, if applicable:

- a. rate plan area;
- b. recurring monthly service charges;
- c. number of peak and off-peak minutes;
- d. hours when peak and off-peak minutes apply;
- e. charge for overtime or excess minutes above allowance;
- f. charge for long distance minutes;
- g. charge for off-network or roaming minutes;
- h. minimum contract term;
- i. early termination fee;
- j. activation and/or other mandatory service initiation fees;
- k. material terms of its cancellation and return policy and any applicable charges;
- l. the fact that monthly taxes, surcharges, and other fees apply, including a listing of the name or type and amount (or, if applicable, a percentage formula as of a stated effective date) of any monthly discretionary charges that are generally assessed by Carrier on Consumers in a uniform dollar amount or percentage without regard to locale. For additional monthly discretionary charges that are assessed by Carrier on Consumers with regard to locale, Carrier shall clearly and conspicuously disclose that additional monthly fees will apply, depending on the

customer's locale, and disclose the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of such additional monthly discretionary charges.

m. for a promotional price, the disclosures required by paragraph 34 of this Assurance; and

n. for a free to pay conversion, the disclosures required by paragraph 23 of this Assurance.

19. Where a Sales Transaction occurs at Carrier's retail location, Carrier will implement procedures to provide Consumers with printed materials that Consumers may take and that contain clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

20. Where a Sales Transaction occurs via Carrier's website, Carrier will provide to Consumers clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, including, but not limited to, a clear and conspicuous disclosure of such information before any click-through or other mechanism of acceptance required for a Consumer

to accept Carrier's contract terms and conditions. These disclosures shall be in electronic format that Consumers may print.

21. During a Sales Transaction that occurs during a telephone conversation between Carrier and a Consumer, and such sales technique is not prohibited under state law, Carrier shall instruct its Telephone Sales Representatives to make the disclosures required by paragraph 18 of this Assurance clearly and conspicuously and orally.

22. Where a Sales Transaction occurs during a telephone conversation between Carrier and a Consumer, Carrier will implement procedures to send within five (5) business days following the telephone conversation with a Consumer who does not have an existing relationship with Carrier and who purchases and enters into a contract for Wireless Service from Carrier, and within ten (10) business days following the telephone conversation with a Consumer who is an existing customer of Carrier and who renews or extends his or her Wireless Service contract for a fixed term, or changes Wireless Service rate plans, resulting in a new fixed term, written materials containing clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

23. A "free to pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a Consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if the Consumer does not take affirmative action to cancel before the end of the initial period. If Carrier offers any part of its Wireless Service or any Enhanced Service as a free to pay conversion, Carrier shall disclose, before the Consumer is bound by a contract with Carrier, the material terms and conditions of the free to pay conversion clearly and conspicuously, including, if applicable:

- a. The fact that the Consumer must cancel the free to pay conversion in order to avoid being charged;
- b. The date or deadline and method by which the Consumer must cancel to avoid being charged; and
- c. The cost of the good or service after the expiration of the free to pay conversion.

C. Coverage

24. Carrier shall not misrepresent in its marketing and advertising materials that there is greater geographic service coverage available for its Wireless Service than actually exists.

25. When representing in its advertising and/or marketing materials that its coverage is "nationwide," "national," "coast-to-coast," or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously the following conditions and limitations on such term:

- a. whether the advertised rate requires the Consumer to be on a particular wireless carrier's network or networks; and

#7
2409

b. that coverage may not be available in all areas.

26. In addition to the disclosures required by Paragraph 25, for a period of at least three years following the Compliance Date, when representing in its advertising and/or marketing materials that its coverage is "nationwide," "national," "coast-to-coast," or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously in those advertising and marketing materials the basis for use of the term, which may include the population number covered by the plan, the number of major metropolitan areas covered by the plan, or a referral to the applicable coverage map and to the location where that coverage map is available. Carrier's obligation to clearly and conspicuously disclose the basis of such claim in its advertising and marketing materials shall continue thereafter if there is any material limitation to such coverage representation.

27. When advertising the availability of any Enhanced Feature, if such Enhanced Feature is not available in all areas where Carrier's Wireless Service is available, then Carrier shall disclose that fact clearly and conspicuously.

28. Carrier shall implement procedures to provide during a Sales Transaction at its retail locations, and provide on its website, maps depicting approximate Wireless Service coverage applicable to the Wireless Service rate plan(s) being sold. The maps will be at Carrier's retail locations in printed materials that Consumers may take with them and on Carrier's website as electronic documents that Consumers may print out. The maps will be generated using predictive modeling and mapping techniques commonly used by radio frequency engineers in the wireless service industry to depict approximate outdoor coverage, based on then-appropriate signal strength for the applicable wireless technology and signal strength confidence levels under normal

operating conditions on Carrier's network, factoring in topographical conditions, and subject to variables that impact radio service generally. All such maps will include a clear and conspicuous disclosure of material limitations in Wireless Service coverage depiction and Wireless Service availability. To assist Consumers in making comparisons among carriers, Carrier will make available to Consumers separate such maps depicting approximate Wireless Service coverage on a nationwide and regionwide basis as applicable to its Wireless Service rate plans that are currently offered to Consumers.

29. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

30. Carrier will request to exchange coverage maps based upon the above criteria with its roaming partners, so as to allow the roaming partners to incorporate the same into their own maps as necessary. To the extent Carrier is unable to obtain such maps from a roaming partner, Carrier may rely upon publicly or commercially available coverage information in creating its own maps.

D. Cancellation Period for New Wireless Service

31. When a Consumer initiates service with Carrier:

- a. The Consumer will be informed of and given a period of not less than 14

days after activation to try out the service. Carrier will not impose any early termination fee if the Consumer cancels service within the 14-day period, and will refund any activation or other non-usage based fee charged to the Consumer if the Consumer cancels service within three days (not including national holidays) after activation, provided in each case that the Consumer complies in full with applicable return and/or exchange policies. If the Consumer will be responsible for any charges or fees for use of the service during the 14-day period, Carrier will clearly and conspicuously disclose this fact during the Sales Transaction. Any charge for airtime and charges based on usage must be based on actual usage (which may, if applicable, be calculated by prorating, either based on portion of month or billing cycle or based on the amount of minutes used in the applicable "bucket" of minutes). If any fees were waived during the Sales Transaction or at any time prior to cancellation, these fees may not be charged when the Consumer cancels during the 14-day period.

b. The Carrier's obligations under paragraph 31(a) shall expire in a Participating State 3 years after the Compliance Date, provided that Carrier has not been adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in the Participating State to be in material violation of this Assurance. If prior to 3 years after the Compliance Date, Carrier is adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in a Participating State to have materially violated this Assurance, Carrier shall continue to be subject to the obligations under paragraph 31(a) in the Participating

State until the later of December 31, 2009 or three years from the date of the last adjudication of a violation unless the operative adjudication is reversed by the highest appellate court that addresses the matter. This paragraph is in addition to all other remedies available to any Participating State in law and equity.

c. If Carrier changes its return policy, it shall provide advance notice with a description of the changes to the Attorney General of Tennessee and it shall clearly and conspicuously disclose its new return policy to Consumers prior to having Consumers enter into a Sales Transaction.

E. Advertising

32. Carrier shall not misrepresent, expressly or by implication, any term or condition of any of its products or services, including, but not limited to, cost.

33. In advertising materials stating prices for Wireless Service and/or Wireless Service devices, Carrier will disclose clearly and conspicuously all material terms and conditions associated with the stated price, pursuant to applicable law.

34. When advertising a promotional price or free offer for its Wireless Service or Enhanced Features, Carrier will clearly and conspicuously disclose material terms and conditions related to the promotional price, including, as applicable and in close proximity to the promotional price or free offer, any minimum term of service required to obtain that promotional price or free offer and the price after the promotional price or free offer expires within the minimum term.

35. When advertising a "free" Wireless Service device, Carrier will clearly and conspicuously disclose, in close proximity to the word "free," any material limitation on the word "free," including, if applicable: (a) the price of any Wireless Service device required to be purchased to

#7
2409

obtain the "free" Wireless Service device; and (b) any minimum term of Wireless Service required to obtain the "free" Wireless Service device.

F. Disclosures of Taxes and Surcharges on Consumer Bills

36. On Consumers' bills, Carrier will
- a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
 - b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.

G. Consumer Inquiries and Complaints

37. Carrier will provide information about how Consumers can contact Carrier in writing, by toll-free telephone number or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to Consumer inquiries and on Carrier's website. Carrier will also make such contact information available, upon request, to any Consumer calling Carrier's customer service department.
38. Carrier shall respond within a reasonable time and in good faith to all consumer complaints or requests for adjustments received by Carrier with respect to the matters set forth in this

Assurance on an individual basis.

H. Compliance Procedures

39. Carrier shall develop and implement compliance procedures reasonably designed to ensure compliance by Carrier with the obligations contained in this Assurance. With respect to its Agents, Carrier shall (a) notify its Agents of the relevant provisions of this Assurance; (b) ensure that all advertisements provided by Carrier to its Agents for their use in the marketing and sale of Carrier's Wireless Service are in conformity with the terms of this Assurance; and (c) not direct its Agents to take any action or implement any practice that is in contravention of this Assurance.

I. General Provisions

40. Carrier agrees to pay a total of \$1,666,667.00 to the Attorneys General no later than fifteen (15) days after the effective date of this Assurance for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each Participating State's law at the discretion of each Participating State's Attorney General.⁴

41. All court costs associated with this Assurance and its entry and approval shall be borne by Carrier and are included within the payment outlined in paragraph 40 of this Assurance. No costs shall be imposed on any Participating State. Further, no discretionary costs shall be imposed on

⁴ With respect to Arkansas, the funds shall be deposited in the consumer education and enforcement fund maintained by the Attorney General and shall be held in trust for uses directly related to the Attorney General's consumer protection efforts. With respect to Colorado, such funds, including interest thereon, shall be held by the Colorado Attorney General in trust to be used, first, for actual costs and attorney fees incurred by the Colorado Attorney General in this matter and, second, for consumer education and for consumer fraud and/or antitrust enforcement efforts. In Massachusetts, \$100,000 of the funds shall be used to reimburse the Commonwealth of Massachusetts for fees and costs and the remainder shall be shall be deposited into the Local Consumer Aid Fund pursuant to M.G.L.c. 12, § 11G.

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any Participating State.

42. Carrier is entering into this Assurance solely for the purposes of settlement. Nothing contained in this Assurance may be taken as or construed to be an admission by Carrier or as evidence supporting any of the allegations raised by the Attorneys General, any matter of fact or law, any violation of state or federal law, or any other liability or wrongdoing whatsoever, including without limitation an admission by Carrier that any of its business practices are or have been unfair or deceptive, or violate or have violated any of the Consumer Statutes of any of the Participating States, all of which Carrier expressly denies.

43. Further, to the extent that any changes in Carrier's business, advertising materials, and/or advertising practices are made to achieve or facilitate conformance to the terms of this Assurance, such changes shall not constitute any form of evidence or admission by Carrier, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute or regulation or the common law.

44. There is no private right of action, explicit or implicit, created by this Assurance to enforce its terms; however, nothing in this Assurance shall be construed as a waiver of any Consumer's claims.

45. The subject matter of this Assurance is the issues covered by paragraphs 9 through 39 of this Assurance and Carrier's advertising materials and billing practices for its Wireless Service and Enhanced Features related to the issues covered by paragraphs 9 through 39 of this Assurance. The Attorneys General acknowledge that execution of this Assurance constitutes a complete settlement and release by the Participating States of all civil claims, causes of action, damages, fines, costs, and penalties that were asserted or could have been asserted by the Attorneys

General, either individually or collectively, on or prior to the effective date of this Assurance against Carrier, and/or any of its Affiliates, successors, employees, shareholders, officers, directors, Agents (but solely as to said Agents' actions at the direction of Carrier), and/or assigns relating to or based on the subject matter of this Assurance, pursuant to any consumer protection statutes or regulations reasonably construed to address marketing, sales or billing practices that the Attorneys General are authorized to enforce, including without limitation the Consumer Statutes set forth in footnote 3 of this Assurance and the regulations promulgated pursuant to such Consumer Statutes, but not including any statutes or regulations not reasonably construed to address marketing, sales or billing practices (including without limitation consumer credit codes, debt collection, antitrust laws, environmental laws and tax laws).

46. This Assurance shall be governed by the laws of the Participating States and is subject to court approval in those Participating States whose procedures require court approval. By entering into this Assurance, Carrier and the Attorneys General agree to all such court approvals, provided that there are no modifications to the terms of this Assurance without the express written consent of Carrier and the Attorneys General. This Assurance does not constitute an admission by Carrier of any Participating State's jurisdiction over it other than with respect to this Assurance, and does not alter any Participating State's jurisdiction over it.

47. Carrier represents that it has fully read and understood this Assurance, that it understands the legal consequences involved in signing this Assurance, and that there are no other representations or agreements between Carrier and the Attorneys General not stated in writing herein.

48. Carrier represents and warrants that it is represented by legal counsel, that it is fully

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advised of its legal rights in this matter and that the person signing below is fully authorized to act on its behalf.

49. This Assurance shall bind Carrier and shall be binding on any and all of its Affiliates, successors, employees, shareholders, officers, directors, and assigns.

50. Carrier shall provide a copy of this Assurance and an accurate summary of the material terms of this Assurance to its senior executive officers who have managerial responsibility for the matters subject to this Assurance.

51. This Assurance shall be effective on July 21, 2004 (the "Effective Date"), but only so long as it has been signed by an authorized representative of Carrier and by authorized representatives of every Participating State, unless such condition expressly has been waived in whole or in part by Carrier. Unless provided otherwise in this Assurance, Carrier shall comply with the terms of this Assurance beginning one hundred twenty (120) days following the Effective Date (but one hundred eighty (180) days with respect to paragraphs 20, 22 and 36), or such later date or dates as Carrier and the Attorneys General otherwise may agree (the "Compliance Date"). In the event Carrier acquires or merges with another wireless carrier that is not subject to the terms of an assurance of voluntary compliance that is substantially similar to this Assurance, the Compliance Date shall be not less than nine months from the date of the closing of such merger or acquisition to bring the acquired operations into compliance with the terms hereof, provided, however, that (a) Carrier shall not unduly delay effecting compliance with any provisions of this Assurance that can reasonably be completed prior to the end of such period; and (b) if Carrier makes a good faith showing that it is not commercially feasible to complete such compliance within such period, and requests an extension thereto, the Attorneys General shall not unreasonably withhold consent to

such an extension of such period, provided that, and so long as, Carrier continues to work diligently toward completion of such efforts.

52. This Assurance contains the entire agreement between Carrier and the Attorneys General. Except as otherwise provided herein, this Assurance shall be modified as to any Participating State and/or Carrier only by a written instrument signed by or on behalf of the Attorney General of that Participating State and signed by or on behalf of Carrier. Carrier understands that in some Participating States court approval of any modification will be necessary. Carrier and the Attorneys General for such Participating States agree to use their best efforts to obtain such court approval.

53. Neither Carrier nor anyone acting on its behalf shall state or imply or cause to be stated or implied that a Participating State, an Attorney General, or any governmental unit of a Participating State has approved, sanctioned, or authorized any practice, act, advertising material, or conduct of Carrier.

54. Nothing in this Assurance shall be construed as a waiver of or limitation on Carrier's right to defend itself from or to make agreements in any private individual or class action, state, or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Assurance.

55. Nothing contained in this Assurance shall be construed to deprive any Consumer or other person or entity of any private right under the law.

56. The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by Carrier or the Attorneys General to lend meaning to the actual terms of this Assurance.

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57. This Assurance shall not be construed against the "drafter" because both Carrier and the Attorneys General participated in the drafting of this Assurance.

58. Nothing in this Assurance shall limit an Attorney General's right to obtain information, documents, or testimony from Carrier pursuant to any state or federal law or regulation.

59. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

60. Carrier will not participate directly or indirectly in the formation of a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or that would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

61. Nothing in this Assurance shall be construed to waive any claims of sovereign immunity that a Participating State may have in any action or proceeding.

62. Nothing in this Assurance shall be construed as relieving Carrier of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Assurance be deemed to grant Carrier permission to engage in any acts or practices prohibited by such laws and regulations.

63. As consideration for the relief agreed to herein, if the Attorney General of a Participating State determines that Carrier has failed to comply with any of the terms of this Assurance, and if in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the Participating State, the Attorney General will notify Carrier in writing

of such failure to comply and Carrier shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination.

The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why Carrier believes it is in full compliance with the Assurance; or
- b. A detailed explanation of how the alleged violation(s) occurred; and
 - i. A statement that the alleged breach has been cured and how; or
 - ii. A statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (1) Carrier has begun to take corrective action to cure the alleged breach; (2) Carrier is pursuing such corrective action with reasonable and due diligence; and (3) Carrier has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

64. Nothing herein shall prevent the Attorney General from agreeing in writing to provide Carrier with additional time beyond the ten (10) business day period to respond to the notice.

65. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Assurance.

Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of the Participating State or the people of the Participating State.

66. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard for fairness.

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67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

68. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by a Participating State such that the statute or regulation is in conflict with any provision of this Assurance and such that Carrier cannot comply with both the statute or regulation and the provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to both the Attorney General of Tennessee and the Attorney General of the Participating State, of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 68, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

J. Modification of Certain Operational Provisions

69. To seek a modification of this Assurance for any reason other than that provided for in paragraphs 67 or 68 of this Assurance, Carrier shall send a written request for modification to the

Attorney General of Tennessee on behalf of the Participating States. The Participating States shall give such petition reasonable consideration and shall respond to Carrier within 30 days of receiving such request. At the conclusion of this 30 day period, Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.

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