



Testimony of

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Regarding

**“The State of Wireless Communications”**

Before the

**Senate Commerce Committee**

**Subcommittee on Communications, Technology, and the Internet**

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Chairman Pryor, Ranking Member Wicker, and Members of the Subcommittee: on behalf of Consumers Union, the policy and advocacy arm of *Consumer Reports*, thank you for the opportunity to testify before you today. *Consumer Reports* is the world's largest independent, not-for-profit product testing organization. We rate thousands of products and services annually, provide overviews and comparisons, conduct customer satisfaction surveys, and publish tips on how consumers can save money and protect themselves against abusive practices. We appreciate being included in a conversation about wireless in your ongoing examination into the state of the telecommunications market.

## **Introduction**

Wireless service is becoming an evermore essential part of our lives. Smartphone penetration levels continue to increase,<sup>1</sup> and innovative new technologies and applications are improving consumers' lives in never-before-seen ways. Significantly, a growing portion of the population has chosen to "cut the cord" and replace landline phones with mobile wireless service. According to the FCC, thirty-four percent of adults lived in wireless-only households by the second half of 2012.<sup>2</sup> Others – including consumers in rural areas, low-income communities, and communities of color – rely on their cell phones as their only means of accessing the Internet. In light of the growing importance of wireless, we would like to bring attention today to a number of practices that delve into consumers' pocketbooks and limit competition and consumer choice. Some of the issues are unique to the wireless arena, while others are not; but all of them deserve attention in light consumers' heavy reliance on wireless technologies.

Our comments today are guided by three basic principles. First, all consumers should have access to quality, affordable wireless services. Second, consumers should

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<sup>1</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34 (rel. Mar. 21, 2013) ("*Sixteenth Competition Report*") (noting that 55.5% of mobile wireless consumers owned smartphones as of July 2012, up 41% from the previous year).

<sup>2</sup> *Sixteenth Competition Report* at 26.

not be unduly limited in their ability to choose among the products, service plans, and carriers that best suit their particular needs. Third, carriers should provide the tools and information necessary for consumers to make meaningful choices and protect themselves against abusive practices.

With these principles in mind, our comments today will focus on wireless bill shock and cramming, the new legal barriers to unlocking cell phones, early termination fees, the need to preserve wireless as part of the Lifeline program for low-income consumers, and spectrum policy.

### **Bill Shock**

First, bill shock. For years, *Consumer Reports* received stories from consumers who had been hit with hundreds – even thousands – of dollars’ worth of surprise charges on a single month’s bill for exceeding plan limits on data, voice, and texting, or for incurring international roaming charges.<sup>3</sup> In our view, the underlying problem was that consumers did not have the tools they needed to keep track of their plan limits. We supported action by the Federal Communications Commission (FCC) to remedy this and filed comments in its proposed rulemaking proceeding.

In October 2011, the FCC and major wireless carriers agreed to a voluntary plan under which carriers would begin providing free alerts to consumers as they approached their plan limits for data, voice, and texting – and before they incurred international roaming charges. Consumers Union joined the FCC and CTIA in announcing the agreement in 2011, and we are pleased that the FCC recently announced in April that all participating carriers are in compliance with the agreement, which protects 97% of the population from bill shock.

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<sup>3</sup> “Bill Shock” Is Common, CONSUMERREPORTS.ORG, Jan. 2011, available at <http://www.consumerreports.org/cro/magazine-archive/2011/january/electronics/best-cell-plans-and-providers/cell-phone-bills/index.htm> (visited May 31, 2013) (finding that one in five respondents had received an unexpected charge on a bill over the past twelve months).

We are glad to have been part of the consumer education and advocacy process that resulted in these protections, but we plan to continue to closely monitor carrier performance and engage in a dialogue with consumers to ensure that these alerts work for everyone as intended.

### **Cramming**

A second issue of concern is cramming, or the placement of unauthorized charges by third party services on a consumer's telephone bill. Several studies have suggested that cramming costs consumers billions of dollars each year. As we've explained in *Consumer Reports*, these charges often go unnoticed by consumers because they can be as small as 99 cents or described in a way that makes them sound like legitimate phone-related charges.

We were pleased that the FCC adopted new cramming rules last year to better help consumers identify third-party charges in the landline context. These rules require carriers to more clearly separate third-party charges from other charges on a phone bill. The new rules also require carriers to notify consumers of the option to block all third-party charges if the carrier provides that option. However, we were disappointed that the FCC did not extend these rules to wireless cramming. Cramming is just as serious a problem for wireless consumers – and arguably even more so in light of the ease with which it can occur. In the wireless context, for example, a crammer needs only to confirm that an active cell phone number exists before initiating an unauthorized charge.

*Consumer Reports* has been alerting readers to the practice of cramming and advising them to be extra vigilant in reviewing their mobile phone bills for unexplained charges. However, we strongly believe more needs to be done to help consumers identify third-party charges and to keep unauthorized charges from ending up on their bills in the first place.

We very much appreciate the Committee's active pursuit of this concern, including its 2011 investigation into cramming, as well as the letters that Chairman Rockefeller recently sent to the four major carriers identifying cramming as a growing threat for wireless consumers.<sup>4</sup>

### **Unlocking Mobile Devices**

Third, we are concerned about the new legal barriers to unlocking mobile phones. Last fall, in its review of the Digital Millennium Copyright Act, the Copyright Office extinguished the long-recognized right of consumers to unlock their mobile phone for use on other carriers' networks. As a result, what had once been legally protected is now potentially subject to criminal prosecution.

Consumers Union recently sent letters to the FCC Commissioners and to the Commerce Committee, among others, encouraging efforts to remedy the uncertainty created by the Copyright Office's decision. We are pleased that President Obama has signaled a willingness to engage on this issue and that the FCC is currently looking into the matter. A number of bills have been introduced in Congress to restore the legal protection removed by the Copyright Office's decision, including bills introduced and co-sponsored by members of this committee. We thank you for your recognition of this important issue and support your efforts to craft an effective solution that benefits consumers.

In our view, consumers should be able use the mobile devices they have purchased as they see fit. For example, they should be permitted, where feasible, to adapt their mobile device for use abroad with a foreign carrier. They should be permitted to sell or give a mobile device they own to someone else for use with the carrier of the new owner's choice. And they should be able to obtain an unlocked mobile device

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<sup>4</sup> Senate Committee on Commerce, Science, & Transportation, Press Release, *Rockefeller Vows to Avert Wireless Cramming Scams*, Mar. 1, 2013, available at [http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=cd0edc13-b355-4d4e-9619-7035329daa1a](http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=cd0edc13-b355-4d4e-9619-7035329daa1a) (visited May 31, 2013).

themselves, and adapt it for use with the carrier of their choice. All of these uses make sense for consumers, and all should be legal and available.

In fact, a 2011 nationwide poll conducted by *Consumer Reports* makes it clear that consumers themselves agree. According to our poll, an overwhelming *ninety-six* percent of respondents felt that consumers should be able to keep their existing handsets when changing carriers. Furthermore, eighty-eight percent of respondents believed that their handset should work on *any* cellular network that they choose, while seventy-three percent said that they would support a government rule that requires handsets to be compatible with *all* U.S. cellular services.

For years, our organization has advocated on the related issue of interoperability. We were pleased to see the FCC begin a proceeding to promote interoperability among wireless devices last year and support efforts that allow consumers to use the devices that they have purchased on the networks of their choice.

### **Early Termination Fees and the Traditional Long-Term Contract**

Fourth, we remain concerned about early termination fees and the structure of the traditional wireless service contract. This model builds in the cost of expensive handsets into the long-term service contract, creates artificial barriers to competition and consumer choice, and implements early termination fees that dissuade consumers from switching among mobile service providers.<sup>5</sup> Although carriers generally prorate these early termination fees, customers who switch before their contract expires can still incur charges as high as \$350.<sup>6</sup>

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<sup>5</sup> *Sixteenth Report* at para. 308 (noting that churn rates for post-paid services are significantly lower than pre-paid contracts, due in part to existence of early termination fees).

<sup>6</sup> AT&T, *Early Termination Fees*, available at <http://www.wireless.att.com/learn/articles-resources/early-term-fees.jsp> (visited May 31, 2013) (listing early termination as high as \$325 for advanced phones); Verizon Wireless, *Customer Agreement and Important Information*, available at <http://youreguide.vzw.com/legal-customer-agreement/> (visited May 31, 2013) (listing early termination fees as high as \$350 minus); Sprint, *Learn About Early Termination Fee*, available at [http://support.sprint.com/support/article/Learn\\_about\\_early\\_termination\\_fee/case-sp061027-20110823-171256](http://support.sprint.com/support/article/Learn_about_early_termination_fee/case-sp061027-20110823-171256) (visited May 31, 2013) (listing early termination fees as high as \$350).

Wireless carriers justify these fees as necessary to recoup the cost of providing consumers with mobile devices below their regular cost. But in many ways, embedding the cost of a mobile device into a contract is a bad deal for consumers. For example, under this traditional structure, a consumer is forced to pay for a new mobile device over the course of a contract even if the consumer does not want or need a new mobile device. Furthermore, early termination fees lock consumers into these long-term contracts. Although carriers argue that they have strong incentives to keep customers happy, the fact remains that if consumers have a harder time switching to a carrier's competitor, then carriers are under less pressure to respond to customer demands.

If consumers were able to shop for the best deal on each of these purchases separately, they could benefit significantly from the lower prices, improved quality, and greater innovation and variety that healthy competition would encourage among both mobile device manufacturers and wireless service providers. In Europe, for example, where LTE wireless service is sold separately from the mobile device, one study shows that the cost of the service is only about a third of its cost in the United States.<sup>7</sup>

We are encouraged to see that wireless carriers are beginning to consider offering consumers more innovative choices than the traditional long-term contract.<sup>8</sup> This emerging development certainly appears to be catching the attention of consumers, as

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<sup>7</sup> Kevin J. O'Brien, *Americans Paying More for LTE Service*, NY TIMES, Oct. 15, 2012, available at [http://www.nytimes.com/2012/10/15/technology/americans-paying-more-for-lte-service.html?\\_r=0](http://www.nytimes.com/2012/10/15/technology/americans-paying-more-for-lte-service.html?_r=0) (visited May 31, 2013) (noting that LTE services in the U.S. cost, on average, three times the European average).

<sup>8</sup> For example, in January, AT&T CEO Randall Stephenson said he would consider allowing consumers to pay for their own smartphones in exchange for a lower rate. In March, T-Mobile announced a pricing plan that effectively separates the charge for the service from the charge for the device. In response, AT&T recently introduced a wireless no-contract cell service. See <http://www.att.com/gen/press-room?pid=24185&cdvn=news&newsarticleid=36421> (visited May 31, 2013). In April, Verizon CEO Lowell McAdam said he would consider ending two-year contracts if there were consumer demand for it. See Roger Cheng, *Verizon CEO Says He's Open To Dropping Contracts*, CNET NEWS, Apr. 3, 2013, available at [http://news.cnet.com/8301-1035\\_3-57577842-94/verizon-ceo-says-hes-open-to-dropping-contracts/](http://news.cnet.com/8301-1035_3-57577842-94/verizon-ceo-says-hes-open-to-dropping-contracts/) (visited May 31, 2013).

evidenced by a recent grass roots online petition to Verizon that argues against long-term service contracts and has garnered over 150,000 signatures.<sup>9</sup>

### **Protecting the Wireless Lifeline Program**

Finally, we would like to express our continued support for the Universal Service Fund's Lifeline program. Fifteen million low-income families depend on this program, which we believe plays a key role in expanding the benefits of communications services to those who would otherwise be unable to afford them.

We recognize that the FCC recently took steps to appropriately address problems of waste, fraud, and abuse. These efforts have already resulted in \$200 million of savings and will continue to save millions, while ensuring that the funds are targeted to consumers who need telecommunications services the most.

Furthermore, we remain concerned about any proposals to exclude wireless from the Lifeline program. To do so would be to deprive the millions of low-income families who depend on cell phones for basic access to vital telecommunications services. The importance of this program is especially clear in light of the consumers' increasing shift away from landline service. As discussed earlier, many Americans are choosing to replace their landline phones with mobile phones, while others – including many consumers in rural areas – rely on their cell phones as their only means of accessing the Internet.

We support the FCC in its efforts to get affordable broadband to as many people as possible, without leaving behind low-income consumers and the groups who need it the most.

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<sup>9</sup> See Change.org, Petition, *Verizon: Get Rid of Contracts for Wireless Services*, available at <https://www.change.org/petitions/verizon-get-rid-of-contracts-for-wireless-service> (visited May 31, 2013); Brandon Griggs, *Thousands Petition Verizon To Nix Wireless Contracts*, CNN.COM, Apr. 17, 2013, <http://www.cnn.com/2013/04/16/tech/mobile/verizon-petition-contracts/index.html> (visited May 31, 2013).



## **Spectrum**

Consumers have much to gain if more spectrum is made available for commercial wireless services. But consumers won't be able to realize the benefits of this additional available spectrum unless future spectrum auctions actually promote competition in this market. The two largest providers of wireless services today, AT&T and Verizon, are positioned to dominate the auctions unless the government puts in place appropriate rules to also give small carriers the opportunity to bid on this important limited resource. Consumers also will benefit if the government agrees to set aside spectrum for unlicensed uses. These goals need to be at the forefront of future spectrum policy decisions.

## **Conclusion**

These issues highlight some of the ways in which consumers have borne the brunt of a wireless marketplace that is not as sufficiently competitive and consumer friendly. Wireless technology holds incredible promise for all of us, but policymakers and regulators play an important role in helping ensure that – as wireless technology becomes evermore prevalent in our day-to-day lives – it delivers quality, affordability, and choice to consumers. We appreciate the Subcommittee's attention to these important issues and I look forward to your questions. Thank you.