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Calls for More Wireless Regulation Heating Up in Congress

By Thomas A. McCann

Consumer frustration with their wireless companies has led to untold angry phone calls to customer service lines across the country and increasing class action litigation.⁵² Sensing a political opportunity, several federal legislators are attempting to enter the fray now as well, proposing a bevy of new federal laws aimed at improving the quality and consumer friendliness of cell phone service.⁵³

Among the disputed practices the legislators hope to address are mandatory contract extensions, early termination fees and confusing language on billing statements.⁵⁴ Some proposals call for the Federal Communications Commission (“FCC”) to step in, while another proposed bill seeks unprecedented oversight by the Federal Trade Commission (“FTC”).⁵⁵

U.S. Rep. Edward Markey (D-Mass.) introduced draft legislation in February that would require wireless service providers to describe their important terms and charges “in a clear, plain and conspicuous manner” for customers, including the duration of the service plan; the duration of any trial period; the number of minutes in the plan and how the minutes are calculated; the charges for long distance, international calls, directory assistance, receipt of incoming calls and roaming charges, among others; the terms of subsidizing

⁵² Wailin Wong, *Calls for Wireless Regulation Gets Louder*, CHI. TRIB., March 21, 2008, at A1.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*; Richard Martin, *Senate Considers Striking down ‘Common Carrier’ Exception*, INFO. WK., April 14, 2008, available at <http://www.informationweek.com/story/showArticle.jhtml?articleID=270200476> (last visited April 23, 2008).

any wireless customer equipment; and the existence of any early termination fees, service initiation fees or other non-recurring fees.⁵⁶

Markey's proposed legislation emphasizes that there are more than 250 million wireless service subscribers in the United States and that the cell phone has replaced traditional telephone service entirely for many Americans.⁵⁷ The bill's findings note that many consumers find it exceedingly difficult to compare the costs and service differences between the nation's many wireless service carriers because of lack of consistency among contracts and general lack of information.⁵⁸ The bill also notes that service providers typically require customers to sign a two-year contract and charge early termination fees of \$175 or more to stop customers from switching to competitors.⁵⁹

Markey's bill would mandate that all wireless providers offer at least one service plan to consumers that has no early termination fee, and that if a plan does have an early termination fee, that the fee be prorated over the course of the plan.⁶⁰ The bill would require all plans with durations of two years or more to have a termination fee that is reduced by at least half once the contract is halfway completed.⁶¹

The legislation would require that all customers be given a 30-day trial period where the customer can stop service for any reason and not incur a penalty or charge.⁶² The customers also would have to receive a pro rata refund for any charges for use of wireless customer equipment.⁶³ Wireless providers would have to give written notice of any subsequent changes in terms or charges at least 30 days in advance of the change and, if the changes include higher

⁵⁶ U.S. Rep. Edward Markey (D-Mass.), Draft H.R. (as discussed by H. Subcomm. on Telecom. and the Internet, Feb. 27, 2008), *available at* http://markey.house.gov/docs/telecomm/draft_wireless_legislation.pdf (last visited April 23, 2008).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*; Roy Mark, *Markey Floats Wireless Bill of Rights*, eWeek.com, Feb. 27, 2008, *available at* <http://www.eweek.com/c/a/Government/Markey-Floats-Wireless-Bill-of-Rights/> (last visited April 23, 2008).

⁶¹ Mark, *supra* note 60.

⁶² *Id.*

⁶³ *Id.*

rates or more restrictions, the companies again must give customers 30 days to end their contract without any penalty or termination fee.⁶⁴ The bill also would impose strict standards for the content of monthly bills, including requiring companies to state the full monthly service charge on each customer's monthly bill without breaking it up into smaller pieces; to separate and itemize all federal, state or local taxes or charges; and to deliver a bill that is "clearly organized. . .[and] describes in plain language the products and services for which a charge is imposed."⁶⁵

In order to improve mobile service quality, the bill would mandate that every wireless service provider create and make available to consumers a map of the geographic area where the provider is licensed to provide service, showing the coverage area of the wireless service and any known outdoor service gaps.⁶⁶ According to the bill, the map must have sufficient detail to identify "generally the geographic areas where commercial mobile service is not predicted to be regularly available."⁶⁷ The map would have to be furnished to customers whenever a customer requests one or whenever the company signs up a new customer. The provider would also have to provide a service map on its Internet website.⁶⁸

Finally, under Markey's proposed legislation, each of the nation's wireless service providers would have to provide semi-annual reports to the FCC which would include, among other things, the percentage of the potential geographic market where the provider currently offers service, an assessment of the provider's average outdoor signal strength within designated geographic areas, an assessment of dropped calls within designated areas, and the identification of any known coverage gaps in those areas.⁶⁹ The FCC would be charged with crafting more detailed regulations on the matter, specifying which geographic areas to focus on, and establishing an Internet site for conveying the semi-annual reports to the public.⁷⁰

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Mark, *supra* note 60.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

In the U.S. Senate, Sen. Amy Klobuchar introduced similar legislation in 2007, called the Cell Phone Consumer Empowerment Act, which also included provisions on pro-rating early termination fees and other restrictions on wireless service contracts.⁷¹ Also, Sen. Mark Pryor (D-Ark.) has floated legislation which would amend the Communications Act of 1934 to establish a uniform set of customer service and consumer protection requirements for wireless service providers.⁷² “This bill begins an important debate on building uniform, comprehensive rules that provide a fair, transparent and quality wireless service to consumers across the nation,” Pryor told the Senate floor in October 2007. “[The] rules must be comprehensive and address a broad range of issues, including disclosures of contract terms and conditions, service-area maps, trail periods and early termination fees.”⁷³

In the latest federal attempt to increase regulation of the wireless industry, two U.S. senators introduced legislation in April 2008 that would put wireless carriers for the first time under the authority of the Federal Trade Commission (“FTC”).⁷⁴ The bill, sponsored by U.S. Sen. Daniel Inouye (D-Haw.), chairman of the Senate Commerce Committee, and U.S. Sen. Byron Dorgan (D-N.D.), would repeal the FTC’s “common carrier exception,” which has been around since the 1930s and has traditionally exempted big telecommunications firms from FTC regulation.⁷⁵

Testifying before the Senate Commerce Committee in April, FTC Chairman William Kovacic said that the common carrier exception was now obsolete, a relic from a time when telecommunications companies were highly regulated under other laws.⁷⁶ “Technological advances have blurred the traditional boundaries between telecommunications, entertainment, and technology,” Kovacic said. “As the Internet and telecommunications industries continue to converge, the . . . exception is likely to frustrate

⁷¹ Martin, *supra* note 55.

⁷² S.2171, 110th Cong. § 2 (2008).

⁷³ 153 Cong. Rec. s12938-01 (daily ed. Oct. 16, 2007) (statement of Sen. Pryor).

⁷⁴ Martin, *supra* note 55.

⁷⁵ S.2831, 110th Cong., § 14 (2008).

⁷⁶ Martin, *supra* note 55.

the FTC's ability to stop deceptive and unfair acts and practices and unfair methods of competition."⁷⁷

On the state level, the Florida Attorney General in February fined AT&T Mobility \$3 million for billing customers for "third-party ring tones" and other services that were misleadingly advertised as free.⁷⁸ Also, in Illinois, State Rep. Susanna Mendoza has tried to pass legislation to free customers from their wireless contracts if their cell phones break repeatedly.⁷⁹

The raft of federal legislative proposals and state action has frustrated wireless service providers like Sprint Nextel and AT&T, most of which have tried to institute reforms themselves to preempt any threatened government regulations.⁸⁰ The CTIA, the wireless industry's trade group, says it is open to light national regulation but insists that it has tried hard to improve customer service, and federal regulation may do more harm than good.⁸¹ "We believe regulation is best applied on the federal level so it applies to everyone, and at one time in a consistent manner," CTIA spokesman Joe Farren told the Chicago Tribune. "But [it] is something that should be applied only when necessary – when there's some kind of market failure."⁸²

According to the Council of Better Business Bureaus, the cell phone industry fields the most complaints out of the 3,800 industries the council tracks. However, the council also says that the wireless industry has a better rate of resolving complaints than other industries on average.⁸³ The industry says that fierce and increasing competition among companies also will keep them responsive to consumers, citing that wireless companies have acted on their own to allow number portability and that most major providers have now rolled out unlimited voice and data plans.⁸⁴ However, the increased industry competition is one of the main reasons companies have resorted to early termination fees in the first place.⁸⁵

⁷⁷ *Id.*

⁷⁸ Wong, *supra* note 52.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Wong, *supra* note 52.

⁸⁴ *Id.*

⁸⁵ *Id.*

Customers evidently are interested in stricter regulation of their cell phone companies. When State Rep. Mendoza introduced her Illinois legislation, she said she was shocked at the constituent response. She told the *Chicago Tribune*, “This one little issue probably got more calls to my office than any other issue I’ve ever worked on.”⁸⁶

⁸⁶ *Id.*
