

Can You Hear Us Now?

A Report on How the Cell Phone Industry has Failed Consumers

A WISPIRG Report on the
Cell Phone Industry

Including a Shoppers' Guide
for Consumers

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Acknowledgements

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EXECUTIVE SUMMARY

Consumers increasingly rely on cell phone service to meet their basic communication needs. The use of wireless communications has skyrocketed over the past few years, jumping from approximately 24 million subscribers in 1994 to an estimated 170 million today. Along with the growth in the industry has come an increase in consumer complaints. In fact, complaints to the Federal Communications Commission (FCC), the agency charged with overseeing competition in the wireless industry, increased almost 40 percent between 2002 and 2003, significantly outpacing the 13 percent growth in subscribers during that time period.

The problems consumers experience with wireless service have taken on increasing importance as more consumers begin to use their cell phones as substitutes for traditional landline phones. Unlike traditional phone service, wireless service is largely unregulated. The FCC has failed to enact even the most basic consumer protections regulations, instead relying almost exclusively on competition and market forces to protect wireless subscribers. Unfortunately, competitive pressures alone are inadequate for ensuring that consumers are treated fairly in the wireless marketplace.

In survey after survey, cell phone subscribers reveal chronic dissatisfaction with the wireless industry. Consumers report difficulty comparing cell phone plans because information on terms, pricing and service is not presented in a uniform manner. Carriers often fail to clearly disclose the true cost of their plans, adding on various surcharges to consumers' bills. Consumers also cannot adequately judge the quality of the cellular service in their area before choosing a plan. Moreover, consumers who are fed up with their carriers' billing errors and poor coverage are often locked into long-term contracts with hefty early termination fees.

To make matters worse, recent mergers within the industry threaten to reduce competitive pressures on carriers to offer better deals and service. Fewer carriers competing for consumers' business will likely translate into higher prices and lower quality service for cell phone subscribers.

The rising swell of customer dissatisfaction with the cell phone industry demonstrates a need for additional consumer protections. While the FCC has taken a "hands-off" approach to wireless regulation, states can play an important role in establishing a set of basic service quality and customer service standards. States should provide cell phone users with a bill of rights that includes the following provisions:

- All wireless contracts and marketing materials should clearly spell out the terms of the contract in an easy-to-read, standardized format. The disclosures should be made available and accessible to consumers comparing prices and services among competing carriers.
- Cell phone bills should be clearly organized. Consumers should be able to dispute billing errors through the state utility commission. Providers should not treat the disputed portion of the bill as late or terminate the contract for non-payment if a complaint is pending with the state.

- The state utility commission should monitor service quality. Data should be collected and made publicly available so consumers can compare signal strength, dropped call counts and dead zones across carriers.
- Consumers should have a risk-free trial period during which they can cancel any new service contract without penalty. This trial period would give consumers time to evaluate whether the cell phone service works where and how it was promised. Consumers should have 30 days to cancel a contract after receiving the first bill so that they may verify representations regarding the cost of service.
- Contracts should be for no longer than one year, with an option for renewal.
- Carriers should obtain customers' express permission prior to making cell phone numbers public. They should not charge a fee for keeping the number private.

OVERVIEW

The cell phone has truly revolutionized the way individuals communicate. Over the last decade, the number of cellular or wireless telephone subscribers in the United States has exploded, increasing from approximately 24 million in 1994 to an estimated 170 million today, producing a national penetration rate around 58 percent.¹ Cell phones increasingly serve as a substitute for traditional wireline phones. Almost a third of today's telephone users receive more than half of their calls on cell phones, and an estimated five to six percent of all households have "cut the cord" on their traditional wireline phones and now rely exclusively on wireless service to meet their basic calling needs.²

As consumers rely more on wireless phones, the need for quality service has become increasingly important. Unfortunately, cell phone complaints are on the rise. Complaints to the Federal Communications Commission (FCC), the agency charged with overseeing competition in the wireless industry, jumped almost 40 percent between 2002 and 2003, significantly outpacing the 13 percent growth in subscribers during that time period.³

In 2003, the latest year for which the FCC has released complaint data, the agency received more than 21,000 complaints about wireless service.⁴ Research reveals that this number significantly understates the number of consumers experiencing problems with cell phone service. As a general rule, few consumers actually file complaints when they are dissatisfied with a product or service.⁵ In addition, many consumers do not know where to direct complaints about wireless service providers. A national survey of adults commissioned by the AARP found that nearly half (46 percent) of cell phone users did not know whom to contact if their cell phone provider would not resolve a billing or service problem.⁶ Only four percent of respondents surveyed knew that they could file a complaint with the FCC. A U.S. Government Accountability Office (GAO) survey found similar results. While 19 percent of the survey respondents had complained about the quality of their calls to their provider, only one percent had brought their complaint to the attention of other parties, such as the FCC, a state agency or the Better Business Bureau.⁷

Other national studies have made it clear that cell phone companies are not providing the level of service quality that consumers want and expect. The industry had the second-lowest customer satisfaction ranking, trailing only cable companies, in the University of Michigan's consumer satisfaction index.⁸ In addition, wireless carriers were the second-largest source of complaints to the Better Business Bureau in 2003, with only car dealers performing worse.⁹

Similarly, *Consumer Reports* magazine found that customer satisfaction with wireless phone service is lower than most other services it measures, putting cell phone companies on par with cable television and HMOs.¹⁰ A September 2004 survey of 39,000 of its subscribers revealed that only 45 percent of respondents were completely satisfied or very satisfied with their cell phone service.¹¹

The bottom line is that consumers are frustrated with many aspects of the quality of wireless service. Confusing calling plans, billing errors, hidden fees, dropped calls, spotty signal coverage, inadequate customer service and excessive contract termination fees are among the

long list of consumer complaints. Complaints logged with the FCC, *Consumer Reports*, and the Better Business Bureau all indicate that consumers are calling out for improved service quality and consumer protection standards. Consumers' chronic dissatisfaction begs a simple question to cell phone providers and regulators: *Can you hear us now?*

CONSUMER COMPLAINTS ABOUT CELL PHONES

Consumers' problems with cell phone companies often begin the moment they start shopping for a plan and can end with hefty early contract termination fees.

Confusing Calling Plans

Shopping around for cell phone service can be a daunting task. Consumers are confronted with a wide variety of plans with complex rate structures that impose different restrictions on use. Consumers may pay different amounts for calls depending on whom they are calling, when they are calling, where they are located when calling, and how many calls they have already made. Further, competing carriers make comparison shopping difficult because they do not present key price and contract terms in a uniform manner.

A *Consumer Reports* survey found that 83 percent of respondents experienced problems shopping around for a cell phone carrier. At least 48 percent reported difficulty comparing plans from competing carriers, and 43 percent said it was hard to determine the true, final cost of the service.¹²

Consumers need to carefully read the fine print of providers' plans to fully understand the rates they will be charged. Some plans, for example, offer "nationwide" calling, but some carriers define "nationwide" as anywhere in that carrier's service network, not anywhere in the country. Once outside of that network, subscribers will have to pay roaming fees that can be as high as 79 cents per minute. Other plans provide consumers with "unlimited" mobile to mobile minutes. The details of the plans, however, reveal that "unlimited" does not actually mean without limitation. Generally, both callers must be in the carrier's own service network, and the Caller ID number cannot be blocked in order for the call to qualify as a mobile to mobile call. That means if one caller is roaming, or if the wireless system does not pass through the Caller ID number of the caller, regular rates will apply.

To further complicate comparison-shopping, cell phone carriers do not use standard terminology. Verizon Wireless, for example, defines "daytime minutes" as those made beginning at 6:00 a.m. Daytime minutes for the other major, national cell phone carriers, however, generally start at 7:00 a.m.

Carriers also make it difficult for consumers to determine the actual cost of service plans. Most carriers have been adding extra fees to the basic monthly charges for calling plans. These fees are not taxes or government-mandated fees; instead, they are surcharges that carriers use to recoup the costs of complying with various federal and state legal requirements. In other words, these fees simply cover the cost of doing business as a cell phone carrier. They are the

equivalent of having a line item on bills for the cost of renting office space or paying employees. By separating out their cost of complying with regulations into surcharges, the companies' advertised prices mislead consumers about the true cost of service.

This practice has not gone unchallenged. Several carriers faced lawsuits alleging that they were misrepresenting these surcharges as government fees or taxes. As a result, Cingular Wireless, Sprint PCS, Verizon Wireless and Nextel agreed to clarify that these surcharges were not government-imposed or mandatory.¹³ Other carriers, including T-Mobile, have made a similar pledge through an industry-sponsored voluntary code of conduct.¹⁴ But neither the settlement nor the voluntary code requires cell phone companies to include these surcharges in the advertised price of monthly services. As such, the advertised prices of cell phone plans typically do not represent the true cost of service.

By failing to advertise key information about their calling plans in a uniform manner, cell phone providers have made it unreasonably difficult for consumers to adequately compare plans among carriers. As a result, consumers may end up in a long-term contract with cell phone providers that do not meet their expectations. These consumers can end up paying substantial fees and roaming charges for exceeding their plans' package of minutes or calling areas.

Marketing Misrepresentations

Cell phone companies' confusing calling plans and poor disclosure of their contract terms leave consumers more reliant on the representations made by carriers in advertising campaigns and through their sales agents. Unfortunately, thousands of consumers have complained about being misled about the terms and conditions of their contract through unfair marketing practices.¹⁵

One of the most commonly reported complaints involves sales agents who misrepresent the terms of the cell phone contract.¹⁶ In these complaints, consumers allege that the salesperson promised some feature, such as free minutes or long distance, that turns out not to be included in the plan. When these consumers complain directly to the carrier, they often are told that nothing can be done to rectify the situation and that they will be bound by the written terms of the contract, regardless of what they were told by the salesperson.¹⁷ *SmartMoney* magazine captured one example of this practice:

John Gourley thought he was doing right by his family by signing up for one of Verizon's America's Choice plans. Gourley, his wife and two children were to share a pool of 1,000 mobile-to-mobile minutes. A true family value — that is, until they discovered that when they called each other using cell phones, both users were charged minutes. For instance, in one month son Paul and daughter Mary used 750 more minutes than the plan allowed, with each extra minute costing 45 cents.

Gourley says he asked the salesperson at the Verizon store where he purchased the plan "over and over" if the person making the mobile-to-mobile call would be the only one charged for airtime. According to Gourley, "He said, 'Yes, sir.'" Obviously, that turned out not to be the case. A Verizon spokesperson says that the mobile-to-mobile charge is stipulated in service contracts.¹⁸

Mr. Gourley is not alone. The Better Business Bureau reports that complaints involving unfair marketing and misrepresentations about contract terms make up the third largest source of complaints it receives about cell phone carriers.¹⁹ Unfair marketing also appears to be a growing problem. FCC quarterly reports reveal that complaints regarding advertising and marketing practices of carriers, including alleged misrepresentations, increased by 66 percent between 2002 and 2003, the last year for which complaint data is available.²⁰

An analysis of complaints filed with California's Utility Consumer Action Network (UCAN) suggests that misrepresentations made at the point of sale may be more acute when consumers sign up for a plan through third-party retail outlets, such as the companies that sell cell phone service at kiosks in shopping malls. Sixty-five (65) of the 184 sales-related complaints made to UCAN about cell phone service involved third-party agents.²¹ Unfortunately for those consumers, terminating a service agreement involving a third-party seller can be costly. Many third-party agents require subscribers to sign two contracts—one with the cell phone carrier and one with the third-party retailer, which often carries an additional contract termination fee that can be as high as \$400.

Sales agents are not the only source of confusion regarding the terms of service agreements. National advertising campaigns also gloss over contract limitations. Cingular, for example, has widely advertised its "rollover" minutes. With rollover minutes, consumers do not lose any unused free minutes at the end of the monthly billing cycle. Instead, these unused minutes remain available for consumers' use in future months. The advertisements, however, do not point out that this feature is only available on Cingular's more expensive plans. Similarly, Sprint PCS runs advertisements promoting that its plans' "nighttime" minutes start at 7 p.m. rather than the industry standard of 9 p.m. Only in the fine print do these advertisements disclose that this feature is an option for which consumers must pay an additional \$5 per month and commit to a two-year contract.

Billing Errors

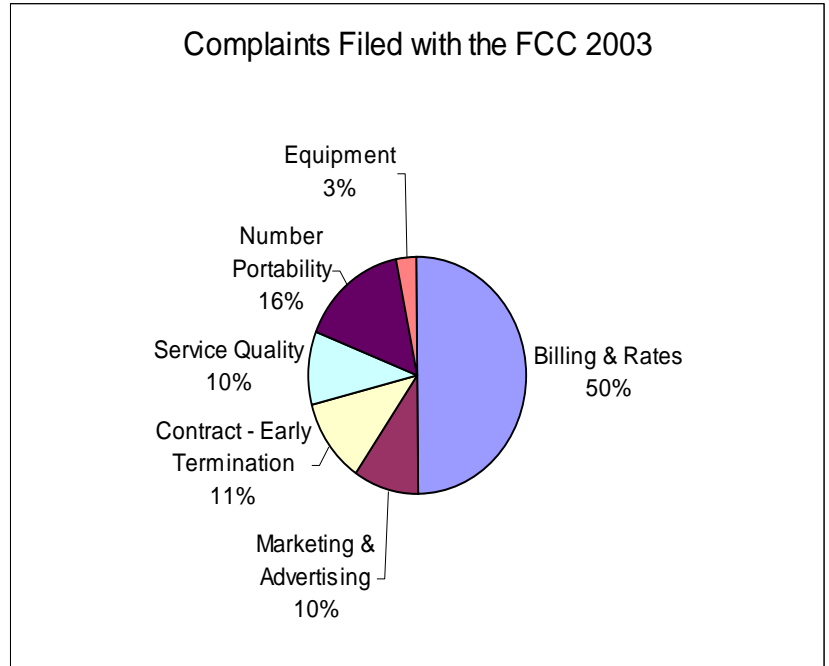
Consumer problems with cell phone carriers' billing practices are the largest source of cell phone complaints filed with federal and state regulators and consumer assistance organizations. In 2003, half of the complaints filed with the FCC concerned billing and rates.²² Similarly, the California Public Utility Commission reports that the majority of the cell phone complaints it receives involves billing disputes.²³ They also account for close to two-thirds of complaints filed with the Better Business Bureau.²⁴

Billing disputes include a range of issues. Some consumers report double-billing problems. One consumer explained that she had arranged to pay her Cingular Wireless bill every month automatically with her credit card. Even though the company already had charged her credit card, Cingular then sent her paper bills. When she didn't pay the duplicate bill, they disconnected her service.²⁵

Other consumers complain that they are charged extra fees for features that are included in their plan. *Consumer Reports* documented one consumer who was routinely billed by AT&T Wireless for long distance and roaming charges that were free under the terms of his contract.²⁶ In Minnesota, the Attorney General has filed a lawsuit against Cellular One, asserting that the carrier improperly charged customers 10 cents a minute for inbound calls that were within the subscribers' home rate coverage area.²⁷

Roaming fees are another source of discontent. Under many plans, carriers charge additional fees on calls that are made on another carrier's network outside of the subscriber's home calling area. Callers typically have notice when they are roaming in another carrier's territory through a display on their cell phone. Some consumers, however, report being charged expensive roaming fees even though their phones did not display that they were roaming.²⁸

Even consumers in calling plans without roaming fees experience billing problems related to calls made while roaming on another carrier's network. Often, carriers do not immediately bill consumers for the minutes used on another carrier's network because they must wait for the operators of those networks to provide the billing information. Once carriers receive the information, they often fail to allocate those minutes to the months in which the calls were made, instead attributing them to the current month's minute usage. This billing practice can cause consumers who are on plans with monthly minute caps to pay high "overage" fees. Joseph Fedor, for example, sued Cingular Wireless for improperly billing him for minutes that he used



in one month to the billing periods in later months.²⁹ Mr. Fedor complained that the delayed billing caused him to pay hefty, extra fees for exceeding his monthly allotment of minutes. Those charges would not have been incurred had the calls been properly billed in the month during which he actually placed the call. A class action lawsuit has been filed against AT&T Wireless for the same practice.³⁰

Carriers also are making it increasingly difficult for consumers to detect billing mistakes. Over the past few years, several carriers have changed their policies and are no longer automatically issuing itemized bills. Now subscribers to these carriers must pay a fee to have the company mail them bills detailing the calls that were made and received during the billing cycle. A lawsuit has been filed against Nextel for unilaterally changing its billing policy the month after it sent out four text messages to all its customers, charging them 60 cents to receive them.³¹ The lawsuit alleges that Nextel's decision to stop sending itemized bills made it virtually impossible for consumers to realize that they were being overcharged for those text messages as well as other billing errors.

Dead Zones and Dropped Calls

Problems with call quality are almost as commonplace as the cell phone itself. Consumers most frequently complain of dropped calls, poor sound quality and dead zones -- geographical areas where they cannot receive service. The most recent *Consumer Reports* survey found that nearly 70 percent of respondents who frequently use a cell phone had at least one dropped call in the week prior to the survey, and nearly 60 percent had a bad connection.³² A national GAO study conducted in November 2002 found significant call quality problems as well. More than 30 percent of respondents said they had been unable to get service on 10 percent or more of their attempted calls because of the carrier's coverage area, and over 20 percent had their calls dropped more than 10 percent of the time.³³

A cell phone user's ability to make and receive calls is not simply a matter of convenience. Coverage service gaps can also be life threatening to the increasing number of consumers who rely on their cell phone to make emergency calls. A 2002 study by the AARP revealed that for cell phone subscribers 65 years and older, the most common reason for purchasing a cell phone is for security in case of an emergency.³⁴ In addition, more and more households are now relying exclusively on cell phones, making their reliability increasingly important.

To date, cell phone carriers have been less than forthright in providing consumers with information about their service coverage areas. While carriers collect detailed information about the frequency of blocked and dropped calls in their networks, they will not voluntarily share that information with consumers.³⁵ The information they do share is minimal. The coverage maps they provide to subscribers typically are only rough estimates of their network area and generally include broad disclaimers indicating that the maps do not guarantee service availability. Even the information carriers are required to provide to consumers is insufficient for determining the adequacy of coverage areas. Since November 2004, Cingular, Sprint PCS and Verizon have been under a consent agreement as part of a settlement with 32 states attorneys general, to provide consumers with detailed coverage maps depicting approximate service coverage for each of their rate plans.³⁶ These maps, however, are limited in their usefulness, as they typically

depict a large, regional area of coverage instead of the more detailed, street-level signal strength maps the carriers often have at their disposal.³⁷

Without detailed information about service coverage areas, consumers cannot easily determine which carrier's network will meet their needs. To make matters worse, consumers who mistakenly choose a carrier with poor coverage will generally be locked into a contract with that carrier for one or two years.

Unauthorized, Unilateral Contract Changes

Cell phone companies require consumers to sign long-term contracts with substantial penalties for early termination, but they do not hold themselves to the same standard. Cell phone carriers routinely change the length and terms of customers' contracts without providing adequate notice to consumers and obtaining their consent.

A few years ago, for example, Verizon Wireless quietly notified its subscribers that it was unilaterally changing its peak calling hours from 8 p.m. to 9 p.m., leaving thousands of its customers who were under long-term contracts with one hour less of free calls each night. Customers who complained were told that they could only cancel the contract if they paid a \$175 termination fee. After a Boston reporter broke the story, hundreds of consumers filed complaints with the Massachusetts Office of Consumer Affairs and Business Regulation. Faced with negative media attention, Verizon Wireless eventually abandoned its plan and grandfathered in existing customers who were under contract.³⁸

Consumers are not always as fortunate when facing cell phone carriers who attempt to make unilateral contract changes. In hearings on the issue, the Minnesota Legislature heard a litany of complaints about such practices. One consumer reported that a company had changed his month-to-month agreement to a one-year contract without his consent. In fact, he did not even know about the change until he attempted to cancel his service and was hit with a \$150 early contract termination fee. Others complained of carriers that had extended their contract terms without their consent when they added monthly minutes to their calling plans.³⁹

Cell phone carriers defend these actions by pointing out that their contracts with consumers allow them to make such changes. These "change in terms" contract provisions are generally completely one sided. Nextel's clause, for example, reads in part, "Subject to applicable law, Nextel may, at any time in its sole discretion, modify any of the terms and conditions of this agreement, including but not limited to the rates it charges to customer."

Other companies' contracts are similar in that only the cell phone carrier can modify the price and terms of the contract, despite the fact that both the customer and the carrier agreed to certain fixed terms when they first entered into the contract for service. Under these contract provisions, a carrier basically can excuse itself from complying with the terms of the original deal, but a customer who later wants out of the contract will have to pay up to \$250 as an early contract termination penalty.

Difficulty with Disputes

Cell phone customers aggrieved by carriers' practices typically face yet another set of obstacles when working to resolve their disputes.

Customer service in the cell phone industry is on the decline. According to a J. D. Power and Associates study, overall satisfaction with customer care decreased 7 percent between 2003 and 2004. More than half (56 percent) of cell phone users surveyed had to contact their carrier's customer service department within the last year, and many said they had difficulty navigating through companies' automated response systems and reaching a live service representative. Consumers also reported being on hold for an average of 6.4 minutes, up a full minute from the previous year.⁴⁰

Once consumers get through to customer service, they often do not get their issue resolved to their satisfaction. Only 31 percent of respondents to a 2004 *Consumer Reports* survey said that a company's response to their service inquiry was very helpful, and only 40 percent rated responses to billing inquiries as very helpful.⁴¹

Indifferent, ineffective customer service can be costly as well as frustrating. Currently, most cell phone carriers' dispute resolution procedures require customers to pay disputed charges up front to avoid service disconnection. Subscribers who have incurred erroneous charges often pay the disputed bills because they fear that their credit ratings will be harmed if they withhold payment.⁴² Others may pay them just to avoid the inconvenience of having the carrier terminate their service for non-payment. Those consumers who choose to withhold payment often begin accruing late fees and receiving debt collection calls. One consumer who filed a complaint with the California's Utility Action Network (UCAN) noted that the industry's practices likely result in many consumers simply giving in and paying charges that they do not owe. He explained:⁴³

I've had the service for less than 2 months and am not certain yet whether the billing is completely straightened out. After all the problems, I was charged a \$5.00 "late" fee on my second "corrected" bill! I received 2 "dunning" calls before I even received this promised correction to the first bill! The "Financial Services" reps who called me claimed they had no way to know about the billing errors!...

The number of hours I've had to devote to problems with Verizon were well beyond anything reasonable. I'm sure I'm not the only customer to have experienced these difficulties. But, I imagine that most customers don't have the time, patience, and perseverance to deal with the errors, misrepresentations, wrongful demands, and lack of service. I would imagine that most give up and pay what is demanded.

Carriers Limit Consumers' Rights to File Claims in Court

For those consumers who do not give up, their avenues for redress are limited. Generally, it is not cost-efficient for individual subscribers to spend the time and money necessary to dispute erroneous charges or unfair practices through the legal system. Furthermore, for many

subscribers court may not be an option. Virtually all cell phone carriers include mandatory arbitration clauses in their contracts: provisions requiring any future disputes to be heard through a private dispute resolution program rather than court.⁴⁴ Some carriers' contracts also specifically prohibit subscribers from participating in class action cases.

These arbitration and anti-class action clauses are problematic for several reasons. First, the clauses are typically buried in the fine print of a carrier's form contract that few consumers, if any, read and fully understand. Most subscribers, therefore, have not knowingly waived their rights to pursue their carrier in court should a dispute arise. Second, class action lawsuits often are the only fair and efficient way to pursue unfair and deceptive business practices. Frequently, an individual consumer's claim may be so small that it would be impractical to pursue because the legal costs will exceed the dollar amount of any potential recovery. By prohibiting class actions in those cases, arbitration clauses can provide legal immunity to companies that engage in unfair practices that cause a relatively small injury to a large number of people. Finally, the procedural rules of many arbitration programs are unfair to consumers. Typically, the rules limit the rights of consumers to obtain documents from the other party that they may need to prove their case, and also eliminate their rights to appeal decisions should the arbitrator make a legal error.

Given the difficulty consumers have with resolving disputes with their carriers, it is no surprise that approximately 35 percent of cell phone subscribers are seriously thinking about switching to another provider.⁴⁵ Unfortunately for these consumers, carriers have made that option not so simple.

Barriers to Competition: Cell Phone Service Lock Down

Cell phone companies engage in a range of business practices that limit consumer choice and undermine competition among carriers. As a result, consumers who are dissatisfied with their cell phone service often have difficulty "voting with their feet" and switching carriers.

For years, cell phone companies worked to defeat wireless "local number portability," an initiative to allow consumers to keep their phone numbers when they switch cell phone providers. In 1996, Congress charged the FCC with implementing number portability as part of an effort to encourage competition among telecommunication providers. Denying number portability served as a barrier to competition. Consumers who would otherwise want to change carriers for better service or prices were staying with their provider simply because they did not want to change their phone number.⁴⁶ The FCC originally established a compliance deadline of June 30, 1999, but the cell phone industry pushed hard to delay implementation. They filed numerous legal challenges to the rules, but on November 24, 2003, number portability began in most areas in of the country. During the first year of implementation, more than 8.5 million consumers switched carriers and kept their cell phone numbers.⁴⁷

Despite number portability, cell phone companies still successfully employ tactics to prevent subscribers from switching carriers. Most carriers lock subscribers into long-term contracts, ranging from one to two years. Some carriers also require consumers to extend these contracts whenever they upgrade to a better plan or phone. These long-term contracts also include high

fees for early termination, typically between \$175 and \$250. These fees undermine competition among carriers by restricting the ability of consumers to take advantage of other options in the marketplace. A GAO study found that, for two-thirds of cell phone users who wanted to change carriers but did not, the early termination fee was an important factor in their decision not to switch providers.⁴⁸

Cell phone companies also are preventing customers from keeping their cell phone when they switch providers. Several providers have installed software on their phones that prevents the handsets from being used on their competitors' networks. As a result, consumers are forced to buy a new phone when they switch carriers. A lawsuit has been filed challenging this practice as an anti-competitive measure designed to thwart the new number portability rules.⁴⁹

Hefty termination fees and handset lockdowns stop the cell phone market from working efficiently. When cell phone companies erect artificial barriers to competition, consumers suffer because carriers have less incentive to offer better service at lower prices.

Cell Phone Number Privacy at Risk

While consumers may now take their cell phone numbers with them when they switch carriers, they soon may be losing control over who has access to that number.

Currently, several cell phone companies are working together to create a Wireless 411 Service that would allow cell phone numbers to be available for a fee to individuals who use the existing 411 directory assistance system.⁵⁰ The industry expects to launch the 411 directory by the spring of 2005. While carriers do not have plans to make subscribers' cell phone numbers available in a public directory or database, the 411 directory would still leave consumers at risk of incurring charges for unwanted incoming phone calls and text messages. Because most cell phone subscribers pay for all the incoming calls to their phones, it is critical that they retain control over who has access to their number.

The wireless industry claims that only cell phone subscribers who choose to participate or "opt in" to the system will have their numbers available to those who dial 411. But buried in the fine print of many cell phone contracts is a clause allowing the cell phone company to include the customer's cell phone number in the directory. Even Verizon Wireless, one of the few wireless companies to oppose the 411 directory, has this clause in its contract with subscribers.⁵¹ Unlike these clauses, a meaningful "opt-in" program would involve carriers obtaining consumers' permission for inclusion in the directory through a signed document that is separate from carriers' standard form contracts for service.

Last year, the U.S. Senate Commerce Committee passed legislation that would have required carriers to get subscribers' express, written permission before including their numbers in the directory. But neither the full Senate nor the House considered the bill.⁵² The State of California, however, did pass a similar bill into law.⁵³ Similar legislation is being considered in Connecticut, Georgia, Massachusetts, New York, South Dakota, Texas, Washington and Wisconsin.

WHO'S LISTENING: FEDERAL, STATE AND INDUSTRY RESPONSES TO CONSUMERS' CELL PHONE COMPLAINTS

FCC: Fails to Protect Consumers

The rising swell of customer dissatisfaction with the cell phone industry demonstrates a need for additional consumer protections. Unfortunately, on the national level, the Federal Communications Commission (FCC) has taken a "hands-off" approach to regulating wireless carriers.

In September 2002, the FCC eliminated a rule requiring carriers to provide subscribers with information detailing their coverage areas on the grounds that competition in the marketplace was a strong enough incentive for carriers to supply this information to consumers.⁵⁴ Coverage maps provide consumers with the ability to shop around and compare which carrier has the best service in their area. They also help consumers compare costs among carriers because roaming charges in areas that a carrier does not service can greatly increase a subscriber's monthly wireless bill. The FCC eliminated this consumer protection at the same time that consumer complaints to the agency about service quality were increasing.⁵⁵

Similarly, the FCC has made it difficult for consumers to review carriers' complaint histories when shopping for cell phone service. The FCC accepts consumer complaints about carriers, but will not disclose the complaint statistics for specific carriers in its quarterly reports on the wireless industry. In 2003, Consumers Union, the publisher of *Consumer Reports*, was able to obtain complaint data for each cellular and wireless provider, but only by going through the burdensome process of filing a Freedom of Information Act request with the agency.⁵⁶ The FCC quarterly reports on complaints also do not indicate whether or how the complaints were resolved, leaving consumers with little information about how carriers handle customer service problems brought to their attention.

To date, the FCC has been reluctant to increase its oversight on the wireless industry, and instead appears to believe that competition alone obviates the need for consumer protection regulations. After the U.S. Government Accountability Office called on the FCC to include information about mobile phone quality in its annual review of the industry, FCC Chairman Michael Powell offered only tepid support for the GAO's recommendation, stating that "[t]he Commission remains dedicated to allowing market forces to work in order to provide high quality mobile phone service."⁵⁷

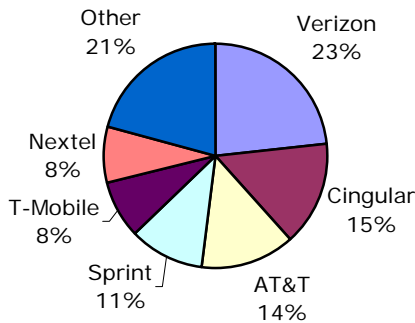
The FCC's reliance on market forces to protect consumers fails to recognize that an efficient market depends on consumers having adequate information. In the context of the cell phone market, if consumers had better information about carriers' coverage areas, complaint histories, rates, and service terms in a standardized format, then consumers would be able compare offers and choose the provider offering the best combination of service quality and price. These informed consumers, in turn, would force the carriers to compete with each other and offer better prices, coverage areas and service quality. If consumers lack information, however, carriers have less incentive to compete as vigorously, and service and price will not improve.

Unfortunately for consumers, the FCC has failed to recognize that it has an important role to play in fostering competition by ensuring that consumers have the information they need to make informed choices in the marketplace.

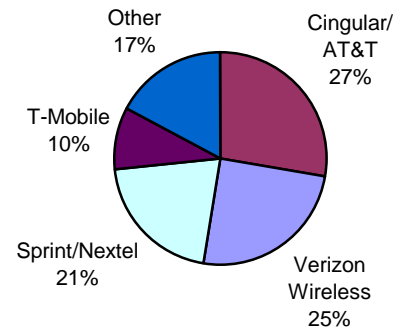
In fact, the FCC has taken action that weakens consumers' options in the cell phone market. In October 2004, the agency approved a merger between AT&T Wireless and Cingular, creating the nation's largest cell phone company. By approving a merger that would allow one company to control so much of the available spectrum in the cell phone market, consumer advocates warned that the decision signaled to other carriers that future mergers would likely be approved.⁵⁸ Less than two months later, Sprint PCS and Nextel announced plans to merge into what would be the third-largest cell phone company.⁵⁹

Fewer cell phone players in the market likely will result in higher rates and diminished service quality because companies will have less incentive to compete against each other to offer better products and services.

2003 Estimated Market Share



Estimated Market Share with Mergers



Source: For 2003 estimated market share: Consumers Union, http://www.consumersunion.org/pub/0511%20FCC_Cell_ComplaintsAll3.pdf; for estimated merger market share: Wall Street Journal for subscribers by company (Dec. 16, 2004), *CTIA Survey* for total number of subscribers, *supra* note 1.

The Role for the States

As the cell phone industry consolidates under minimal federal oversight, states need to take action to protect consumers.

Under the federal Telecommunications Act, states have the authority to protect consumers and to adopt service quality standards for cellular and wireless carriers. The statute and its legislative history demonstrate that Congress intended states to have the power to regulate a range of wireless carriers' practices. The statute expressly reserves the right of states to regulate the "terms and conditions" of wireless service and only preempts states from regulating the rates and market entry of wireless carriers.⁶⁰ The legislative history of the statute makes it clear that Congress intended to allow states to enact consumer protection laws regulating the wireless industry. In its House Report, Congress wrote:

It is the intent of the Committee that the states still would be able to regulate the terms and conditions of these [wireless] services. By "terms and conditions," the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (e.g., zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a state's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."⁶¹

The FCC also has acknowledged that states have the right to require the disclosure of rates and billing practices and that wireless carriers are not exempt from the neutral application of state contract and consumer protection laws.⁶² Additionally, courts generally have interpreted the preemption provisions of the federal law narrowly. Several courts have ruled that the federal Telecommunications Act only preempts claims that directly regulate rates and does not necessarily preempt those that only indirectly affect rates.⁶³ On similar grounds, some courts have upheld consumers' rights to challenge carriers' early contract termination fees as invalid under state law.⁶⁴

In recent years, states have begun to exercise their authority to regulate cell phone carriers. Several states have passed laws addressing discrete problems in the industry. Louisiana, for example, now prohibits cell phone providers from automatically renewing consumers' contracts, and Rhode Island requires carriers to wait at least 30 days before imposing late fees for delinquent payments.⁶⁵ In 2004, the Minnesota legislature passed a bill requiring cell phone companies to obtain consumers' affirmative consent prior to making changes to the terms of the contract, which carriers currently are challenging in court.⁶⁶

California was the first state to take a more comprehensive approach to regulating the industry. After a four year investigation of consumers' complaints about wireless service, the California Public Utilities Commission (PUC) passed a Telecommunications Consumer Bill of Rights in May of 2004. The rules provided consumers with a 30-day right to cancel a contract without

penalty, providing the opportunity to test a carrier's service before being locked into a long-term contract. They also required companies to disclose clearly in writing the key rates, terms, and conditions of service, both at the point of sale and online. In addition, the rules established procedures for consumers to resolve billing disputes.

Not surprisingly, the cell phone industry staunchly opposed the bill of rights, spending over half a million dollars working to defeat it.⁶⁷ After they failed to stop the California PUC from passing these modest consumer protections, wireless carriers sought to delay their implementation and continued with an aggressive lobbying campaign to repeal the rules.⁶⁸ For the moment, their lobbying has paid off. In December 2004, California Governor Arnold Schwarzenegger, who opposed the rules, replaced two of three PUC Commissioners who had supported the bill of rights. A month later, the new PUC voted to suspend the bill of rights, despite objections from consumer groups, Attorney General Bill Lockyer and all 58 district attorneys in California.⁶⁹ Currently, members of the California legislature are working to codify the original PUC rules into state law.⁷⁰

Wireless carriers argue that state regulations are unnecessary in light of their own voluntary code of conduct, referred to as the "Consumer Code for Wireless Service."⁷¹ The code sets forth 10 practices that carriers are encouraged to adopt. The consumer protections in the code, however, are fairly minimal and generally reflect the industry's existing practices. The guideline regarding customer service, for example, only promises to provide consumers with a toll-free customer service number; it establishes no minimum standards for hold times or dispute resolution. Another provision simply states that providers will comply with federal and state privacy laws and will post their online privacy policies. The code does provide for a 14-day trial period during which a subscriber can cancel a service contract without having to pay an early termination fee. This trial period, however, is not long enough for subscribers to see their first bill and verify that the rates are in line with any representations made to them at the time of sale.

Another problem with the industry code is that consumers have no way to guarantee that companies are complying with it. Cell phone carriers do not have to agree to follow with the code. And for those that agree to adhere to it, the consequence of non-compliance is minimal. A company that fails to honor the code simply cannot display the wireless trade industry's "Seal of Wireless Quality/Consumer Information."

Given these limitations, the voluntary industry code does not serve as a meaningful substitute to state regulation of the industry.

RECOMMENDATIONS

A Cell Phone Users' Bill of Rights

Cell phone users are clearly on record. They have reported a litany of complaints about the quality of the service provided by wireless carriers. For years, consumers have been dealing with broken promises, poor call quality, and anti-competitive practices. Now, they are calling out for improved service and additional consumer protections. A May 2004 *Consumer Reports*

poll found that more than 70 percent support extending a cell phone users' bill of rights to consumers across the country.⁷² An earlier survey of the magazine's subscribers found that 64 percent were concerned with the lack of detailed information on service coverage areas and 61 percent objected to early contract termination fees.⁷³ It is time for policy makers to hear consumers' call for action.

The cell phone industry should be governed by basic consumer protection standards. Without these protections, cell phone companies are not accountable for their business practices. As more consumers begin to use cell phones as a substitute for traditional phone service, accountability for service becomes increasingly important. Cell phones today are becoming much more of a basic utility than a luxury. But consumers do not enjoy the same protections in the wireless market as they do in the traditional wireline market.

States have an important role to play in establishing a set of basic service quality and customer service standards by which regulators and consumers can hold carriers accountable. States considering regulating the industry should ensure that the following consumer protection standards are included in any regulatory framework:

Disclosure:

- All wireless contracts and marketing materials should clearly spell out the terms of the contract in an easy-to-read, standardized format. The disclosures should be made available and accessible to consumers comparing prices and services among competing carriers. The disclosures should include:
 - Rate information, including monthly base charge, per-minute charges for minutes not included in the plan, the method for calculating minutes charged, late payment penalties, and other usage fees;
 - Plan details, including a breakdown of weekend/daytime, nights/weekend, long-distance, roaming, incoming calls, and directory assistance;
 - Termination and start-up fees, as well as the termination dates for the trial plan and contract; and
 - Taxes and surcharges.
- All providers should provide consumers with coverage maps that are as accurate as current technology allows. These maps should be available on the provider's Internet site as well as provided at the point of sale.

Billing:

- Cell phone bills should be clearly organized. All mandated government taxes, surcharges and fees required to be collected from consumers and to be remitted to federal, state, or local governments should be listed in a separate section of the bill and clearly itemized. This section of the bill should not include any charges the carrier is not required to remit to the government.

- Roaming calls should be itemized on the bill within 60 days of the call, identifying the date and location of the call.
- Consumers should not be held liable for calls made after a phone is stolen as long as the consumer promptly reported the theft to the service provider.
- Consumers should be able to file billing disputes with the state utility commission. Providers should not treat the disputed portion of the bill as late or terminate the contract for non-payment if a complaint is pending with the state.

Service Quality:

- The state utility commission should monitor service quality. Data should be collected and made publicly available so consumers can compare signal strength, dropped call counts and dead zones across carriers.

Service Contracts:

- Consumers should have a risk-free trial period during which they can cancel any new service contract without penalty. This gives consumers time to see whether the phone works where and how it was promised. Consumers should have 30 days to cancel after receiving the first bill so they can verify representations regarding the cost of service.
- Contracts should be for no longer than one year, with an option for renewal. In addition, carriers should not extend a customer's contract without obtaining a customer's written permission. Currently, many consumers do not realize that they are extending their contracts by upgrading their phones or by increasing or decreasing the minutes in their plans.
- Any material changes that a carrier makes to a contract should be provided to customers in advance, and customers should have a 30 day opportunity to terminate the contract without penalty and to receive a pro-rated refund of the charges they paid for purchasing a phone for the carrier's network.
- Contracts should not waive or have the practical effect of waiving consumers' rights to resolve any disputes that arise under the contract by obtaining relief on a class action basis.

Consumer Privacy:

- Carriers should obtain customers' express permission prior to making cell phone numbers public. They should not charge a fee for keeping the number private.

Tips for Consumers

In the largely unregulated cell phone market, consumers need to carefully choose providers and monitor the carrier's practices once a contract is signed. WISPIRG offers the following tips for consumers:

- **Before signing up, understand your choices.** Carriers make it difficult to compare cell phone plans, so take the time to investigate your options. Ask friends, family and coworkers for recommendations of carriers that provide good call quality in your area. Use the Shoppers' Guide at the end of this report to compare the prices and terms of plans. Carriers regularly change their plans and fees, so be sure to get the most updated quotes from the carriers themselves.
- **Make the contract work under your terms.** Before you sign on the dotted line, read the service contract carefully and understand all the terms. You will be bound by them. Consider striking any clauses that require you to waive your right to court and class-action relief or that allow the carrier to modify the contract at any future point. The carrier ultimately may not agree to your suggested contract changes, but at the very least you can express your dissatisfaction with the terms of its form contract.
- **Review your bills carefully.** Billing mistakes are the largest source of complaints about cell phone companies reported to the FCC. When you get your first bill, read it carefully to verify that the cost and terms of the plan are the same as those the company represented to you. If they are not, file a complaint with the FCC (1-888-225-5322) and the Office of the Attorney General (608) 266-1221.
- **Protect your privacy.** Add your cell phone number to the national Do Not Call Registry by calling 1-888-382-1222 from the number of your cell phone, or log on to www.donotcall.gov. Taking this action won't stop your cell phone number from being listed in a 411 directory, but it can help ensure that you don't get unsolicited telemarketing calls.
- **Get involved.** Cell phone companies are lobbying hard to keep from being regulated. If you want more consumer protections, make sure your voice is heard by contacting your state and local representatives.

METHODOLOGY

This report is based upon a review and analysis of surveys and reports regarding consumers' experiences with wireless carriers completed by the AARP, the Better Business Bureau, the California Utility Consumers' Action Network (UCAN), Consumers Union, the Federal Communications Commission (FCC), the Government Accountability Office (GAO), and J. D. Power and Associates. The author also examined the terms and conditions of service published by the five major national wireless providers, as well as their rating plans for consumers as of January 2005.

WISPIRG's Shoppers' Guide to Cell Phone Service

Shopping for a cell phone plan can be a daunting task. Calling plans can be complicated and confusing. And competing carriers make comparison shopping difficult because they do not present key price and service conditions in a uniform manner. This *Shopper's Guide to Cell Phone Service* is designed to help you understand some of the key factors to consider when choosing a plan. In addition, in the pages that follow, you will find a detailed breakdown of the major calling plans offered by the five national carriers. Use this information when choosing a cell phone service, but be aware that carriers frequently change their calling plans. Check with the carrier for the most updated information.

COVERAGE: "Coverage" is the geographical area within which you can use your cell phone to make and receive calls. Coverage can vary greatly by carrier because it is primarily determined by where the carrier has built up its network. Most carriers can provide you with maps outlining their coverage areas, but typically these are only rough estimates of the geographic area they cover. They do not guarantee that your phone will work in all areas on the coverage map. Areas on the coverage map in which you cannot use your phone are often referred to as "dead zones." Dead zones can be caused by hills, buildings, and even foliage blocking the signal between the carrier's tower and your phone.

Tip: It will be difficult to adequately judge the quality and coverage of the cellular service in your area before you buy a phone and sign a contract. Ask friends, family and coworkers for recommendations of carriers that provide good call quality in your area. Ask each carrier how much of a trial period they will provide you for testing out the coverage of your phone. Most of the national carriers offer 14-day to 30-day trial periods.

CALLING PLANS: Many cell phone companies offer local, regional, and national calling plans. Each plan will designate a specific calling area where you can make a certain number of minutes of calls each month for a set price. Calls made outside of that calling plan can carry an extra per-minute, long-distance charge.

Tip: To pick the best plan for you, figure out whether you will be making most of your calls locally or outside of the carrier's local or regional areas.

ROAMING: "Roaming" refers to calls that you make or receive either when you are outside of your home calling plan or on another carrier's network. Some cell phone plans charge high fees for roaming; others do not. Several carriers reserve the right to terminate service if over half of your calling time is used while roaming.

Tip: Be aware that even "nationwide" plans can include roaming fees. Some carriers define "nationwide" as anywhere in that carrier's service network, not anywhere in the country. Once outside of that network, subscribers will have to pay roaming fees that can be as high as 79 cents per minute.

INCLUDED MINUTES: Most carriers offer different calling plans that include a set amount of minutes for use each month. This is often called a "basket" or "bucket" of minutes. Generally, if you use more than that specified amount of minutes, you will have to pay additional charges. Many carriers will offer a limited amount of daytime or "peak" minutes and unlimited "off-peak" minutes. In addition, some carriers offer plans with additional minutes that can be used for calling other subscribers to that carrier's network.

Tip: Carriers can define "peak" and "off-peak" minutes differently. Read the contract terms carefully to understand the bucket of minutes included in a particular plan. Exceeding your allotted minutes can be costly.

SERVICE CONTRACTS: The five national carriers all require that new customers sign a one to two year contract for service, unless they sign up for prepaid plans. While many carriers will allow you to move from one of its calling plans to another while you are under contract, making this kind of change will often extend the length of your contract with the carrier. Most contracts carry a high cancellation fee if you decide to cancel the service early.

Tip: Read the service contract carefully. Most providers' contracts include clauses that allow them to modify the contract at any point in the future and that prohibit you from resolving any disputes through court or class actions. Consider striking out these kind of clauses. The carrier ultimately may not agree to your suggested contract changes, but at the very least you can express your dissatisfaction with the terms of its form contract.

MONTHLY BILLING: Some carriers will provide you with "detailed billing," itemizing each call you made or received during a billing cycle, at no cost; others will charge a fee for this information.

Tip: Billing mistakes are the largest source of complaints about cell phone companies reported to the FCC. When you get your first bill, read it carefully to verify that the cost and terms of the plan are the same as the company represented to you.

IF SOMETHING GOES WRONG: If you are unable to resolve billing or service problems by contacting your carrier directly, you may want to file a complaint or take further action. Consider the following options:

Federal Communications Commission (FCC): The FCC has regulatory authority over cell phone carriers. To file a complaint with FCC's Consumer & Governmental Affairs Bureau, call 1-888-225-5322 or visit: <http://www.fcc.gov/cgb/complaints.html>.

Wisconsin Consumer Protection: The Wisconsin Department of Agriculture, Trade, and Consumer Protection takes consumer complaints about unfair or deceptive acts or practices. Call (608) 224-4953.

Small Claims Court: If you are unable to resolve your dispute, you may want to file a claim against the carrier in small claims court. Some contracts allow consumers to pursue this option. Others may prohibit it, but those clauses can be challenged in some circumstances.

END NOTES

¹ Cellular Telecommunications & Internet Association (CTIA), *Wireless Industry Indices: Semi-Annual Data Survey Results* (results through June 2004) ("CTIA Survey"), available at: <http://files.ctia.org/pdf/CTIAMidyear2004Survey.pdf>. In its October 24, 2004 press release announcing the results of the survey, CTIA estimated total current subscribership at more than 170 million. The nationwide penetration rate is calculated by dividing total mobile telephone subscribers by the total U.S. population. According to the Bureau of the Census, the combined population of the 50 states, the District of Columbia, and Puerto Rico as of July 1, 2004 was estimated to be 293.7 million. See U.S. Census Bureau, *Population Estimates: Annual Population Estimates April 1, 2000 – July 1, 2004*, available at: <http://www.census.gov/popest/states/>.

² Federal Communications Commission, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Ninth Report*, ¶¶ 212-213 (2004) ("Ninth Report"), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-216A1.pdf, citing statistics from a special supplement to the February 2004 Current Population Survey of the Census Bureau and David Janazzo, Wendy Liu, and Linda Mutschler, *The Next Generation VIII*, Merrill Lynch, Global Securities Research & Economics Group, Mar. 15, 2004 at 41.

³ The number of wireless complaints made to the FCC totaled 15,329 in 2002 and 21,357 in 2004. See, Federal Communications Commission, *Quarterly Reports on Informal Consumer Inquiries and Complaints*, (1st, 2nd, 3rd, and 4th Quarters 2002 and 2003) ("FCC Complaint Reports"), available at <http://www.fcc.gov/cgb/>. The number of wireless subscribers, according to the FCC, totaled 141.8 million in 2002 and 160.6 million in 2003. See, "Ninth Report," *supra* note 2 at 6.

⁴ *Id.*

⁵ As a general matter, only a small portion of consumers file complaints about consumer problems. See, Arthur Best, *When Consumers Complain*, at 118 (Columbia University Press, 1981).

⁶ Baker & Kim-Sun, "Understanding Consumer Concerns about the Quality of Wireless Telephone Service," AARP Public Policy Institute (June 2003) ("Understanding Consumer Concerns").

⁷ United States Government Accountability Office, *Telecommunications: FCC Should Include Call Quality in its Annual Report on Competition in Mobile Phone Services*, GAO-03-501 at 44 (April 2003) ("GAO Call Quality Report").

⁸ Ellen Simon, "Your Cell Phone Company Knows You Hate It," *Associated Press* (June 4, 2004).

⁹ Better Business Bureau, *Analysis of Cell Phone Complaints Reveals Root Causes of Customer Dissatisfaction* (May 4, 2004) ("BBB Analysis").

¹⁰ Jon Van, "Only 45 Percent of Wireless Customers Satisfied with Service," *Chicago Tribune* (Jan. 5, 2005).

¹¹ "Cellular Service: Best Carriers," *Consumer Reports*, at 18 (Feb. 2005) ("Cellular Service").

¹² *Id.* at 19.

¹³ Thirty-two state attorneys general negotiated an assurance of voluntary compliance with Cingular Wireless, Sprint PCS and Verizon Wireless regarding these fees as well as other matters. The settlement agreements are available at: <http://www.nasuca.org/AVC%20Documents.htm>. In addition, the Missouri Attorney General reached a settlement with Nextel and Sprint PCS regarding these fees. See, Press Release, *Nixon Obtains Agreements Requiring Nextel, Sprint to Use Clearer Language in Cell Phone Bills, Ads Regarding Fees*, Office of the Missouri Attorney General (July 3, 2003), available at <http://www.ago.mo.gov/newsreleases/2003/070303.htm>.

¹⁴ Cellular Telecommunications & Internet Association (CTIA), *Consumer Code for Wireless Service*, ("CTIA Code"), available at: http://files.ctia.org/pdf/The_Code.pdf.

¹⁵ *FCC Complaint Reports*, *supra* note 3, and *BBB Analysis*, *supra* note 9.

¹⁶ *Id.*, *BBB Analysis*, noting that complaints involving sales agents made up one-third of the complaints filed alleging deception or misrepresentation of contract terms. See also, California Utility Consumers' Action Network (UCAN), *Phraud and Phonies: The Compelling Need for Telecommunications Consumer Protection, a White Paper on Consumer Complaints*, (July 2003) ("UCAN Complaints Report"), available at: http://www.ucan.org/law_policy/teledocs/telcoreport.htm.

¹⁷ *Id.*, *UCAN Complaints Report*, *supra* note 17.

¹⁸ Ryan Malkin, *10 Things Your Cell Phone Service Won't Tell You*, SmartMoney.com (July 2003), available at: <http://www.smartmoney.com/consumer/index.cfm?story=tenthings-july03>.

¹⁹ *BBB Analysis*, *supra* note 9.

²⁰ In 2002, the FCC received 1282 complaints in this category. In 2003, that number increased to 2133. See, *FCC Complaint Reports*, *supra* note 3.

²¹ *UCAN Complaints Report*, *supra* note 17.

²² In 2003, the FCC received 10,592 complaints involving billing and rates. See, *FCC Complaint Reports*, *supra* note 3.

²³ Table One, *GAO Call Quality Report*, *supra* note 17, at 26.

²⁴ *BBB Analysis*, *supra* note 9.

²⁵ Simon, *supra* note 8.

²⁶ *Service Shortcomings*, ConsumerReports.org (Feb. 2002).

²⁷ Jeffrey Silva, "Kennedy Backs Off Alternative Bill of Rights," *RCR Wireless News* (Jan. 20, 2004).

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- ²⁸ Testimony of Dr. Douglas Elfner, Director of Utility Intervention, NY State Consumer Protection Board, *Overcoming Obstacles to Wireless Phone Service*, before the NY Senate Committee on Energy and Telecommunications at 4 (Dec. 8, 2003), available at: <http://www.consumer.state.ny.us/pdf/wireless%20testimony%2012-8-03.pdf>.
- ²⁹ *Fedor v. Cingular Wireless Corp.*, 355 F.3d 1069 (7th Cir. 2004).
- ³⁰ Dan Meyer and Jeffrey Silva, "AT&T Wireless Faces Class-Action Lawsuit for Roaming Billing," *RCR Wireless News* (Sept. 8, 2003).
- ³¹ James S. Granelli, "Consumer Group Sues Nextel," *Los Angeles Times* (Oct. 22, 2003).
- ³² *Cellular Service*, *supra* note 11 at 18.
- ³³ *GAO Call Quality Report*, *supra* note 7 at 42.
- ³⁴ *Understanding Consumer Concerns*, *supra* note 6.
- ³⁵ *GAO Call Quality Report*, *supra* note 7, at 22.
- ³⁶ The assurance of voluntary compliance for each carrier is available at: <http://www.nasuca.org/AVC%20Documents.htm>.
- ³⁷ Mike Langberg, "Cell Phone Companies Should Level with Public," *Mercury News* (Dec. 22, 2003), available at: <http://www.siliconvalley.com/mld/siliconvalley/7548274.htm>.
- ³⁸ Robin Washington, "Verizon Hangs up its Plan to Extend Peak Hours," *Boston Herald* (Feb. 3, 2001).
- ³⁹ Brief of Minnesota Attorney General Mike Hatch, *Cellco Partnership v. Hatch*, No. 04-3198, before the Court of Appeals for the Eight Circuit, at 6-8.
- ⁴⁰ Press Release, *Wireless Customer Care Performance Drops Significantly from 2003*, J.D. Power and Associates (July 8, 2004), available at: <http://www.jdpower.com/news/releases/pressrelease.asp?ID=2004061>.
- ⁴¹ *Cellular Service*, *supra* note 11 at 18.
- ⁴² Brief of Attorney General Hatch, *supra* note 40 at 7.
- ⁴³ *UCAN Complaints Report*, *supra* note 17.
- ⁴⁴ Some carriers' contracts include arbitration clauses that would allow either party to pursue individual claims through the small claims court process.
- ⁴⁵ *Cellular Service*, *supra* note 11 at 18.
- ⁴⁶ *Understanding Consumer Concerns*, *supra* note 6, finding that 47 percent of respondents reported that keeping their cell phone number when changing providers was "very important," and another 20 percent found it "somewhat important."
- ⁴⁷ Press Release, *FCC Observes First Anniversary of Wireless Local Number Portability*, FCC (Nov. 24, 2004), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-254499A1.doc.
- ⁴⁸ *GAO Call Quality Report*, *supra* note 7 at 30.
- ⁴⁹ Jim Finkle, "Pulling the Plug," *Orange County Register* (Nov. 16, 2003).
- ⁵⁰ Yuki Noguchi, "The Wireless Industry and the 411," *The Washington Post* (Aug. 7, 2004).
- ⁵¹ Verizon Wireless Customer Agreement, available at: <http://www.verizonwireless.com/b2c/footer/customerAgreement.jsp> (accessed Jan. 7, 2005).
- ⁵² Senate Bill 1963 (108th Congress).
- ⁵³ Cal. Pub. Util. Code § 2891.1
- ⁵⁴ *In re The Year 2000 Biennial Regulatory Review- Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, 17 FCC Rcd. 18485, 18489 (2002).
- ⁵⁵ *FCC Complaint Reports*, *supra* note 3.
- ⁵⁶ Press Release, *Government Records Reveal AT&T Wireless Has Four Times as Many Consumer Complaints as Verizon*, Consumers Union (May 11, 2004).
- ⁵⁷ *GAO Call Quality Report*, *supra* note 7 at 57.
- ⁵⁸ Yuki Noguchi, "Cellular Merger Approved," *The Washington Post* (Oct. 26, 2004).
- ⁵⁹ "Taking on Giants," *The Wall Street Journal* (Dec. 16, 2004).
- ⁶⁰ Specifically, 47 U.S.C. § 332(c)(3)(A) reads: "[N]o state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulating the other terms and conditions of commercial radio services."
- ⁶¹ H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. (1993), *reprinted in* 1993 U.S. Code Cong. & Admin. News, 378 at 588.
- ⁶² *In re Southwestern Bell Mobile Sys., Inc.*, 14 F.C.C.R. 19898, ¶¶ 23 and 10. (F.C.C. November 18, 1999).
- ⁶³ *See, Brown v. Washington/Baltimore Cellular, Inc.*, 109 F. Supp.2d 421, 423 (D. Md. 2000) and *Cellular Telecommunications Indus. Ass'n v. F.C.C.*, 168 F.3d 1332, 1336 (D.C.Cir.1999).
- ⁶⁴ *See, Esquivel v. Southwestern Bell Mobile Sys., Inc.*, 920 F. Supp. 713 (S.D. Tex. 1996); *Brown v. Washington/Baltimore Cellular, Inc.*, 109 F. Supp.2d 421 (D. Md. 2000); and *Phillips v. AT & T Wireless*, No. 4:04-CV- 40240, 2004 WL 1737385 (S.D.Iowa July 29, 2004).
- ⁶⁵ La. Rev. Stat. Ann. § 45:844.6; R.I. Gen. Laws § 39-2-1.3.
- ⁶⁶ *Cellco Partnership v. Hatch*, No. Civ.04-2981, 2004 WL 2065807 (D. Minn. 2004)
- ⁶⁷ *Viewpoint: Cell-phone Users' Bill of Rights*, ConsumerReports.org (Sept. 2004) ("*Viewpoint*").
- ⁶⁸ Jeffrey Silva, "CPUC to Revisit Bill of Rights Rules," *RCR Wireless News* (Jan. 10, 2005).
- ⁶⁹ Michael Liedtke, "Stiff PUC Wireless Rules Put on Hold," *Associated Press*, (Jan. 28, 2005).
- ⁷⁰ Alex Pham, "PUC Shelves Phone Rules," *Los Angeles Times*, (Jan. 28, 2005).

⁷¹ *CTIA Code*, *supra* note 15.

⁷² *Viewpoint*, *supra* note 67.

⁷³ Press Release, *Escape Cell Hell Campaign*, Consumers Union (Jan. 6, 2004).