

**TESTIMONY OF  
MINNESOTA ATTORNEY GENERAL LORI SWANSON**

**CONSUMER WIRELESS ISSUES**

**Before the United States Senate  
Committee on Commerce, Science, and Transportation**

**October 17, 2007**

**ROOM 253 RUSSELL SENATE OFFICE BUILDING  
WASHINGTON, D.C.**

Good morning. My name is Lori Swanson, and I am the Attorney General of the State of Minnesota. I thank Chairman Inouye, Vice Chairman Stevens, and the members of the Committee on Commerce, Science, and Transportation for conducting these important hearings on the topic of consumer protections relating to the cellular phone industry.

**I. THE CELL PHONE INDUSTRY.**

The cell phone industry has undergone big changes since the last decade. In 1995, an estimated 33 million Americans had cell phone service; last year, an estimated 233 million Americans did. For a growing number of Americans, the cell phone is their only phone or their primary phone.

At the same time, the cell phone industry, through numerous mergers and acquisitions, has become much more concentrated. By some estimates, just four companies control about 80 percent of the market. In some smaller markets, there are even fewer carriers with adequate service. Less competition makes it more difficult for consumers to shop around for the best service at the lowest rates.

Over the last three years, the Better Business Bureau reported that the cell phone industry has generated more complaints than any other of the 3,600 industries in America. According to the American Customer Satisfaction Index, the cell phone industry has continually ranked in the bottom five industries for customer satisfaction.<sup>1</sup>

**II. CONTRACTS AND CONTRACT EXTENSIONS.**

Mergers and acquisitions are not the only thing that has reduced competition in this industry. The companies' business and contracting practices have also impeded consumers' ability to move to a competitor when a company provides poor service. Many cell phone

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<sup>1</sup> Eleazar David Melendez, *I'm About to Lose You*, Newsweek, August 6, 2007, at 36.

companies require their customers to enter into long-term contracts of up to two years in length and require customers who terminate the contract early to pay substantial termination fees, often of several hundred dollars. These termination fees often bear little or no relation to the actual costs incurred by the company in terminating the contract early. The lengthy contracts and early termination penalties have the effect of locking consumers in with one company for extended periods of time. My office has received complaints from consumers who were asked to pay sizable termination fees even when they cancelled their contracts for very legitimate reasons, such as because their phone did not work or they couldn't get the service that was promised in their home area.

In other words, consumers have found themselves trapped in lengthy contracts even where, as a practical matter, they could not even use their phone. Indeed, after hearing from many men and women in the military who were required to pay termination penalties to cancel their service when they were deployed to active duty, my office drafted and the Minnesota legislature passed this year consumer protections that allow men and women in military service to cancel their service without penalty when deployed to active duty. The fact that it takes a law to stop cell phone companies from penalizing men and women in uniform with early termination penalties simply because they needed to cancel their phone service while serving their country highlights the problems in this industry.

In a fair consumer transaction, there is transparency and a "meeting of the minds" between the business and the consumer. The business agrees to sell the consumer a product with disclosed terms for a disclosed price, and the consumer agrees to pay it. Both sides know what the deal is, they both want to enter the deal, and they both give knowing consent to its terms. In other words, there is a fair agreement.

Many consumers report to our office that their cell phone companies didn't treat them that way. Some companies use even the smallest change in a customer's phone service -- such as adding or dropping minutes, adding or deleting a family member, or adding a new number -- as justification to extend the consumer's contract for yet another lengthy period of time, often as long as two years. These companies have used even the smallest change in a customer's phone service as an opportunity to trap the consumer in a new contract of up to two years with termination penalties of up to \$200. *Consumer Reports* writes that the biggest nationwide complaint that consumers have about their cell phone is that making minor changes to their service -- such as increasing minutes or adding a number -- can result in lengthy contract extensions. Many consumers who complain to my office report that they first learned that their contracts were extended after the fact, when they changed to a different wireless service or cancelled their service and were hit with substantial termination penalties.

The consumers who have complained about these practices range from individuals to businesses, rural to metro, elderly to young, and include people from all walks of life, ranging from Ph.D.'s and business executives to retirees and construction workers. Last month my office filed a lawsuit against one large national provider alleging that it violated Minnesota consumer protection laws by extending the terms of consumers' wireless contracts for up to two years without giving adequate disclosure or obtaining the knowing consent of the customer when they made small changes to their wireless phone service. See *State of Minnesota v. Sprint Nextel Corporation*.

### **III. WHY FEDERAL LEGISLATION IS IMPORTANT.**

In addition to the problems discussed above, consumers have complained to our office about a variety of other cell phone problems, including that their companies did not provide them

with coverage maps that adequately described the coverage areas, that they cannot understand the convoluted bills sent to them by their carriers, and that their carriers changed the terms of the deal without giving them adequate notice of the changes.

To address some of these abuses, in 2004, the Minnesota Legislature enacted the “Consumer Protections for Wireless Customers” Act. Among other things, the statute required providers to give customers 60 days’ notice before any substantive change in the contract, which would not become effective unless the consumer “opted in” to the change. The cell phone industry challenged the law in federal court before it was set to go in effect, arguing that federal law preempts states’ ability to regulate the rates that companies charge and that the Minnesota law in effect regulated rates. The district court rejected the industry’s arguments, but the U.S. Court of Appeals for the Eighth Circuit struck down Minnesota’s law as being preempted by federal law. The propensity of the cell phone industry to challenge legitimate state consumer protection regulations is another reason why Congress should act in this area.

The Eighth Circuit Court of Appeals did recognize that states can regulate “other terms and conditions” of cell phone service besides rates, such as consumer protection, consumer fraud and contract law matters. I note that Senate File 2033 by its express terms does not preempt state laws. This is an important provision, and I strongly encourage the Congress not to preempt state consumer protection laws that are more protective of consumers.

Fair business dealings require transparency so that consumers can shop for the best service at the lowest rates. Transparency requires that the consumer be armed with information to make an informed, knowing decision. That does not occur when companies fail to provide adequate coverage maps or fail to adequately inform the consumer that even minor changes to their plans will trap them in lengthy contract extensions that they can only exit at a steep price.

The burden should not be on the consumer to figure out the rules of the cell phone shell game. There needs to be more transparency and more fundamental fairness in consumer cell phone transactions. The United States Congress should pass meaningful consumer protection legislation so that consumers are treated fairly and not subjected to a game of "hide the ball" when navigating the cell phone maze.

I thank you again for holding these important hearings.