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# AN EXAMINATION OF WIRELESS DIRECTORY ASSISTANCE POLICIES AND PROGRAMS

## HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

SEPTEMBER 29, 2004

**Serial No. 108–122**

Printed for the use of the Committee on Energy and Commerce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

96–102PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# AN EXAMINATION OF WIRELESS DIRECTORY ASSISTANCE POLICIES AND PROGRAMS

**WEDNESDAY, SEPTEMBER 29, 2004**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2322, Rayburn House Office Building, Representative Charles F. Bass, presiding.

Members present: Representatives Stearns, Gillmor, Shimkus, Pickering, Bass, Walden, Terry, Markey, Wynn, Stupak, and Barton (ex officio).

Also Present: Representative Pitts.

Staff present: Neil Fried, majority counsel; Jaylyn Jensen, majority professional staff; Will Carty, majority legislative clerk; Howard Waltzman, majority counsel; Will Nordwind, majority counsel; David Vogel, minority staff assistant; and Peter Filon, minority counsel.

Mr. BASS. This meeting is called to order. I waive explanation. I just want to mention that Chairman Upton is currently in a DOD Authorization Conference Committee Report. His Decency Bill has been added to that bill so Commerce Committee members are now involved in the DOD conference. He regrets not being here today. I am pleased to stand in his stead.

Without objection I would like to have my opening statement made part of the record and I will at this time read into the record Chairman Upton's opening statement.

Good morning. Today's hearing is entitled, "An Examination of Wireless Directory Assistance Policies and Programs." Like many Americans I often carry a cell phone. I also have landlines at home and at work so I have not cut the cord completely.

However, unlike my landline phone which I leave behind the second I walk out of the house, my cell phone is oftentime attached to my hip. Wherever I go whether it is in the car to drop the kids at school, to the grocery store, to Lake Michigan Beach, or out to dinner with my wife. And unless I tell people to call me or there is an emergency, I don't want people calling my cell phone because of the simple fact I closely guard my cell phone number and it is not listed in any directory.

That is the way I want to keep it for the foreseeable future. I suspect that is the way many Americans want to keep it, too. To folks like me this is a matter of simple privacy so when we hear

about a proposed industry Wireless Directory Assistance Project I, like many Americans, get justifiably concerned.

However, I am also mindful that many Americans, particularly small business people like plumbers, real estate agents, delivery people, and electricians have cut the cord and may very well be interested in having their numbers listed in a directory. As a consumer the proposed industry Wireless Directory Assistance Project raises a number of critically important fundamental questions which need to be answered and answered correctly by the industry before I would be comfortable with such a directory.

For instance, would the directory be opt-in for the consumer based on clear and conspicuous mechanism? It better be. Two, will consumers be charged to keep their numbers out such a directory? They better not be. Three, regardless of any legalese in their existing service contracts will consumers be able to keep their numbers out of such a director? They better be able to.

Four, if consumers choose to be listed will their numbers be published or exposed or sold to third-party telemarketers without the consumer's consent? They better not be. Fifthly and last, will consumers be able to change their minds later and get out of the directory at no charge? Chairman Upton things they ought to be able to.

Recently, I, Chairman Upton, joined Chairman Barton and Senator McCain in asking for the six major wireless carriers to respond on the record in writing to get answers to these types of questions. We have received written responses from all those carriers and the replies are encouraging. I will enter those responses into today's record.

Today we will also hear from the CTIA who will run the Wireless Directory Assistance Project to see how its answers jibe with those of the carriers. I would also note that Verizon Wireless has announced its intention to not participate in the proposed Wireless Directory Assistance Project. This is a significant factor in this debate because if other companies participate and do not respect consumer wishes and privacy, then I suspect consumers will have the opportunity to "vote with their feet" and flock to Verizon wireless.

Above all, the wireless industry has been a model of competitiveness in large part due to Government restraining itself from overregulating it. Two able members of this committee, Mr. Pitts and Mr. Markey, have introduced legislation to regulate the Wireless Directory Assistance.

In particular, I believe Mr. Pitts and Mr. Markey's legislation has forced the wireless industry to soberly reflect upon the Wireless Directory Assistance Project and how it seeks to construct and run it. I congratulate those members for their foresight, persistence, and commitment to consumer privacy. It truly has made a difference.

At the moment I am inclined to think that on-the-record commitments to us from the industry combined with competitive forces and continued oversight from this subcommittee preclude the need for legislation action at the present time. However, given the seriousness of this issue for consumers and their privacy, it will not take much convincing to move such legislation if any of those com-

mitments come up short in the future. We will all be watching the industry like a hawk.

Opening statements. Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. I will be brief. Thanks for holding the hearing and I want to thank our witnesses for appearing today, especially Senator Boucher.

I am glad to hear that the wireless industry is revamping its original plan to create a 411 cell phone directory. Cell phones are different from landlines. Cell phone users are charged for incoming and outgoing calls. Those users should not have to pay for any unwanted incoming calls.

With cell phones privacy has always been a given unlike regular landline phones and their phone directories which require a customer to opt-out to keep their numbers unlisted. I look forward to hearing today, Mr. Chairman, about whether this legislation is really needed to ensure that consumer cell phone privacy is protected. It is an interesting debate and I look forward to hearing from our witnesses. I would yield back the balance of my time.

Mr. BASS. Thank you, Mr. Stupak.

Mr. Walden.

Mr. WALDEN. Thank you very much, Mr. Chairman. I want to associate myself with the comments that you made in your opening statement. I also want to welcome Mr. Patrick Cox from Oregon who will be testifying later in this hearing. I think we all are concerned about privacy and people's access to our cell phone numbers and some of the things that go along with that. I think the wireless industry has come a long way and I look forward to the testimony of all of our witnesses today, and especially want to extend a warm welcome to Patrick Cox.

Mr. BASS. The gentleman yields back.

Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman. I, too, appreciate you calling this hearing on this very interesting issue. Approximately 5 million people already pay to list their wireless numbers in traditional wireline directories. Many of these individuals have at-home businesses or small businesses with a need for mobility. Businesses that have a need for this service include realtors, plumbers, any at-home business, and also obviously electricians.

For these individuals the option to list their wireless phone numbers is not a luxury, but a necessity to ensure the viability of their business. In response to this need the wireless industry, headed by CTIA, began development of a national wireless phone directory.

The industry is almost finished creating an all opt-in directory where each participating carrier will ask new and existing customers if they want to be included. Importantly, CTIA and the participating carriers have affirmed that they will not sell this directory to a third party and that there will not be a published version of this directory.

Aside from commercial customers, more than 8 million Americans have cut the cord and only use wireless phones in their home. Since a wireless number is their primary phone number, these individuals should be given the opportunity to list their numbers in a directory. The industry has been a great model to show how light

regulation of an emerging industry fosters competition and leads to a better product for its consumers.

I believe we should allow the wireless industry to proceed with its plans to complete development and implementation of a national wireless directory. I am very interested in the testimony today, but I want to mention one thing. The industry has made representation that this will be an opt-in system and I think that is fundamental to our discussions here today that consumers will have control over whether or not they are included.

That being the case, we have an initial guarantee of privacy that is fundamental to this process. I am looking forward to the testimony and hope that we can envision a system or create a system in which we don't have to over-regulate a problem that does not yet exist. Rather, we can watch and see if the option approach and the existing level of competition is sufficient to protect consumers' interest.

Thank you for the time.

Mr. BASS. The gentleman yields back.

Gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. This is one of these areas where the evolution of technology is just amazing and great. We have now an issue where people want to be able to get phone numbers but they don't want their phone numbers to be the one to get. I don't know how we get involved with this and how we dispute this but it is a good hearing. I look forward to learning from both sides and I yield back the time.

Mr. BASS. The gentleman yields back.

The gentleman from Nebraska, Mr. Terry, do you have an opening statement?

Mr. TERRY. I will waive.

Mr. BASS. The gentleman waives.

Mr. Pitts is not a member of the subcommittee but I would ask unanimous consent since he is a sponsor of the bill to allow him to participate in the hearing. If there is no objection, I recognize Mr. Pitts for an opening statement.

Mr. PITTS. Thank you, Mr. Chairman. Thanks so much for allowing me to join your subcommittee today. I am pleased that this subcommittee is taking a look at the Wireless Directory Assistance Data base. Mr. Markey has been a great partner in drawing attention to this issue. He should be commended for his clear and consistent voice for consumer privacy.

As you may know, I have some serious privacy concerns about this and I will share them today, Mr. Chairman. It was 18 months ago when I first heard about the wireless director. It was a very small story in some trade publications. I was shocked that something so important to consumer privacy was not more public.

We have several studies that show a majority of consumers opposed to such a violation of their personal privacy. The Pierz study and the AARP study both show that a majority of Americans are opposed to being in the directory. I would like to submit both studies for the record.

Mr. BASS. Without objection.

[The material follows:]

PPI PUBLIC POLICY INSTITUTE

FACT SHEET

# UNDERSTANDING CONSUMER ATTITUDES ABOUT WIRELESS TELEPHONE DIRECTORIES AND PRIVACY

## Introduction

Almost since the advent of telephone service itself, consumers have been able to use a telephone directory or directory assistance service to search for other phone users. Moreover, these directories have usually included a comprehensive listing of telephone numbers. Indeed, when individuals order telephone service for their home or business, their phone number is automatically included in a directory database. For the most part, only customers who request nonpublished service and pay a monthly fee for an unlisted number are excluded from these directories.

More recently, however, the telecommunications industry and the media have begun to focus on a large and rapidly growing group of telephone numbers—those of wireless customers—that are generally excluded from telephone directories. In the United States, the number of wireless[1] telephone subscribers has increased dramatically in only a short time, rising from roughly 49 million in 1997 to over 160 million[2] currently, yet most cell phone numbers are not included in traditional directories and directory assistance services.[3] This situation may change very soon. In fact, a group of wireless service providers is now compiling a national database of wireless phone numbers that may be available sometime in 2005.

A number of policymakers and privacy advocates have expressed concern over the industry's planned release of the cell phone directory. They contend that subscribers value the privacy of their wireless phone number and want to avoid having it appear on a list for anyone to see. While many subscribers to more traditional landline telephone service also want to keep their home numbers private,[4] cell phone subscribers have additional incentives to do so. First, the privacy of wireless subscribers has always been safeguarded. Therefore, many cell phone users now expect to receive calls only from those individuals to whom they have personally given their number. Second, wireless service providers, unlike their landline counterparts, charge for incoming as well as outgoing calls. As a result, wireless users have to pay for any unwanted, incoming calls.

The wireless industry's leading trade association argues that wireless users want and need a directory, and that cell phone companies would include only the wireless numbers of those subscribers who agree to be listed. Their critics, however, express concern that wireless phone companies may charge consumers in exchange for keeping their numbers out of the directory.

## Methodology

AARP conducted a nationwide survey to measure cell phone users' interest in making their wireless phone numbers publicly available through a directory. A nationally representative sample of 5,283 respondents age 18 and older participated.[5] AARP designed the sample to represent the continental United States adult population living in households that had a telephone and, at the same time, to allow for comparisons among owners of wireless telephones in three different age groups: 18–49, 50–64, and 65 and older. Of the total sample, researchers identified and questioned 1,443 wireless phone owners concerning their cell phone use and their attitudes about making their wireless phone numbers publicly available in a directory.

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[1] For purposes of this report, the terms "wireless" and "cellular" are interchangeable.

[2] See the Cellular Telecommunications & Internet Association's website at www.wow-com.com/.

[3] Customers can pay a monthly fee to have their wireless phone numbers listed in traditional directories. As many as 5 million wireless subscribers (roughly 3 percent of the all wireless subscribers in the United States) take advantage of this option. See May, Jeff. "Phone Directories Shrink as Dialing Options Expand," Newhouse News Service (July 14, 2004).

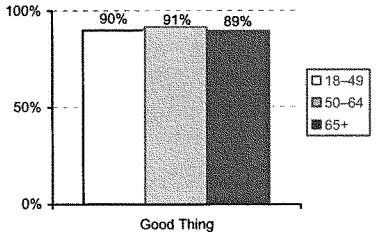
[4] Slightly more than one-third of residential wireline phone numbers are unlisted nationwide. See Wong, M. "Privacy Could Hamper Cell Phone Directory," Associated Press (June 18, 2004).

[5] The survey was conducted via telephone from June 2, 2004, to June 13, 2004. The percentage of respondents who indicated that they owned a wireless phone from each age group was as follows: 18–49: 62 percent, 50–64: 58 percent, and 65+: 38 percent.

## Attitudes about Wireless Telephone Directories

The survey asked respondents whether they thought it was good or bad that there is currently no way for another individual to get the respondent's wireless phone number unless the respondent chooses to give it to that person. Wireless phone owners of all ages overwhelmingly said that they thought this was a good thing (Figure 1).

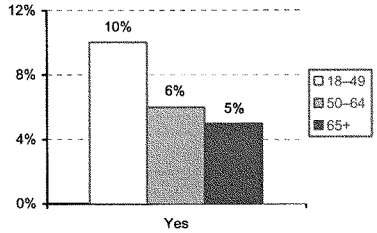
Figure 1.
Is the Current Lack of a Wireless Directory a Good Thing?




AARP Public Policy Institute (N=1,443)

Respondents were also asked whether they would want their cell phone number included in a directory so that others could locate them. Ten percent of wireless phone owners age 18–49 said they would want to be included in such a directory, while half as many (5 percent) wireless owners age 65 and older, and 6 percent of those age 50–64 indicated that they would want to be included in a wireless directory (Figure 2).

Figure 2.
Would You Want Your Wireless Phone Number Included in a Directory?

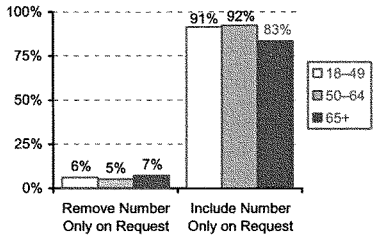



AARP Public Policy Institute (N=1,443)

## Preference for the Method to Create a Wireless Telephone Directory

The survey asked wireless phone owners to assume that a cell phone directory would in fact be compiled and then asked them to identify the best method for creating a directory. More specifically, it asked whether wireless providers should 1) add every cell phone number to their directory and give wireless owners the ability to have their number removed upon request, or 2) only add those phone numbers of wireless users who give their permission to do so. Respondents of all age groups overwhelmingly indicated that a wireless directory should only include the cell phone numbers of those wireless users who elect to participate (Figure 3).

Figure 3.
What Is the Best Method for Creating a Wireless Directory?




AARP Public Policy Institute (N=1,443)

## Conclusion

Cell phone owners highly value the privacy of their wireless telephone numbers. An overwhelming majority of them view the current lack of a publicly available wireless phone directory as a positive. If such a directory were created, most cell phone owners indicated they would not want to have their number included. In fact, they believe that no wireless phone number should be added to the directory unless the cell phone owner specifically requested it.

Written by Neal Walters and Christopher Baker
AARP Public Policy Institute, August 2004
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# AARP
# Cell Phone Directory Survey

*Topline Results*

**This AARP Cell Phone Directory Survey was conducted via telephone from June 2, 2004 to June 13, 2004 among a nationally representative sample of 5,283 respondents age 18 or older. A total of 1,443 respondents are cell or wireless phone users. All fieldwork by ICR/International Communications Research of Media, PA**
**All numbers are rounded. -- indicates no responses. * equals less than 0.5% of respondents.**

We would like to ask you a few questions about cellular telephones and new 411 or directory assistance for cell phone numbers. Wireless directory assistance, similar to "411" for your regular phone, would make your number publicly available. Today, people can only get your cell phone number if you give it to them.

CD-1. Do you personally have a cell phone or wireless telephone that you could use to make or receive calls?

| Age | Yes (%) | No (%) | Don't know (%) | Refused (%) |
|---|---|---|---|---|
| 18–49 | 62 | 38 | * | -- |
| 50–64 | 58 | 42 | -- | 1 |
| 65+ | 37 | 62 | * | * |

**(Asked of total cell phone owners; n = 1443; 18-49 = 505; 60-64 = 509; 65+ = 429)**
CD-2. Do you use this cellular or wireless telephone mainly for business use, mainly for personal use, or both?

| Age | Business (%) | Personal (%) | Both (%) | Don't know (%) | Refused (%) |
|---|---|---|---|---|---|
| 18–49 | 5 | 49 | 47 | * | -- |
| 50–64 | 8 | 56 | 36 | * | * |
| 65+ | 3 | 77 | 19 | 2 | -- |

**(Asked of total cell phone owners; n = 1443; 18-49 = 505; 60-64 = 509; 65+ = 429)**
CD-3. Do you consider your cell phone to be your primary phone—that is, the way you make or receive most of your calls?

| Age | Yes (%) | No (%) | Don't know (%) | Refused (%) |
|---|---|---|---|---|
| 18–49 | 38 | 62 | * | -- |
| 50–64 | 20 | 80 | 1 | * |
| 65+ | 18 | 81 | 1 | -- |

**(Asked of total cell phone owners; n = 1443; 18-49 = 505; 60-64 = 509; 65+ = 429)**

CD-4. Do you think it is a good thing or a bad thing that there is currently no way in which individuals can get your cell phone number unless you give it to them?

| Age | Good thing (%) | Bad thing (%) | Neither good nor bad (%) | Don't know (%) | Refused (%) |
|---|---|---|---|---|---|
| 18–49 | 90 | 6 | 4 | 1 | -- |
| 50–64 | 91 | 5 | 3 | 1 | * |
| 65+ | 89 | 5 | 4 | 2 | * |

**(Asked of total cell phone owners; n = 1443; 18-49 = 505; 60-64 = 509; 65+ = 429)**

CD-5. Some cell phone users want their number included in a cell phone directory to make it easier for others to find them. Other cell phone users prefer not to have their cell phone number made available to the general public. Would you want to have your cell phone number included in a cell phone directory assistance database so that others could find it?

| Age | Yes (%) | No (%) | Don't know (%) | Refused (%) |
|---|---|---|---|---|
| 18–49 | 10 | 89 | 1 | -- |
| 50–64 | 6 | 93 | 1 | * |
| 65+ | 5 | 92 | 3 | -- |

**(Asked of total cell phone owners; n = 1443; 18-49 = 505; 60-64 = 509; 65+ = 429)**

CD-6. If cell phone companies were to create a directory assistance of cell phone numbers, should they…?

| Age | Add every cell phone number to wireless directory assistance and then ask people whether they want to be removed from the directory (%) | Add only those cell phone numbers belonging to people who say they want to be added to the list (%) | No preference (%) | Don't know (%) | Refused (%) |
|---|---|---|---|---|---|
| 18–49 | 6 | 91 | 2 | 1 | -- |
| 50–64 | 5 | 92 | 2 | * | * |
| 65+ | 7 | 83 | 5 | 4 | 1 |

[The Pirez study can be obtained from the Pierz Group itself and they can be contacted through their website at http://www.pierxgroup.com/]

Mr. PITTS. When I first heard of this public listing, my first instinct was to put an end to the whole thing. I don't want just anyone to have the number of my cell phone. But as I read more about it, I came to realize that certain customers, particularly some small businesses and those who have cut the cord, could benefit from it.

I am sure we will hear more about that from Mr. Largent. I agree with him that this could be a good service. And that is why Mr. Markey and I crafted our legislation to allow this directory to move forward under a few common sense conditions.

Eighteen months ago the full committee chairman joined Mr. Markey, Ms. Eshoo, Mr. Burr, and I in sending a letter to CTIA asking more questions about this directory. The response we received in meetings was revealing. We were told that we were interfering with business. We were told that making this directory all opt-in was unworkable.

We were told that the companies own the cell phone numbers, not individuals. We were also told that they would not make any money if we told them they couldn't charge to be unlisted. We were told basically that the companies reserved the right to do anything they wanted.

I am pleased to learn that today the industry supports the opt-in provision in the bill, that they agree to not charge users to be unlisted, and that they essentially support the components of the bill. That is great news, and we have definitely come a long way on this from 18 months ago when we first talked about it.

But, Mr. Chairman, a number of concerns remain and these are the current contracts for all five of the major carriers. Deep in each contract, that all users have signed, is language that permits companies to list numbers in a Directory Assistance Data base and even charge to be unlisted. Mr. Chairman, I would like unanimous consent to insert these contracts in the record.

Mr. BASS. Without objection.

[The material follows:]

# Wireless Service Agreements

## Wireless Directory Assistance

**Updated August 2004**

**AT&T WIRELESS SERVICE AGREEMENT** - see paragraph 22

**IMPORTANT PLEASE READ CAREFULLY**

This is an agreement ("Agreement") between you and the entity licensed by the Federal Communications Commission to provide wireless radio and other services ("Service") in the area associated with your assigned account ("Account") that is doing business as AT&T Wireless and/or AT&T Wireless Services ("AT&T Wireless" or "us" or "we") and governs Service provided by us to you through wireless receiving and transmitting equipment, SIM (Subscriber Identity Module) Card and any accessories (each a "Device") that we have authorized to be programmed with a number or identifier (an "Identifier"). This Agreement explains our respective legal rights concerning all aspects of our relationship, including:

- Billing and charges
- Starting and ending service
- Account information
- Early cancellation fees
- Limitations of liability, damage awards and warranty
- Changes to this Agreement
- Resolution of past or future disputes by arbitration instead of court trials and class actions and limitations on the time periods for bringing claims.

ARBITRATION NOTICE: The **Resolution of Disputes** provisions below describe our mutual agreement to use mandatory arbitration for the resolution of most past or future disputes between us instead of a court trial or class action lawsuit.
IF YOU 1) USE THE SERVICE OR DEVICE, OR 2) ACCEPT ANY BENEFIT IN EXCHANGE FOR COMMITTING TO NEW TERMS AND CONDITIONS AND/OR A NEW CONTRACT TERM, OR 3) PAY US ANY AMOUNT FOR THE SERVICE, YOU CONSENT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, ANY CORRESPONDING RATE PLAN, AND ALL POLICIES AND GUIDELINES INCORPORATED BY REFERENCE, ALL AS MAY BE CHANGED AS DESCRIBED IN PARAGRAPH 6 BELOW. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT USE THE SERVICE OR DEVICE AND NOTIFY US WITHIN 30 DAYS OF THE DATE OF ORIGINAL ACTIVATION FOR EACH IDENTIFIER TO CANCEL THE SERVICE AND/OR RETURN THE DEVICE PURCHASED FROM US. YOUR RIGHTS TO TERMINATE THEREAFTER ARE SET FORTH BELOW. YOU ARE RESPONSIBLE FOR ALL CHARGES INCURRED PRIOR TO NOTIFYING US OF CANCELLATION.

**DESCRIPTION OF SERVICES**

1. **Rate Plans.** The price, features and options of the Service available for each Identifier on your Account depends on the calling, data or mobile Internet plan, feature or promotion selected by you when you activated or changed your Service and are described in a separate AT&T Wireless Calling Plan, Service Plan or Rate Plan ("Rate Plan") Brochure, in feature or promotional materials, at attwireless.com and/or in an AT&T Wireless Welcome Guide (collectively, "Sales Information"), all of which are incorporated by reference, are a part of this Agreement and were available when you activated or changed Service. To receive copies of Sales Information contact Customer Care.

   * Puerto Rico residents only: Refer to the following web address: attwireless.com/pr.

2. **Authority** You represent that you are: (i) legally competent to enter into this Agreement, (ii) in the case of an individual, over 18 years old and a resident of the one of the fifty United States or 21 years old or legally emancipated and a resident of Puerto Rico, and (iii) not aware of any disability that would prevent you from entering into this Agreement. If you order or activate Service on behalf of an entity, you represent that you are authorized to do so and acknowledge that such entity is bound by the terms and conditions of this Agreement; however, all terms and conditions that relate to use of the Service by you as the end user of a Device will also bind you individually. If you activate Service on behalf of an entity but were unauthorized to do so, you will be personally responsible for all charges to the Account and will be fully bound by this Agreement as though you had activated Service on your own behalf.

3. **Deposits/Service Limits/Credit Reports/Return of Balances.** You authorize us to ask consumer reporting agencies or trade references to furnish us with employment and credit information, and you consent to our rechecking and reporting personal and/or business payment and credit history if, in our sole discretion, we so choose. If you believe that we have reported inaccurate information about your account to a consumer reporting agency, you may send a written notice describing the specific inaccuracy to the address provided in the Notices section below. For you to receive Service, we may

September 12, 1996 and Regulation 5940 promulgated by the Telecommunications Board. You are also advised of Regulation 5939 of March 12, 1999 promulgated by the Telecommunications Board regarding the procedures for resolution of customer disputes.

**PRIVACY**

21. **Our Privacy Policy.** In addition to the specific terms of this Agreement, we encourage you to learn more about our general privacy practices by reading our Privacy Policy at attwireless.com/privacy.
22. **Consents.** *
    a. You consent to our release of information about you and your use of Service when we believe release is appropriate to (i) comply with the law (e.g. a lawful subpoena, E911 information); (ii) enforce or apply our customer agreements; (iii) initiate, render, bill and collect for Services; (iv) protect our rights or property, or to protect users of those Services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such Services; or (v) facilitate or verify the appropriate calculation of taxes, fees or other obligations due to a local, state or federal government.
    b. We may also release information about you if we reasonably believe that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of communications or justifies disclosure of records without delay. You consent to our monitoring of any communication to or from you or your Device to protect our rights or property or those of our customers, as well as for quality control and service related purposes.
    c. Your caller identification information (such as your name and wireless number, including area code), may be displayed on the equipment or bill of the person receiving your call.
    d. You consent to our use of regular mail, predictive or autodialing equipment, email, SMS, facsimile or other reasonable means to contact you to advise you about our services or other matters we believe may be of interest to you. In any event, we reserve the right to contact you by any means regarding customer service-related notifications, or other such information. You consent to receiving advertising, alerts and other broadcast messages from us or our authorized agents.
23. **CPNI Consent.** Under federal law, you have a right, and we have a duty, to protect the confidentiality of information about the amount, type, and destination of your wireless service usage and the location of your device on our network (CPNI) when you use voice service. You consent to us sharing your CPNI with our affiliates who provide communications-related services, joint venture partners and independent contractors, to develop or bring to your attention communications-related products and services. This consent survives the termination of your Service and is valid until you revoke it. To remove this consent, notify us in writing at the address provided in the Notices section below, providing your (1) name, (2) Service billing address, (3) identifier (e.g. mobile phone number including area code), and (4) Service account number. Removing consent will not affect your current Service or the provisions of paragraphs 5, 22 or 24.
24. **Business Transfer.** You consent to disclosure of your CPNI or other personal information, in connection with any merger, acquisition or sale of our assets or transition of service to another provider, as well as in the event of an insolvency, bankruptcy or receivership in which personal information would be transferred as one of our business assets.

**RESOLUTION OF DISPUTES**

**PLEASE READ. IT IS IMPORTANT THAT YOU READ THIS SECTION CAREFULLY. THIS SECTION PROVIDES FOR RESOLUTION OF MOST DISPUTES THROUGH FINAL AND BINDING ARBITRATION INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION. THIS ARBITRATION CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

25. **Binding Arbitration.** The arbitration process established by this section is governed by the Federal Arbitration Act (the "FAA") (9 U.S.C. §§ 1-16). The FAA, not state law, governs whether a claim related to this Agreement is subject to arbitration. This provision is intended to be interpreted broadly to encompass all disputes or claims, including those against any subsidiary, parent or affiliate companies, arising out of any aspect of our relationship (including but not limited to this Agreement, our Privacy Policy, Acceptable Use Policy or the Service or any equipment used in connection with the Service). All such disputes or claims whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, will be resolved by binding arbitration except that (1) you may take claims to small claims court if they qualify for hearing by such a court, or (2) you or we may choose to pursue claims in court if the claims relate solely to the collection of any debts you owe to us.
26. **Arbitration Procedures.** You must first present any claim or dispute to us by contacting Customer Care to allow us an opportunity to resolve the dispute. You may request arbitration if your claim or

verizonwireless
We never stop working for you.

See "Directories and Your Privacy"

# Customer Agreement

The following applies to our calling plans except Prepay plans, which are governed by our Prepay Wireless Service Agreement.

## YOUR VERIZON WIRELESS CUSTOMER AGREEMENT

**We're Verizon Wireless. Please carefully read this agreement, including the calling plan or plans you've chosen, before filing it in a safe place.**

This agreement covers important topics such as when it begins, how long it lasts, fees for early termination and late payments, our rights to change this agreement and your wireless service, limitations of liability, use of information about you, and settlement of disputes by arbitration instead of in court. If you accept this agreement, it will apply to *all* your wireless service from us, including all lines in service from us and all your existing calling plans. Its provisions also apply to any other transactions or agreements between us. To the extent their terms and conditions conflict with this agreement, this agreement will govern.

**Your Calling Plans**
**YOUR CALLING PLANS BECOME PART OF THIS AGREEMENT.** The prices you pay, including activation fees, monthly access fees, monthly minutes of airtime included with an access fee, prices for additional minutes, roaming charges, and any per-minute charges for long distance service from us, may depend in part on how long-the minimum term-you're agreeing in advance to do business with us. Calling plans describe these prices and your minimum term.

**Your Rights To Refuse Or Cancel This Agreement**
**THIS AGREEMENT STARTS WHEN YOU ACCEPT.** Paragraphs marked "∞" continue after it ends. You accept when you do *any* of the following things after an opportunity to review this agreement:

- *Give us a written or electronic signature;*
- *Tell us orally or electronically that you accept;*
- *Activate your service through your wireless phone;*
- *Open a package that says you are accepting by opening it; or*
- *Use your service after making any change or addition when we've told you that the change or addition requires acceptance.*

**IF YOU DON'T WANT TO ACCEPT, DON'T DO ANY OF THESE THINGS.** You can cancel (if you're a new customer) or go back to the provisions of your former customer agreement (if you're already a customer) without additional fees if you tell us (and return to us in good condition any wireless phone you got from us with your new service) **WITHIN 15 DAYS** of accepting. You'll still be responsible through that date for the new service and any calls using it.

including, but not limited to: (a) paying late more than once in any 12 months; (b) incurring charges larger than a required deposit or billing limit (even if we haven't yet billed the charges); (c) verbally or physically abusing our employees or agents; (d) lying to us; (e) interfering with network, customer service, or business operations; (f) becoming insolvent or going bankrupt; (g) breaching this agreement; (h) "spamming," "mail bombing," or other abusive messaging; (i) modifying your wireless phone from its manufacturer's specifications; (j) providing credit information we can't verify; (k) using your service in a way that adversely affects service to other customers; or (l) allowing anyone to steal or tamper with your wireless phone number. We can also temporarily limit your service for any business or governmental reason.

**Directories And Your Privacy**

∞ Except as follows, we won't share personal information about you with others without your permission. We have a duty under federal law to protect the confidentiality of information about the quantity, technical configuration, type, destination, and amount of your use of our service, together with similar information on your bills. (This doesn't include your name, address, and wireless number. Unless you arrange otherwise with us and pay any required fee, we may list them in a public directory. We aren't responsible for mistakes in the listings.) We can, however, share and use this information as required by law, by legal process, by exigent circumstances, or to protect ourselves. We can also use this information to communicate with you about goods and services related to the products and services you already buy from us, and we can share it with our affiliates when related to goods and services you already buy from both us and our affiliates. You can call us any time if you do not wish us to use this information to communicate about such other goods and services with you or you do not wish us to share this information with our affiliates. In addition, you've authorized us to investigate your credit history at any time and to share credit information about you with credit reporting agencies. If you ask, we'll tell you the name and address of any credit agency that gives us a credit report about you.

**Disclaimer Of Warranties**

∞ WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, TO THE EXTENT PERMITTED BY FEDERAL, STATE, AND LOCAL LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICE OR YOUR WIRELESS PHONE. WE CAN'T PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE AND DON'T AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF. THIS DOESN'T DEPRIVE YOU OF ANY WARRANTY RIGHTS YOU MAY HAVE AGAINST ANYONE ELSE.

**Waivers And Limitations Of Liability**

∞ **UNLESS THE LAW FORBIDS IT IN ANY PARTICULAR CASE, WE EACH AGREE TO LIMIT CLAIMS FOR DAMAGES OR OTHER MONETARY RELIEF AGAINST EACH OTHER TO DIRECT DAMAGES. THIS LIMITATION AND WAIVER WILL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER FRAUD, MISREPRESENTATION, BREACH OF CONTRACT, PERSONAL INJURY, PRODUCTS LIABILITY, OR ANY OTHER THEORY. THIS MEANS THAT NEITHER OF US WILL CLAIM OR SEEK ANY INDIRECT, SPECIAL, CONSEQUENTIAL, TREBLE, OR PUNITIVE DAMAGES FROM THE OTHER.** You agree we aren't liable for problems caused by you or a third party; by buildings, hills, network congestion, tunnels, weather, or other things we don't control; or by any act of God. If another wireless carrier is involved in any problem (for example, while you roam), you also agree to any limitations of liability in its favor that it imposes.

» Close

» Copyright
» Return Policy
» T-Mobile Privacy Notice
» Terms of Use
» Terms & Conditions

## T-MOBILE TERMS AND CONDITIONS see paragraph 19

**Welcome to T-Mobile. BY ACTIVATING OR USING OUR SERVICE YOU AGREE TO BE BOUND BY THE AGREEMENT. Please carefully read these Terms and Conditions ("T&C's") as they describe your Service and affect your legal rights. IF YOU DON'T AGREE WITH THESE T&C'S, DO NOT USE THE SERVICE OR YOUR UNIT. See Sec. 2 regarding your acceptance of these T&C's and Sec. 6 for our Handset Return and Cancellation policy.**

This is your agreement with T-Mobile USA, Inc and its affiliates (together "T-Mobile," "we" or "us") for: (a) communication and related services ("Service"), (b) the purchase or use of smart cards or radio or any other equipment purchased or obtained from us, including replacement equipment, for use with the Service ("Unit") and (c) for other purchases or services (provided by us or third parties) billed to your account ("Other Services"). The Agreement begins when: (1) you sign or electronically accept the Agreement, (2) you activate or use the Service, or (3) are deemed to accept the Agreement (see Sec. 2), whichever happens first.

1. Agreements Governing Use. These T&C's, your Service Agreement (if any), your rate plan information and the terms and conditions for use of any other T-Mobile service (together, the "Agreement"), govern the use of the Service, your Unit and Other Services. These T&C's supersede all earlier versions and impose an EARLY CANCELLATION FEE (see Sec. 5) and require MANDATORY ARBITRATION OF DISPUTES (see Sec. 3). If these T&C's conflict with the T-Mobile Terms and Conditions you receive with your Unit, these T&C's apply. Your electronic acceptance of the Agreement or your acceptance by use or activation of Service is the same as signing the Agreement and you agree that electronic images of the Agreement will be considered originals. You acknowledge that no employee, dealer or other agent is authorized to make any representation or warranty (other than as described in the Agreement or our current materials) with respect to the Agreement, Service, Unit, rate plans and offerings or Other Services, or to waive or modify any terms or provisions of the Agreement.
2. Acceptance of Agreement. You must activate Service within 30 days after purchase of your Unit (unless returned as provided in Sec. 6). If you don't activate within 30 days, you cannot return your Unit for a refund, you are deemed to accept the Agreement, and you agree to pay monthly Service charges according to your rate plan.
3. Mandatory Arbitration; Dispute Resolution. YOU WILL FIRST NEGOTIATE WITH US IN GOOD FAITH TO SETTLE ANY CLAIM OR DISPUTE BETWEEN YOU AND US IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, OR OUR PROVISION TO YOU OF GOODS, SERVICES, OR UNITS ("CLAIM"). YOU MUST SEND A WRITTEN DESCRIPTION OF YOUR CLAIM TO OUR REGISTERED AGENT (See Sec. 22). IF YOU DO NOT REACH AGREEMENT WITH US WITHIN 30 DAYS, INSTEAD OF SUING IN COURT, YOU AGREE THAT ANY CLAIM MUST BE SUBMITTED TO FINAL, BINDING ARBITRATION WITH THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER ITS PUBLISHED WIRELESS INDUSTRY ARBITRATION RULES, WHICH ARE A PART OF THE AGREEMENT BY THIS REFERENCE AND ARE AVAILABLE BY CALLING THE AAA AT 800-778-7879 OR VISITING ITS WEB SITE AT www.adr.org. You must serve our registered

EMPLOYEES, AGENTS, CUSTOMERS OR ANY THIRD PARTIES FOR ANY DAMAGES ARISING FROM USE OF THE SERVICE, ANY UNIT OR OTHER SERVICES, INCLUDING WITHOUT LIMITATION: PUNITIVE, EXEMPLARY, INCIDENTAL, TREBLE, SPECIAL OR CONSEQUENTIAL DAMAGES; LOSS OF PRIVACY OR SECURITY DAMAGES; PERSONAL INJURY OR PROPERTY DAMAGES; COPYRIGHT, TRADEMARK, PATENT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY DAMAGES; OR ANY DAMAGES WHATSOEVER RESULTING FROM INTERRUPTION OR FAILURE OF SERVICE, LOST PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS DUE TO UNAUTHORIZED ACCESS OR DUE TO VIRUSES OR OTHER HARMFUL COMPONENTS, COST OF REPLACEMENT PRODUCTS AND SERVICES, SUSPENSION, TERMINATION, OR THE INABILITY TO USE THE SERVICE OR PRODUCT, THE CONTENT OF ANY DATA TRANSMISSION, COMMUNICATION OR MESSAGE TRANSMITTED TO OR RECEIVED BY YOUR UNIT (WHETHER READ OR UNREAD, SOLICITED OR UNSOLICITED), OR LOSSES RESULTING FROM ANY GOODS OR SERVICE PURCHASED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER MODIFICATIONS OF OR LIMITATIONS TO CERTAIN REMEDIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU, IN WHOLE OR IN PART.

THE MAXIMUM AGGREGATE LIABILITY OF T-MOBILE AND THE T-MOBILE AFFILIATES TO YOU, AND THE EXCLUSIVE REMEDY AVAILABLE IN CONNECTION WITH THE AGREEMENT FOR ANY AND ALL DAMAGES, INJURY, LOSSES ARISING FROM ANY AND ALL CLAIMS AND/OR CAUSES OF ACTION RELATED TO THE SERVICE OR UNIT, SHALL BE A REFUND OR REBATE OF THE PRORATED MONTHLY OR OTHER CHARGES YOU PAID OR OWE US FOR THE APPLICABLE SERVICE OR UNIT. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES.

18. Indemnification. You agree to defend, indemnify and hold us, any roaming or network partner, and any T-Mobile Affiliates harmless from and against any and all claims, demands, actions, liabilities, costs or damages arising out of your use of the Service, a Unit or Other Services or your breach of the Agreement. You further agree to pay our reasonable attorneys' and expert witnesses' fees and costs arising from any actions or claims by third parties and those incurred in establishing whether this Sec. 18 applies.

19. Privacy and Security. Wireless systems use radio channels (and some Units use Bluetooth or other technology) to transmit voice and data communications over a complex network. Privacy and security cannot be guaranteed, and we are not be liable to you for any lack of privacy or security you experience while using your Unit, the Service or Other Services. You are responsible for taking precautions and providing security measures best suited for your situation and intended use of the Service. We have the right, without obligation, to monitor, intercept and disclose any transmissions over or using our facilities, and to provide subscriber billing, account, or calling records, and related information under certain circumstances (such as in response to lawful process, orders, subpoenas, or warrants, or to protect our rights, customers or business). Anyone able to provide or your personally identifiable information can access your account so you should take reasonable steps to protect this information. Your caller identification, (such as your name and Number) may be displayed on the equipment or bill of the person receiving your call or on any site you visit via the

Service. We may list your name, address and Number in a published directory, with your consent. We are not responsible for listing errors. Please consult our privacy notice at http://www.t-mobile.com/info/legal/privacy.asp for information on the use and disclosure of customer information. The way third parties handle and use your personal identification and information related to the use of their services is governed by their policies and T-Mobile is not responsible for their policies, or their compliance with them.

20. Lost or Stolen Unit. If your Unit is lost or stolen ("Lost Unit") notify us about it immediately, ask us to deactivate the Lost Unit and provide us within 14 days, any documentation we request (such as a copy of a filed police report). If you complete all 3 requirements, you will not be liable for any unauthorized airtime charges incurred on the Lost Unit although you agree to assist with any prosecution. You must fulfill the remainder of your Fixed Term by purchasing and activating a replacement Unit, or you will be subject to the $200 cancellation fee per Number.

21. Assignment. We may assign all or part of our rights or duties under the Agreement without such assignment being considered a change to the Agreement, and without notice to you. We are then released from all liability. You may not assign the Agreement without our prior written consent. Subject to these restrictions, the Agreement will bind the heirs, successors, subcontractors, and assigns of the respective parties, who will receive its benefits.

22. Notices. We may send you written notice, which may be a notice on your bill, or a bill insert, which is considered given and received by you on the third day after the date deposited in the U.S. Mail to your address in our billing records. We may also contact you or send you notice electronically through your Unit or otherwise, such as by e-mail, voicemail or text messaging, which is considered given and received immediately upon transmission. Written notice to us shall be considered given when received by our registered agent, Corporation Services Company ("CSC").

23. Digital Millennium Copyright Act ("DMCA") Notice. In operating Service, We may act as a "services provider" (as defined by DMCA) and offer services as online provider of materials and links to third party sites. As a result, third party materials that we do not own or control may be transmitted, stored, accessed or otherwise made available using the Service. If you believe any material available via the Service infringes a copyright, you should notify us using the notice procedure for claimed infringement under the DMCA. We will respond expeditiously to remove or disable access to the material claimed to be infringing and will follow the procedures specified in the DMCA to resolve the claim between the notifying party and the alleged infringer who provided the content. Our designated agent (i.e., proper party for notice) to whom you should address infringement notices under the DMCA is CSC, 1010 Union Ave. SE, Olympia, WA 98501.

24. Severability. All terms and conditions of these T&C's are independent of each other. If any provision of these T&C's is held to be inapplicable or unenforceable, including without limit any terms or provisions in Secs. 3, 16 or 17, then (a) that term or provision shall be construed, as nearly as possible, to reflect the intentions of the parties with the other terms or provisions remaining in full force and effect, (b) the T&C's will not fail their essential purpose and (c) the balance of the T&C's remain unaffected and in full force and effect, unless our obligations are materially impaired, in which event we have the right to terminate the Agreement.

25. Governing Law; Venue and Statute of Limitations. Except as stated in Sec. 3, the Agreement, its validity, construction and performance, is governed by applicable federal law and the laws of the state associated with your Number or your address in our records. Foreign laws do not apply. Arbitration proceedings or any actions to enforce an arbitration award

**General Terms and Conditions**

**IT IS IMPORTANT THAT YOU READ THIS ENTIRE AGREEMENT CAREFULLY.**

This wireless service agreement (the "Agreement"), consisting of these General Terms and Conditions and the Plan Information is an agreement between you individually or, if a business, your business entity or corporation ("Customer"), and the Nextel local operating affiliate authorized to provide service in the geographic region in which Customer's billing address is located ("Nextel"). Customer represents that (1) he or she is at least 18 years of age and is legally competent to enter into this Agreement; (2) if acting on behalf of an entity, he or she is fully authorized to bind the entity; (3) if acting on behalf of a corporation, the execution of this Agreement has been authorized by all necessary corporate actions. These services may include, but are not limited to, wireless calling, Direct Connect ® walkie-talkie services, Nationwide Direct Connect℠walkie-talkie services, Group Connect℠walkie-talkie services, wireless web services including email services ("Nextel Online® Services"), mobile messaging services including two-way messaging and SMS services ("Mobile Messaging") and other related services and features. Together, the services selected by Customer make up Customer's "Service Plan" and are collectively referred to in this Agreement as the "Service" provided to Customer. Service is accessible to Customer through the telephone, data, email or messaging code or number (s) or email address(es) (collectively, the "Number(s)") assigned to Customer's account. This Agreement also governs the purchase and or use of Customer's cellular phone ("Phone"), BlackBerry®, radio equipment and all other related equipment or devices used in connection with the Service ("Equipment"). This Agreement governs the entire relationship between Customer and Nextel and supersedes all earlier versions of any agreement between Customer and Nextel. Customer acknowledges receipt of detailed information ("Plan Information") for each Service selected by Customer. ALL PLAN INFORMATION IS MADE PART OF THIS AGREEMENT AND SHOULD BE CAREFULLY REVIEWED BY CUSTOMER. If Plan Information conflicts with this Agreement, this Agreement shall govern. IN CONSIDERATION OF THE PAYMENTS AND THE MUTUAL COVENANTS AND CONDITIONS SET FORTH IN THIS AGREEMENT, NEXTEL AND CUSTOMER AGREE AS FOLLOWS:

1. ACCEPTANCE OF THIS AGREEMENT- Customer will have accepted and be bound by this Agreement if Customer (1) provides Nextel with a written or electronic signature; (2) otherwise indicates electronically that Customer accepts; or (3) activates Service through the Equipment.
*Creditworthiness of Customer* - Customer must complete a credit application ("Credit Application") before Service may be provided to Customer. THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL NEXTEL APPROVES CUSTOMER'S CREDIT APPLICATION AND OTHERWISE ACCEPTS THE AGREEMENT. Customer acknowledges that Nextel will rely on the credit information furnished by Customer ("Credit Information") and Customer's credit history to determine whether to provide Service to Customer. Customer consents to Nextel's requests for and verification of Customer's bank references and authorizes Nextel to assess Customer's creditworthiness from time to time by contacting standard commercial credit reference services. Customer represents and warrants that all Credit Information is current, complete and accurate. Nextel may require Customer to update its Credit Information from time to time, and Customer agrees to notify Nextel immediately of any change to its Credit Information. NEXTEL MAY, AT ANY TIME, TERMINATE THE SERVICE OF ANY CUSTOMER THAT DOES NOT PROVIDE CURRENT, COMPLETE AND ACCURATE CREDIT INFORMATION. Nextel may, at any time in its sole discretion, place restrictions on Customer's use of Service, including but not limited to, a limitation on the amount of charges Customer may incur with respect to any Number. In this event, Nextel shall provide reasonable notice to Customer. Customer acknowledges that Nextel may provide Customer's payment history and other billing/charge information regarding the Service or Equipment to any credit reporting agency or industry clearinghouse.
*Deposits* - Nextel may, at any time in its sole discretion, require a deposit ("Deposit") from Customer to be held as a guarantee of payment. Customer grants to Nextel a security interest in any Deposit to secure all current or future amounts owed to Nextel. The Deposit may be mixed with other funds and will not earn interest, except as required by applicable law. Customer may not use the Deposit to pay Customer's bills or to extend payment. Nextel may, at any time, determine that Customer's Deposit is insufficient and, upon notice to Customer, require an increase in the Deposit to the extent permitted by law. In this event, Customer must either furnish the increased Deposit to Nextel within a reasonable time of its receipt of notice or terminate the Agreement during this period without incurring any liability for early termination. If Customer does not furnish Nextel with the increased Deposit amount or terminate the Agreement and pay to Nextel all amounts Customer owes to Nextel in a timely manner, Nextel may terminate the Agreement and Customer shall be liable to Nextel for early termination in accordance with Section 7 below. Nextel will apply the Deposit against any amount owed to Nextel at the end of the first billing cycle following the date that is one year from when Nextel received the deposit ("Application Date"), or, if earlier, upon termination of the Agreement or such other time as required by law. Nextel will return the Deposit (or any remaining balance) to Customer within ninety (90) days (or such shorter period as may be required by law) after termination of the Agreement. After the Application Date and upon Customer's request, Nextel will return to Customer within thirty (30) days of such request any balance remaining on the Deposit. Deposits will be returned to Customer, in whole or in part, at Customer's last known address. If required by law, Nextel will forward to appropriate state authorities any remaining balance that the

behalf of third parties) when due under this Agreement; (2) Customer behaves in an abusive, derogatory, or otherwise unreasonable manner to any Nextel employee, representative or agent; (3) Nextel has reason to believe that Customer's Service is being used in a fraudulent manner or for an illegal purpose (such as unusual activity levels or calling patterns); (4) Customer's Service is being used in a way that adversely affects other Customers' Service or Nextel's business operations; (5) Customer provides Credit Information that is false, inaccurate, dated or cannot be verified or Customer becomes insolvent or subject to any proceeding under the Bankruptcy Code or similar laws; (6) Nextel discovers that Customer is underage or does not otherwise possess the capacity or the authorization to enter into this Agreement; (7) Customer's use of the Service or Equipment exceeds limitations or violates any restrictions placed on Customer's account or otherwise breaches this Agreement; or (8) Nextel, in its sole discretion, believes action is required to protect its interests or the interests of Customer or its other customers. NEXTEL SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR EXERCISING OR FAILING TO EXERCISE ITS RIGHTS UNDER THIS SECTION TO LIMIT, SUSPEND OR TERMINATE SERVICE OR THE AGREEMENT. If Customer's Service is subject to fraudulent use, Customer shall immediately notify Nextel's Customer Care department, provide Nextel with any documentation and information that it requests and otherwise cooperate with Nextel in the investigation of such incident. If Nextel terminates Service to Customer, and Service is not reconnected within thirty (30) calendar days, all amounts owed to Nextel (including any damages for early termination) shall become immediately due and payable.
*Reactivation* - Nextel may, but is not required to, reactivate Service to Customer after Service has been suspended or terminated in accordance with the previous subsection. Before Service may be reactivated, Customer must pay to Nextel all past due amounts plus a reconnection charge equal to $25.00 per Number, plus applicable taxes. Nextel may modify the terms of Service before reactivating Service to Customer and may require Customer to provide Nextel with an initial Deposit or an additional Deposit.

11. RELEASE OF CUSTOMER INFORMATION– *Privacy* - Wireless systems use radio channels to transmit communications that may be accidentally or intentionally intercepted. Although federal and state laws may make it illegal for third parties to listen in on Customer's Service, privacy cannot be guaranteed. NEXTEL SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR EAVESDROPPING ON OR INTERCEPTION OF COMMUNICATIONS MADE WHILE USING THE SERVICE OR THE EQUIPMENT.
*911 or Other Emergency Calls* - The Service does not interact with 911 and other emergency services in the same manner as non-wireless or landline telephone services. Depending on Customer's location, the type of Equipment being used, the type of equipment being utilized by any applicable emergency services provider, and the circumstances and conditions of a particular call, Customer's phone number and/or location may not be identifiable to emergency services providers and Customer may not be connected to the appropriate emergency services provider. In certain circumstances, a 911 call may be routed to a state patrol dispatcher. Nextel is deploying wireless E911 compatible Equipment that meets applicable FCC requirements and that is designed to help public safety authorities locate users of the Service who make 911 calls. However, E911 service that is compatible with the FCC technical requirements is not available in all areas, and even in those areas where it is available, it is not entirely reliable. Moreover, if Customer's Equipment is not GPS-enabled, emergency services personnel may have much less precise location information about the Customer, compared to the information available to them if Customer's Equipment was GPS-enabled. The information available to emergency service providers may also be limited if Customer's number or numbers are in the process of being ported. Customer acknowledges that E911 service is not available in all areas, is not completely reliable and is further limited when using non-GPS enabled Equipment or during the number porting process. Customer consents to Nextel's disclosure of Customer information to governmental and public safety authorities in response to emergencies. This information may include, but is not limited to, Customer's name, address, Number, and the location of the user of the Service at the time of call.
*Access, Use and Disclosure of Customer Information and Communications* - Customer acknowledges and agrees that Nextel may access, use, and disclose to third parties, any information whether personally identifying information, or "customer proprietary network information" ("CPNI") within the meaning of 47 U.S.C. § 222 and its implementing regulations ("CPNI Regulations") that Nextel collects, possesses or develops about Customer to: (1) provide Customer with Equipment, Service, or customer support; (2) conduct marketing activities in accordance with applicable law (customer may opt out of any such marketing by contacting Nextel); (3) enable Customer to switch to a new service provider (either Nextel or another service provider) while retaining the same phone number; (4) list Customer's contact information (e.g., name, address, and Number) in a telephone or subscriber directory, or include such information in a directory assistance service; (5) provide handset-based or network-based geographic information services via Nextel-provided or third party software Applications; (6) comply with applicable law; or (7) respond to emergencies. Customer acknowledges that any information that identifies Customer (e.g., Customer's name and Number) and calls made by Customer may appear on the Equipment or bill of a person or party that receives Customer's call. Nextel may access, use, disclose, record or monitor any communications to or from Customer or any other person to protect Nextel's rights or property or those of other customers, as permitted by law.
*Geographic Information Services* - Consistent with the foregoing, Customer acknowledges and agrees that Nextel or a third party application service provider may access, use, and disclose to third parties the geographic location of Customer's Equipment to provide Customer with any geographic information service which Customer accesses through the Service or Equipment. If Customer utilizes any such service and there are additional users

Sprint. One Sprint. Many Solutions. See paragraphs "Wireless Devices, Numbers, and E-mail addresses" and "Caller ID"

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**Using Services.** You agree to not use our Services in an unlawful, fraudulent or abusive manner. You may not resell or lease Services to anyone. Sprint is not responsible for any opinions, advice, statements, services applications or other information provided by third parties and accessible through our various Services, including the Internet. Neither Sprint, its vendors or licensors guarantees the accuracy, completeness or usefulness of information that is obtained through these Services. You are responsible for evaluating such content. *You are also responsible for any use of our Services through any wireless device on your account including, but not limited to, use by children or minors. We strongly recommend that you closely monitor any such usage.*

**Changing Services.** Changes to Services will generally be effective at the start of your next full invoicing cycle. In certain instances, the changes may take place sooner, in which case your invoice will reflect pro-rated charges. Certain changes may be conditioned upon payment of an Early Termination Fee or certain other charges. **Termination of Services.** Consistent with this Agreement: (a) we may terminate Services at any time with notice to you and, in certain instances, without notice; and (b) you may terminate Services at any time with prior notice to us. Except as otherwise provided in this Agreement, IF YOU TERMINATE YOUR TERM SERVICE PLAN EARLY, OR WE DO SO FOR GOOD CAUSE, YOU WILL BE REQUIRED TO PAY THE APPLICABLE EARLY TERMINATION FEE ASSOCIATED WITH YOUR SERVICES. We will not charge an Early Termination Fee for deactivations consistent with our Return Policy or for service plans being provided on a month-to-month basis. If any Services are terminated before the end of your current invoicing cycle, we will not prorate charges to the date of termination, and you will not receive a credit or refund for any unused Services.

**Wireless Devices, Numbers & E-mail Addresses.** We did not manufacture your wireless device and we are not responsible for any defects or for the acts or omissions of the manufacturer. The only warranties on your device are any limited warranties extended by the manufacturer directly to you or passed on to you through us. Your device may not accept Services directly from any other carrier. You do not have any rights to any number, e-mail address or other identifier we may assign to your device or account; you may not modify, change or transfer any of these except as we allow or as allowed for by law. In certain instances, you may transfer your number from another carrier to us, or from us to another carrier. We do not guarantee that transfers to or from us will be successful. If you transfer your number away from us, the terms of this Agreement (e.g., Early Termination Fee, etc.) still apply. If a transfer to Sprint is not successful, you will be responsible for any discounts provided to you with the purchase of your device. See our printed in-store materials or visit www.sprintpcs.com for additional important information on number transfers.

**Coverage.** Available coverage areas for Services are generally identified in our mapping brochures and at www.sprintpcs.com. This may include coverage on our digital network (the "Sprint Nationwide PCS Network") as well as coverage we make available to you through agreements with other carriers ("off network" or "roaming" coverage). All coverage maps are high

connection kits or other phone-to-computer/PDA accessories, or Bluetooth or other wireless technology. We may terminate services without notice for any misuse. You may have access to certain games, ringers, screen savers and other items on our Vision site ("Premium Services") that are available for an additional charge. You will be billed for Premium Service purchases on your Sprint PCS invoice based on the charges as specified at purchase. Subject to the terms of the content purchased, we may delete premium and non-premium items downloaded to any storage areas we may provide, including any pictures, games and other content. We may limit the amount of Premium Services you may purchase in a specific timeframe (month, week, day, or other time period).

**Voice Command.** Calls to 911 or similar emergency numbers cannot be placed through the Voice Command feature. See our printed in-store materials or visit www.sprintpcs.com for additional important information on this option.

**Wireless Web.** Wireless Web Services may be available depending on your device and Service plan/option. This is not a Vision service. Usage is calculated on minutes used and generally deducts from your Service plan minutes. See our printed in-store materials or visit www.sprintpcs.com for additional important information on this option.

**Lost or Stolen Equipment.** If your device is lost or stolen, please notify us immediately by calling 1-888-211-4PCS. You are responsible for all charges incurred before you notify us of the loss or theft. You agree to cooperate reasonably with us in investigating suspected unlawful or fraudulent use.

**Messaging.** You may incur charges in accessing, sending or receiving messages on your device. We may impose limits on the number of voicemail, text, email or other messages that can be retained through your account. Indicators of messages on your device, including mailbox icons, may not always provide an up to date indication of new messages and you may at times need to manually reset or clear your mailbox indicator. . Legitimate messages may be interrupted by software aimed at prevention of SPAM or similar messages.

**Caller ID.** If you do not want people you call to receive the number assigned to your phone, call us at 1-888-211-4PCS for information about automatic Caller ID blocking. The number assigned to your phone can be blocked on a per-call basis by dialing *67 + Destination Number + TALK (or similar key). Caller ID blocking is not available when using Vision or Wireless Web services.

**TTY Access.** A TTY (also known as TDD or Text Telephone) is a telecommunications device that allows people who are deaf or hard of hearing, or who have speech or language disabilities, to communicate by telephone. TTY doesn't work with all devices. If you have a TTY-capable device, it may not function effectively, or at all, when attempting 911 calls and should not be relied on for such calls.

**Disclaimer of Warranties.** WE MAKE NO REPRESENTATIONS OF WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (TO THE EXTENT ALLOWED BY LAW) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICES OR WIRELESS DEVICE. WE DO NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICES AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS.

**Limitation of Liability.** Neither we nor our vendors, suppliers or licensors are liable for any damages arising out of or in connection with any: (a) act or omission by your, or another person or company; (b) providing or failing to provide Services, including deficiencies or problems with your wireless device, our network coverage or Services (e.g., dropped, blocked,

Mr. PITTS. Thank you, Mr. Chairman.

The carriers call this "boiler plate language" that has always been there. They point to the fact that numbers have not been listed for 20 years as evidence that they won't do it now. This is a dangerous line of reasoning. The bottom line is this legislation is necessary because all we have are promises from the carriers.

Promises that they will make this opt-in. That is only from 5 of the 180 small companies. And promises they won't charge users. While those promises are greatly appreciated, we need a law. These contracts give them a way out of those promises.

Besides, the decision to break a promise won't be made on the basis of a letter to a few politicians. It will be made according to a business plan. As a conservative former business owner myself, I am sympathetic to that position. My gut is to oppose more regulation. But there are certain values worth protecting for consumers and privacy is one of them.

There are a number of issues I could raise. I won't raise them all but I know that CTIA is not wanting to do anything harmful but the issues that we will raise today in the hearing must not be overlooked. While on its face a directory for cell phones may sound like a good idea, we need to explore further the ramifications of such a directory and what an invasion of privacy this will be.

Some of the questions I hope the panel will address are what are the legal status of existing service agreements that contain legal authorization to list numbers in a public directory? What happens when you change your mind? Will documentation be provided that prove the industry will continue to pursue an opt-in for the directory? How will users be offered the opportunity to opt-in? Will all users, new and existing, receive a chance to opt-in? Will carriers who choose not to participate at the current time be subject to the promise that you make today if they decide to participate in the future?

Again, Mr. Chairman, thank you so much for holding this hearing and I look forward to hearing our witnesses and look forward to working with you further on this issue.

Mr. BASS. The gentleman's time has expired.

The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Good morning and thank you, Mr. Chairman. As many of you know, consumer privacy continues to be a major focus involved with other subcommittees, one which I chair, the Subcommittee on Commerce, Trade, and Consumer Protection.

Including yesterday's hearing we have had eight hearings on this matter and I think we have developed a number of specific actions that I believe a data collection organization should take when compiling any personal identifiable information from a consumer and that includes his or her cell phone number.

First, the organization must provide the consumer with a clear and conspicuous notice describing the manner in collecting and purpose for using that person's information. Second, Mr. Chairman, the consumer should be allowed to preclude the disclosure of that information. These principles were originally developed as I looked into how businesses collect information to market services to consumers. However, I think that they provide appropriate guidelines

regarding the topic that is before us today, namely the proposed 411 wireless directory.

Most people value the privacy that wireless phones can provide. AARP's testimony notes that is the case based upon the survey they conducted and that privacy should be protected. However, I also firmly believe in market forces and consumer choice. Should a wireless consumer want to disclose his or her cell number as a part of a wireless 411 directory, they have every right to request that service and wireless companies have the right to provide it.

Having said that, prudent safeguards must be in place before such a service is implemented. The consumer must be given a choice as to whether or not he wants to allow his cell phone number to be disclosed in a directory. That choice should be offered in the form of a clear and conspicuous notice with the opportunity to opt-in or out of that service.

Furthermore, in no way should the consumer be charged for not wanting his number published. It is my understanding that this is the direction that these wireless companies are taking in developing this service and that is a positive note. However, there remains a number of issues of concern for members and the public as to how this directory will work and what back doors, if any, could be used to exploit this new service for other motives.

I look forward to the testimony. I also look forward to our formal member, Steve Largent, his testimony, and welcome him this morning, too.

Mr. BASS. The gentleman yields back.

The gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much. It is like all-star weekend here. We have Steve Largent and Barbara Boxer back here to visit us in the House of Representatives. We welcome you both and everyone else who is here today.

Our bill now has 50 co-sponsors. That is the bill that Joe Pitts and I have introduced. Senator Boxer and Senator Specter have introduced an identical bill in the U.S. Senate. It is progressing quite well. This is one of those self-evident truths that when the American people hear about it want to ensure that they are able to gain the attention of.

Chairman Barton of this committee and I co-founded the Privacy Caucus about 5 or 6 years ago proving that the far left and the far right can agree on issues that protect the individual. Now, it does isolate the pragmatic middle, unfortunately, as the far left and right agree on the privacy issues of people but, nonetheless, at the end of the day this is something that all Americans do want to see as part of their lives.

At the core of this privacy is routed in freedom and the freedom to not have your personal life intruded upon without your permission. What we have today in the wireless revolution is the coupling of the freedom to move with a wireless phone that can allow you to stay in communication and, at the same time, the freedom not to be bothered by people who you don't want to be communicating with you, that you have the right to be left alone.

Now, when Mr. Pitts and I first introduced our bill, the wireless industry originally told us that asking consumers' permission before listing them in a 411 data base would be too onerous. They

said that the provision in our bill that prohibited wireless companies from charging new fees to consumers who wanted to remain unreachable or unlisted was unfair.

Last year after we asked the wireless industry for information on their plans, the industry wrote to Mr. Pitts and to myself, to Chairman Barton and to several other members about their directory plans telling us at the time that, "Wireless Directory Assistance offers consumers great benefits. These consumers will want to have their wireless number included in the Wireless Directory Assistance Data base and we are asking for this service." I ask unanimous consent that the letter from the industry to the committee be included in the record.

Mr. BASS. Without objection.

[The letter follows:]

CTIA

Cellular Telecommunications & Internet Association

Thomas E. Wheeler
President/CEO

August 15, 2003

The Honorable Joseph R. Pitts
United States House of Representatives
204 Cannon House Office Building
Washington, DC 20015

The Honorable Edward J. Markey
United States House of Representatives
2108 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
United States House of Representatives
205 Cannon House Office Building
Washington, DC 20515

The Honorable Joe Barton
United States House of Representatives
2109 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard Burr
United States House of Representatives
1526 Longworth House Office Building
Washington, DC 20515

Dear Congressmen:

I am pleased to provide this response to your July 15, 2003, letter regarding wireless "directory assistance" (DA) service, and CTIA's facilitation of the roll-out of a consumer-friendly DA service many wireless customers have requested. As you may know, CTIA, on behalf of its members, has issued a "request for proposal" (RFP) to select a vendor that will aggregate wireless carrier listings. While the wireless industry is in the process of evaluating the responses to this RFP, let me assure you that wireless DA offers consumers great benefits, that no customer will be denied the opportunity to provide consent before they are listed in the wireless DA database, and that the wireless industry has built in many safeguards to prevent the publication or misuse of wireless numbers.

First, wireless DA service is an important step towards making wireless service more valuable to the millions of small businesses, professionals, and ordinary wireless customers. These customers will want to have their wireless number included in the wireless DA database, and are asking for this service. Just like wireline customers may have their telephone number "listed" or "non-listed" in the traditional DA database, wireless carriers will offer their customers a similar choice, and will provide notice to their customers and an opportunity to consent before a wireless number is included in the wireless DA database.

1250 Connecticut Avenue, NW Suite 800 Washington, DC 20036 202.736.3213 phone 202.331.8112 fax www.wow-com.com

Second, fears that telemarketers will abuse the wireless DA database are groundless. Last month, the Federal Communications Commission adopted rules that extend the "Do Not Call" protections to wireless customers. As you know, telemarketers face fines and prosecution for calling customers who have registered their wireless number on the national "Do Not Call" list. Moreover, the wireless carriers participating in the creation of the wireless DA database will prohibit, through the use of license agreements, any publication of the wireless subscriber listings and limit the use of this data to operator-provided DA service.

The privacy and integrity of the master database is of great importance to wireless carriers. Not only has each potential vendor been required to address this issue, each carrier will evaluate and accept the vendor's ability to protect the security and integrity of the master database before submitting its wireless DA subscriber listings to the data aggregator. Because this issue is so important, the database vendor's security practices will be verified through audits and the use of phantom listings that will flag any misuse of wireless DA listings.

Finally, because the Nation's antitrust laws prohibit wireless carriers from discussing their pricing plans with their competitors, there have been no discussions of individual carrier pricing strategies for wireless DA service. I am quite confident, however, that the fiercely competitive wireless market will do a much better job of protecting consumers than regulation, as evidenced by the dramatic decline in wireless rates in contrast to the steadily higher prices for regulated wireline service.

Thanks to the ubiquity of wireline directory assistance service, telephone subscribers are familiar with the approach the wireless industry is taking to wireless DA. We intend to build on this experience, provide notice and consent, protect privacy by prohibiting the publication of wireless DA listings, insure the integrity of these listings through security audits and list management tools, and harness competitive forces in order to roll-out a consumer-friendly wireless DA service early next year.

CTIA is proud of its role facilitating the implementation of this important service many wireless customers have requested. I want to assure you the wireless industry is committed to providing customer-friendly DA service. If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

Thomas E. Wheeler

Mr. MARKEY. Now, notwithstanding the industry's contention last year that consumers were evidently asking for this service, how did the industry advise consumers of the good news that the industry was planning on implementing a 411 data base? Well, the way consumers often find out about such good news is in the fine print of their contracts that they were asked to signed as part of having a wireless service.

The industry also told us in their letter to us last year that, "No customer will be denied the opportunity to provide consent before they are listed in the Wireless Directory Assistance Data base. Yet, in the fine print of many of these wireless contracts the companies disclosed that in order to sign up for service, customers had to sign away their privacy rights. That is just plain wrong. Those contracts went on for months and months.

Recently, many of the carriers have had second thoughts. Several of the carriers appear to have changed their minds. The industry is now saying that they will give consumers the chance to opt-into the service and carriers are now saying they won't charge extra fees. But given the track record of the industry over the last 18 months, one can imagine our reaction when the industry now argues that we shouldn't pass a law even before the service is launched.

A couple of years ago the subcommittee worked on a bipartisan bill that Mr. Shimkus and Mrs. Eshoo had developed to establish a 911 as a national emergency number. As part of that bill I successfully offered an amendment to include strong privacy protections for use of wireless location information. We did this before the industry began fully implementing such technology and that bill is now law with the support of the wireless industry.

This is a very good bill. It is in line with the consistent privacy laws which our committee has placed on the books. No one by law can know what phone numbers you have dialed. They can't find out. People can't look that up. No one can find out what cable shows you watch. That is also against the law, laws that we passed here in this committee. This similarly is something that the American people want and deserve to have as a privacy protection in the modern communications era.

I thank you, Mr. Chairman, very much and it is my great honor to have Senator Boxer here with us today.

Mr. BASS. The Chair thanks the gentleman from Massachusetts. There being no further opening statements, the Chair will move to our first panel and welcome Senator Barbara Boxer from California.

As you know, Senator Boxer, we have a tradition of limiting witness' testimony to 5 minutes. I know you are only going to be able to stay until 10:30 so that probably won't be a big issue for you. Without any further ado, I recognize you for 5 minutes.

## STATEMENT OF HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Since I have been here for 30 minutes I will stay here for the full 5. Maybe even 5½.

Mr. Chairman, thank you so much for the opportunity to testify. As you know, Congressman Markey, Congressman Pitts have

teamed up to take the lead on this cell phone privacy bill. In the Senate I have had the honor to work with Senator Specter and a bipartisan group of Senators on companion legislation.

I am very pleased to report to you today that the Senate Commerce Committee voted to approve the Wireless 411 Privacy bill last week. I particularly want to thank the Consumers Union and the AARP for their work in favor of this legislation.

Speaking of the AARP, Mr. Chairman, they did a very thorough poll on this whole idea and I think it is rather stunning what they came up with. I would disagree with my dearest friend and colleague, Mr. Markey, when he says this is the left and the right. This is everyone. Here is what it says.

"The idea of a wireless phone directory is troubling to all consumers but especially older consumers. Only 5 percent of cell phone users aged 65 and older said they want their number to be listed in a wireless phone directory. Among all cell phone users nine out of 10 said they value phone number privacy and view the lack of a directory as a good things." I think that is rather remarkable. It is very rare that we see the American people gather around the notion of privacy as they have here in this particular area.

Now, all we say in our bill, Mr. Chairman, is that if there is a wireless directory, then every cell phone user has to approve being listed in that directory and there should be no charge for exercising that right. Pretty straight forward.

Mr. Chairman, as has been pointed out, a cell phone is far different from a home phone. It is far more intrusive because we take our cell phones with us wherever we go. We give our children cell phones in case of an emergency. We give our colleagues at work our cell phone numbers to reach us wherever we are whenever they need us. We pay whenever we use it even for incoming calls.

A communication tool as personal and portable as a cell phone must meet a high standard of respect for privacy rights, perhaps the highest. The Wireless 411 Privacy Bill is our effort to establish that standard. It is totally fair. It is very fair to the industry. It just sets out guidelines.

In the Senate Commerce Committee hearing we held last week, we learned that the cell phone companies have hired a firm to create a wireless directory. It is going to be ready to go so we have to act now. We believe our bill is necessary for a number of reasons and I want to give you one. I know every member here. I don't know if you are all parents or uncles. Let me just say this. Imagine your 13-year-old daughter's phone number in a directory. Any stranger, any stalker could call her.

For those kids whose parents give them cell phones for emergencies, imagine someone calling that child and saying, "Your parents want you to go to the nearest corner and wait for them." We have to think about these things, folks, because these things happen. I wrote the Driver Privacy Protection Law that was upheld by the Supreme Court.

It used to be somebody was stalking a young woman, drive next to her in a car, write down her license number, call the DMV, and get her home address. We stopped that here in a bipartisan way and the Supreme Court upheld us. Privacy is important. It is a safety issue. It is a safety issue.

Now, I know the cell phone companies will tell you this bill is a solution in search of a problem. It is a solution in search of a problem. But nothing could be further from the truth. An unregulated directory of wireless phone numbers is a problem and if we don't act, then an unregulated cell phone directory is what we will get. It is much easier for the industry and I think it is safer for our people to establish the protections now instead of having to fix the chaos once Pandora's Box has been opened.

I want to make a point that Mr. Pitts made very clearly. A lot of people who have had cell phones for a while have signed agreements that say the following. This is in the small print in a big contract. "You consent to our use and disclosure of your name, address, and identifier, e.g., mobile phone number, including area code, for any lawful purpose."

It says if you don't want this to happen, you have to write them. It is a very complicated deal. So then people say, "Oh, let competition win the day." People will leave these companies and go to Verizon because Verizon is very much against this and I commend them for being smart business people. It is going to cost a couple of hundred bucks, $100, $150, $200 to switch and that is not fair to people who want simply to have their privacy. Privacy should be afforded to everyone.

As Mr. Largent will tell you today, you have nothing to worry about. Cell phone people are going to be great and they may well be but what is to stop them from changing? We need a uniform standard of privacy for our people.

To sum it up, and I would ask unanimous consent that my entire statement be placed in the record.

Mr. BASS. Without objection.

Senator BOXER. I hate to use this very direct term but this is kind of a no-brainer. You have a situation where everyone, except maybe 5 or 10 percent of the people, want their privacy protected. You have the cell phone company saying, "Fine. We have got no problem with that." Let us pass this law so we know we have done something to protect the people. Let us not wait for the first stalker to send some kid to a corner and then we will all be back here saying why didn't we do this.

It is really simple. I want to have a directory, I agree with Mr. Wynn, for the people who want to get in it. But I don't want people in it who really want to protect their privacy. We can do this. I think you have great leadership on this committee from Mr. Markey and Mr. Pitts. You have strong support from this legislation. I think the only one against it are the cell phone folks. Why would they be against it?

I hope you will press Mr. Largent on that point just because we don't want to be regulated. The fact of the matter is a directory that simply says if you want to be in it you have to opt-in is not a big deal. I think it will set good guidelines and it will make everybody happy.

I thank you very much for this opportunity. I look forward to working with all of you on this.

[The prepared statement of Hon. Barbara Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, A UNITED STATES SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for the opportunity to testify here today on the Wireless 411 Privacy bill.

As you know, Congressman Pitts has taken the lead on the issue with Congressman Markey in the House.

In the Senate, I have had the honor of working with Senator Specter and a bipartisan group of Senators on companion legislation.

I am happy to report that the Senate Commerce Committee voted to approve the Wireless 411 Privacy bill last week. I also want to thank Consumers Union and the AARP for their work in favor of the legislation.

Mr. Chairman, the Wireless 411 privacy bill is very straightforward.

We say that if there is a wireless directory, then every cellphone user has to approve being listed in that directory and there should be no charge for exercising that right.

Mr. Chairman, a cell phone is far different from home phone. It is far more intrusive because people take a cell phone with them wherever they go. We give our children cell phones in case of emergency. We give our colleagues at work our cell phone numbers to reach us wherever we are, whenever they need us. And, we pay whenever we use it B even for incoming calls.

A communication tool as personal and portable as a cell phone must meet a high standard of respect for privacy rights. The Wireless 411 Privacy bill is our effort to establish that standard.

In the Senate Commerce Committee hearing we held last week, we learned that the cell phone companies have hired a firm to create a wireless directory. It will be ready to go within months. As a result, we have to act now.

We believe our bill is necessary for a number of reasons. One of the most important reasons is for the protection of our children.

I am very concerned by the prospect of any child's number being listed.

Imagine your 13 year old daughter's phone number in a directory. Any stranger, any stalker could call her.

For those kids whose parents give them cellphones for emergencies, imagine someone calling them and telling them that their parents want them to go to the nearest corner and wait for them.

I want to make sure that parents can control which numbers are listed in any directory. And, if they choose not to have their children's numbers listed, they should not be charged for that choice.

We have worked hard to draft legislation with which the industry can comply and that will protect consumers.

The AARP and Consumers Union support this legislation. And, every survey that has been conducted says that people want their privacy protected in a cell phone directory.

I know that cell phone companies will tell you this bill is a solution in search of a problem. But nothing could be further from the truth. An unregulated directory of wireless phone numbers is a problem and, if we do not act, then an unregulated cell phone directory is what we will get. It is much safer and easier to establish the protections in law now than having to fix the chaos once Pandora's box has been opened.

The industry also says it has changed its contracts to allow for consumer privacy. But we know that they could just as easily switch right back.

In addition, many of these old contracts cannot be easily abrogated. For example, here is one contract (hold up AT&T contract). For millions of consumers this contract and others like it still apply.

When companies say that if you don't like the directory, just move to another company with a better privacy policy, what they are not telling you is that it will cost you a hundred dollars or more to break your contract.

We can act to protect consumers from an unregulated directory. They want that protection and we should make sure they have it.

Mr. Chairman, thank you again for allowing me to testify. Let's protect our constituents. Let's stand up for privacy.

Mr. BASS. Thank you, Senator Boxer.

Does any member of the subcommittee wish to question Senator Boxer?

Mr. Stupak.

Mr. STUPAK. Just quickly. Under the 411 proposal nothing is published, no address or no phone number, but like my landline that is published. Whenever I get a hard line they publish my phone number, they published my address. Don't you have more privacy with the 411 proposal than you do with a landline?

Senator BOXER. In your home phone you can opt-out.

Mr. STUPAK. And they charge me, right?

Senator BOXER. You have to pay to be unlisted. What we are pointing out this is a different circumstance here. This cries out for more privacy protection.

Mr. STUPAK. Why——

Senator BOXER. I will explain that if you give me a chance.

Mr. STUPAK. Sure.

Senator BOXER. When I call you at your home phone I pay. When I call you on your cell phone you pay. That is one reason right there. You could be having tons of phone calls come in. Yeah, it is true you have a certain number of free minutes but eventually you start paying. That is one difference.

Mr. STUPAK. Sure.

Senator BOXER. Second, with your cell phone you have it with you all the day and, therefore, it is a constant nuisance because it could be ringing all day with people wanting to find you who you don't particularly want to find you. I think this is a different circumstance. It is more ubiquitous. It is with you all the time. You have to pay for the calls that you don't want to have.

If you question people, which the AARP has done, people view their cell phone in a very different way. Sometimes they give it to their kids just for emergencies. It is a very different situation. By the way, we also did set up a no call list, if you will remember, and the same issue was raised because people were going crazy so we did protect them from those.

Mr. STUPAK. If we are really concerned about privacy then why don't we take and pass a law then that says landlines, can't publish my number, can't publish my home address?

Senator BOXER. I just said I feel differently about landlines but if you feel that way, go ahead and do it. I am not going to do it. I think this is a way different situation and you are putting the chairman to sleep.

Mr. STUPAK. I don't think the chairman is sleeping.

Mr. BASS. The gentleman yields back. Any other members of the subcommittee? Congressman Markey.

Mr. MARKEY. It would only be to make this point. If our cell phones were listed, as we left this hearing unfortunately there would be about 40 people in this audience that would then try to start calling us, the members of the committee on our cell phone because it would be listed. People would just be bothering you as you are walking down the street and walking around.

We use it in America, this phone, as something that we give a number to our family members and to other people and they can call us. That is the point of it. It is on us. If it was listed, then everyone here who is interested in lobbying us on the bills would just call us. They would look up our number and call us on the phone all day long instead of calling us in our office or calling us

at home which is where we have become used to getting called at home.

It goes right to voice mail anyway at home when we are not there all day long anyway so it is just a different set of expectations. But since it is on us and it is on, we would be bothered all day long by people who we had not given permission. It is just not something that is available to everyone. I think Senator Boxer is making the point that over 100 years, for better or worse, is a precedent that has these numbers listed.

I think in California, Barbara, I think half the people in California pay each month to have their number unlisted. I think half of all phone numbers in California are unlisted and people have to pay. The question here is should the phone industry make us now pay to have a number unlisted that is already unlisted and we don't pay to have it unlisted?

They see it as a business that they can make $3, $4, $5 million a years making all Americans pay to get something that they already have. What is happening is in most states, I think the minimum number in most states is 20 to 30 percent of all people pay each month to the phone company not to put their name in the book.

So now in this system no one's name is in the book but yet they want us to pay from now on to do so. That just doesn't make any sense at all. They are trying to create a business where no business is needed at all. Thank you, Barbara.

Mr. BASS. The gentleman yields back.

Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman. Good to see you, Senator. Just a couple of questions. The industry has made certain representations, obviously, to all of us. I think it is predicated based on those representations. Is there any example that industry has, in fact, sold wireless numbers or list the wireless numbers?

Senator BOXER. They are just about to get their directory, Mr. Wynn, as you will find out. They have just hired a company to put it together. They don't have the directory as yet. They are just about to have it.

Mr. WYNN. But based on the information you gave us in the fine print, they actually do have all of those numbers and if it were lawful to sell those numbers, and I presume it would be, is there any evidence that they have sold the existing numbers that they have pursuant to——

Senator BOXER. Well, you would have to ask them that.

Mr. WYNN. Okay. All right.

Senator BOXER. Obviously, you wouldn't put something in a contract if you didn't have an intention to do it. It says clearly you consent.

Mr. WYNN. No, I got that part. I was just concerned if there was any anecdotal evidence because I am a big proponent of privacy.

Senator BOXER. Good. Good.

Mr. WYNN. I strongly pushed for the Do Not Call list. I just wanted to find out if there was any egregious anecdotes. Also, I have a 10-year-old daughter so I am very sensitive to the point that you made. If, in fact, this is an opt-in system, as has been represented, would that address your concerns? Because as the parent

of a young daughter, my preference would be to not opt-in. If I had that option without any cost, do you believe that would solve the potential stalking problem?

Senator BOXER. That is the point of the legislation. This is what they will tell you. They will tell you what you want to hear today. They have changed on this constantly which is wonderful they are changing. The point is we are here to legislate for the long run and now you have certain people who obviously hear us and they are listening and they are saying they are going to do it all this way. But if you don't put it into legislation, it could be all fine.

Yes, I agree. That is why we say opt-in, protect your kids and all that is fine. That is what we are doing. We are not stopping the directory. We are just saying this is the way it ought to be. They say they are going to do exactly what we want but yet they oppose the legislation on philosophical grounds that they don't want to be "regulated." But they say they are going to do exactly what we have asked today.

A few months ago that wasn't what they said. What are they going to want to do a year from now? I think we need to get ahead of this. I think what we are doing again is very clear. If the industry supports what we are doing, why not just put it into law so in the future you may have an unscrupulous company come forward and do something and start charging people. This idea of all you have to do is switch to another carrier isn't as easy as it sounds. Have you ever tried to switch carriers? It isn't as easy as it sounds. It cost money. It takes time.

Mr. WYNN. Thank you.

Mr. BASS. The gentleman yields back.

Mr. Stearns.

Mr. STEARNS. Thank you. Senator Boxer, let me also welcome you here.

Senator BOXER. Thank you.

Mr. STEARNS. I served with you when you were in the House. You mentioned your 13-year-old daughter.

Senator BOXER. No, no, no, no, no. I don't have a 13-year-old daughter.

Mr. STEARNS. You mentioned a 13-year-old.

Senator BOXER. I said imagine your 13-year-old. It was kind of a rhetorical put yourself in the position.

Mr. STEARNS. Right. I have a 13-year-old daughter.

Senator BOXER. I actually have a 9-year-old grandson.

Mr. STEARNS. But isn't it true that no one can sign these consent contracts unless you are 18 and over.

Senator BOXER. Exactly right. But they print it anyway.

Mr. STEARNS. The people that have been mentioned here they really can't sign these contracts.

Senator BOXER. Well, the parent signs it for them.

Mr. STEARNS. So the parent's name would be on the contract and not the 13-year-old or the 9-year-old. But just from the standpoint of industry, couldn't they take this——

Senator BOXER. Sir, let me just explain. If you are a stalker you know that there is a kid and who the parents are so if you see a number of phone lines listed in the parent's name, all you have to do is call those and you will get the kid at one point.

Mr. STEARNS. Okay. Is it possible that this consent agreement, that the wireless companies could just change it itself without—I am just talking now. Instead of big Federal legislation couldn't they just change this consent agreement and do some kind of opt-in, opt-out procedures and all do it there? Is that something——

Senator BOXER. That is the whole point. They can do anything they want. They can do anything they want right now.

Mr. STEARNS. So wouldn't you also suggest that—let us say this bill does not pass in this Congress. I know it has passed the Senate but——

Senator BOXER. No, it has not. It has passed the Commerce Committee.

Mr. STEARNS. Okay.

Senator BOXER. In a bipartisan vote.

Mr. STEARNS. Well, let us say it doesn't pass. Wouldn't your recommendation be also that maybe these companies should actually just change the agreement and that would solve the whole problem?

Senator BOXER. Of course I want them to change the agreement. Of course. That is the point of the legislation. There should be a national standard. Verizon doesn't want anything to do with the directory whatsoever. That is their opinion.

Mr. STEARNS. Each company would be different and you want——

Senator BOXER. Each company would be different. I think you should have a standard so that everyone knows that they are protected. Just simple. Instead of Verizon says, "We won't even allow anyone to be in the directory." Now, some people might flock to Verizon for that reason but others may not know. This just seems like such a simple thing.

Mr. STEARNS. Wouldn't that force all the companies to have a national standard because they wouldn't want to lose business so they——

Senator BOXER. I don't think so. There is no national standard today.

Mr. STEARNS. Okay.

Senator BOXER. No. There are all kinds of different standards and Verizon was really chastising the other companies, "Stay away from this. It is really a bad idea." The rest of them—most of them are going forward with this.

Mr. STEARNS. Thank you.

Senator BOXER. It is a mess out there, folks. That is the truth.

Mr. BASS. Thank you, Mr. Stearns.

Further questions? Seeing none, I would like to thank you, Senator Boxer for your testimony.

Senator BOXER. I thank you and it is nice to be here with my—I don't want to say old colleagues and friends but my former colleagues and current friends. Thank you very much.

Mr. BASS. You are very welcome.

The Chair will now introduce the second panel. The Chair will hear from the Honorable Steve Largent who is the President Chief Executive Officer of the Cellular Telecommunications and Internet Association; Mr. W. Lee Hammond, Vice President and Member of

AARP; Mr. Patrick M. Cox, Chief Executive Officer of Qsent, Inc.; Mr. Sunny K. Ahn, Chief Executive Officer of Context Connect, Inc.

The Chair will recognize Congressman Largent for an opening statement.

**STATEMENTS OF HON. STEVE LARGENT, PRESIDENT AND CEO, CELLULAR TELECOMMUNICATIONS AND INTERNET ASSOCIATION; W. LEE HAMMOND, VICE PRESIDENT AND MEMBER, AARP BOARD OF DIRECTORS; PATRICK M. COX, CHIEF EXECUTIVE OFFICER, QSENT, INC.; AND SUNNY K. AHN, CHIEF EXECUTIVE OFFICER, CONTEXT CONNECT, INC.**

Mr. LARGENT. When I left Congress in 2002 the question I got asked often was, "Do you miss being in Congress?" And my answer was typically, "Not at all but I do miss being around my friends." So it is great to have the opportunity to see a lot of old friends and colleagues once again.

I have always been told that a picture is worth 1,000 words so I brought a picture to hopefully help explain in the most simple terms exactly what we are trying to propose and the problems that we have with the direction that Congress seems to be taking.

We have basically devised two different scenarios, what the world looks like today and what we are trying to propose the world look like tomorrow.

Let me just say, first of all, that we know according to surveys about 90 percent of the people want to be like Mark over here who is on this island. Mark wants his number unlisted and you don't have to do a thing in today's world to keep your number unlisted if you are a cell phone customer.

Congressman Pitts mentioned he doesn't want his phone number listed. I don't want my number listed. You don't have to do anything in today's world and you are really not threatened. I mean, I would assume that most people don't feel threatened as the world is today and that is a good thing.

However, John's Plumbing Company, he wants to list his wireless number. He doesn't want to have a landline number anymore. He can't afford to pay an assistant. He carries a cell phone on his hip. It is a one-man operation, or two people perhaps, and he wants to save some money. In fact, in today's world you can actually port your old landline number to your wireless device so that you don't even have to change your current listing in the yellow pages. But John wants to be able to be found and wants his wireless number to be able to be found on a Directory Assistance, a 411 number.

He goes to his wireless company and in today's world wireless companies can't list their numbers which is why we are trying to introduce this service. He goes to his wireless company and no, he can't list it. He goes to his wireline company.

He happened to be smart enough to then try instead of going to his wireless company to go to his wireland company and in some instances in some places in this country today you can actually list your wireless number with the wireline company. We know there are approximately 5 million current wireless customers who list their number.

I mentioned before we knew that 90 percent of the people according to surveys that we have done say, "We don't want our number

listed." That means that 10 percent do. Ten percent of our customers have said, "We would like to have our number listed." Well, in today's world, you know, in the political world you operate with 51 percent, right? But not in the competitive wireless industry.

Ten percent of our customers is 17 million people so 17 million people, primarily small business people, what to have their number listed. We listen to those customers so in today's world there are 5 million of those people currently that are paying a monthly fee to list their number with a 411 service.

If you happen to be in an area of the country where your wireline company won't list your number, that is a no. Perhaps you can list it on the Internet directory but that doesn't necessarily connect with a 411 directory so you really don't accomplish a lot.

Well, this is the world as it exist today. What are we trying to do that is creating so much controversy? All we are trying to do is add this line right here giving a wireless company the opportunity to say yes to 10 percent of their customers, 17 million people like John's Plumbing Company, that are asking to list their number.

This doesn't have anything to do with people like many of us who don't want your number listed. You are still over here on this proposed world. You are still over here on this island. You don't have to do a thing to keep your privacy protected in the world that we are proposing. You can stay over there as Mark is on the island.

But now John's Plumbing Company goes to this wireless company and says, "Can I list my number?" Well, even in this competitive world in the proposed world there are some wireless companies who say, "No, you can't list your number with our service." Some customers will say, "Thank goodness. I want to be with you because I can't list my number. I can't choose to list my number with your company. That is a good thing. I am going to join you."

But we want to create a world where they can go to their wireless company and some wireless companies can say, "Yes, if you join our company you can list your number with a 411 service," which you can't do today. And then you go into—then their number, which they have opted-in, they want to have this service. Now it can be listed.

And a couple of things. John's Plumbing Company has to proactively opt-in. We don't charge him to opt-in. In fact, Mark, who is opting-out in this scenario, we don't charge him for opting-out. That is also a free service. This is the proposal that we have.

What I would like to do in just the 2 or 3 minutes I have left is respond to some really specific questions. No. 1, will carriers charge to opt-in or opt-out? The answer is no. This committee asked for letters from all of our companies that are participating. You got letters from the CEOs of these companies and said absolutely not, not to opt-in and not to opt-out.

Will there be a printed directory of wireless numbers? The answer is no. There is no printed directory unlike landline directories. What about carrier contracts that say they can list? It was mentioned most carriers had boiler plate language that gave them permission over the last 10 or 15 years to create this directory and list those numbers and you had to sign that contract if you wanted to get their service.

The question was raised what is going to prevent companies from changing their mind in the future? Let me just tell you, all you can look at is the history. The carriers had contractual language that allowed them to do this for the last 15 years and they have not done it.

Why? Because they are more concerned about their customer's privacy then Congress is. They know if they start listing numbers their customers are going to flee to somebody else's company that doesn't do it. That is the pressure that these companies face that is a greater pressure than legislation, and that is the competitive industry that creates winners and losers.

Mr. BASS. Steve, I hate to cut you off.

Mr. LARGENT. Let me just finish really quickly. Why now are we doing this? Because of local number portability. You can take your landline and carry it to a wireless service.

Children at risk. I would just, again, remind you you can't sign a contract until you are 18 years old. I would mention the fact that there are 200,000 calls to 911 over wireless phones today. Wireless saves lives. It doesn't put children at risk. It makes children safer. I look forward to responding to your questions.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Steve Largent follows:]

PREPARED STATEMENT OF HON. STEVE LARGENT, PRESIDENT AND CEO, CELLULAR TELECOMMUNICATIONS

Chairman Upton, Ranking Member Markey and members of the Subcommittee, thank you for your invitation to testify this morning regarding, "An Examination of Wireless Directory Assistance Policies and Programs." I welcome the chance to provide CTIA's views on this issue, and specifically, the development of a wireless 411 service.

Let me preface my remarks by acknowledging the legislation that Congressmen Pitts and Markey have put forward, H.R. 3558, and their well-intentioned efforts. However, I sincerely believe that this bill is not needed and does have unintended consequences. The wireless industry has a proven track record of protecting our customers' privacy, and we have made a concerted effort while developing this directory assistance service to safeguard our subscribers' personal information. Moreover, the service is still in the planning stages. It is extremely premature for Congress to issue a government mandate on a service that has yet to be made available to our customers. If there are wireless customers who have serious reservations about this service or who just do not want to be bothered with the choice of opting-in, they have the option to switch to a carrier that is not participating in the wireless 411 service.

The wireless industry has a great story to tell and I feel fortunate to be here today to tell it. Currently, there are more than 168 million wireless customers in this country as compared to roughly 33 million when the 1996 Telecommunications Act was signed. This represents a phenomenal growth rate of 425 percent. And why has our industry enjoyed such a dramatic growth rate? Because of intense competition among service providers, a growing number of service options, technological advancements, and prudent, forward-looking government policies that allowed the market to determine the fate of the industry rather than government mandates.

However, with success, be it athletic, political, or business, comes greater scrutiny. It has become apparent to me over the past 11 months that the wireless industry is not being viewed as the hyper-competitive industry that we are. To set the record straight there are currently more than 180 wireless service providers who compete in the U.S. An impressive 93 percent of Americans live in markets served by four or more operators, and a nearly ubiquitous 98 percent of Americans live in a market served by three or more operators. Whether urban or rural, American wireless consumers have choice and the power to exercise it. Clearly, wireless customers have a multitude of service providers to choose from in the wireless market, and as a result, receive more value for their wireless dollars. Last year, consumers increased their individual usage of voice minutes by 22 percent while paying 13 percent less per minute according to data released last week by the FCC's latest report

on competition in the wireless industry. And wireless customers are now using their phones for a multitude of new purposes—to take pictures, play games and music, and to exchange more than two billion text messages each month.

Customers not only have carrier choice, but also choice among service features. Accordingly, another potential choice we want to offer our customers is a wireless 411 service, but only for those customers who want their number listed. Many wireless customers, particularly those in small businesses who spend most of their workday away from an office and a landline phone, rely upon their wireless phone as their primary business line. We believe these customers would welcome the option of having their wireless numbers be made available in a 411 service. A survey conducted by the Small Business Administration in March of this year entitled "A Survey of Small Businesses' Telecommunications Use and Spending" confirms that wireless services are now used by 73% of small businesses, and 25% of all small businesses spend more for wireless services than they do for local and long distance telephone services combined. Unfortunately, those small businessmen and women who use their wireless phones as their primary business line currently have no other choice but to pay to have their number listed in the wireline phone directory if they have that option at all, which many do not.

Seeing this void in the marketplace, in February 2002, the wireless industry first contemplated the concept of providing its customers with a wireless directory assistance service. During the past two and a half years, CTIA serving in the role of a coordinator and six of the seven largest carriers: AT&T Wireless, Cingular, Sprint PCS, Nextel, T-Mobile, and Alltel have proceeded with a thoughtful approach to provide a service that our customers want and currently cannot receive.

Over 8 million Americans have "cut the cord" and use their wireless phone exclusively; many have no way to have their numbers listed and those that do must incur a cost. Unlike the traditional landline directory, which lists all customers by default, the wireless 411 service being developed will only include consumers who affirmatively choose to participate. Participating wireless carriers will ask their customers if they want their number included. If they do, these numbers can be added to the existing directory assistance database and be made available by the 411 operator to customers who specifically ask for it.

If a customer chooses not to be included, they will not have to do anything—the wireless 411 database will only include numbers that customers affirmatively add to the list—all other numbers are automatically excluded. The only way a number will be listed is if the customer specifically asks that it be made available. In addition, unlike the current wireline directory system, all of the national wireless carriers have indicated they will not charge customers who elect to remain unlisted.

A mutual concern of both the sponsors of H.R. 3558 and the wireless industry is the issue of a published directory. Let me put to rest any misperception that there will be a published directory associated with this service. Wireless numbers from this database will not be published in a directory. Additionally, the aggregated database of wireless numbers will not be sold to any third-party, nor will it be available anywhere on the Internet.

The wireless industry has historically advocated for strong privacy measures for its customers such as prohibiting the use of automated systems to dial wireless phone numbers and encouraging its subscribers to register their wireless number on the Federal Trade Commission's "Do Not Call" list. Likewise, privacy concerns are paramount in this initiative. We have attempted to make every assurance that there is no invasion to a customer's privacy as a result of their inclusion in this database. Moreover, consumers who choose to be listed will have an added protection against telemarketers because of the current restrictions on the use of automated dialers calling wireless numbers.

It is envisioned that the wireless 411 system will operate by having participating carriers contact their customers and offering them the choice of participating in the service. If they choose to opt-in, their wireless contact information will be confirmed by the carrier and sent to the database aggregator, Qsent, at which point Qsent will integrate that information with the opt-in listings provided by wireless customers of all of the carriers who support this service. By providing a single aggregated database for opted-in wireless listings, operators can make a single query to the Qsent database when a customer calls 411 (from either a wireline or wireless phone) to request a wireless listing. While in Congress, I was privileged to serve on this Committee and worked on several privacy-related bills dealing with spamming, slamming, cramming, Do-Not-Call, and the privacy title of the Gramm/Leach/Bliley Act. All of those bills were introduced as a result of bad corporate behavior. With the legislation we are discussing today, there has been no bad behavior; in fact, the behavior has been exemplary, as the wireless industry has sought to fashion the service in a manner most protective of customer privacy. Moreover, as I keep mak-

ing the point, the wireless industry is such a hyper-competitive business that if any carriers that choose to participate in a wireless 411 system betray the confidence of their customers, as sure as I am sitting here, those customers will vote with their feet and switch to another service provider.

We believe the wireless 411 service is yet another example of the efforts of wireless companies to provide their customers with choice. It will be opt-in only and participating carriers indicate there will be no charge for opting out. There will be no published directory, no Internet access to the numbers, nor will there be any third-party sale of the numbers.

The multitude of service and feature options and calling plans, better service for lower prices, free voicemail, caller ID, and 3-way calling are all competitive responses undertaken to satisfy consumer demand. Wireless 411 is one more attempt to provide a service to a growing number of wireless customers. We know the service may not be for everyone, but many have asked for it and we urge you to allow these ultra-competitive companies to offer the wireless 411 service as they propose. Customers truly are the ultimate regulators in a competitive market and they are capable and willing to decide for themselves whether a service is viable.

In closing, as someone who used to sit on the other side of this dais, I know the importance that your constituents place on protecting their privacy. I also know that the wireless industry has a proven track record of supporting legislation to protect its customers' privacy. My concern with H.R. 3558 is that it offers no more privacy protection than the wireless industry's own proposed 411 service, but if enacted, the legislation may deter future innovation and industry initiatives for fear government mandates will step in even before new services get off the ground.

I welcome any questions you may have.

Mr. BASS. Thank you, Congressman Largent.

Mr. Hammond.

**STATEMENT OF W. LEE HAMMOND**

Mr. HAMMOND. Chairman Barton and members of the committee, my name is Lee Hammond and I am a member of AARP's Board of Directors. On behalf of AARP and its 35 million members, thank you for inviting us here this morning to testify on H.R. 3558, the "Wireless 411 Privacy Act," introduced by Representatives Pitts and Markey.

AARP supports this legislation because it will maintain consumer privacy by giving cell phone owners a choice as to whether their cell phone number is included in a wireless directory, and will protect consumer pocketbooks by shielding them against charges for keeping it private.

The number of cellular or wireless telephone subscribers in the U.S. has grown substantially over the past decade, increasing from roughly 16 million in 1994 to 97 million in 2000, and to more than 160 million today. Many of these subscribers are older Americans. In fact, consumers age 50 to 64 are almost as likely as those age 18 to 49 to have cell phones. While consumers age 65 and older are somewhat less likely to have cell phones, cell phones are of growing importance to this age group as well.

In fact, cell phone users age 65 and older are most likely to say that security in case of an emergency is the main reason they have a cell phone. In contrast, younger cell phone users are most likely to list convenience as the chief reason they have a cell phone.

Privacy protection is a critical issue for cell phone users of all ages. While many subscribers to more traditional landline telephone service also want to keep their home numbers private, cell phone subscribers have additional incentives to do so. First, the privacy of wireless subscribers has always been safeguarded.

Therefore, many cell phone users now expect to receive calls only from those individuals to whom they have personally given their number.

Second, wireless service providers, unlike their landline counterparts, charge for incoming as well as outgoing calls. As a result, wireless users have to pay for any unwanted, incoming calls.

A recent study by the AARP Public Policy Institute, which surveyed wireless telephone users age 18 and older, confirms that cell phone owners place a high value on the privacy of their cell phone numbers.

As part of this survey, we asked cell phone subscribers whether they thought it was good or bad that there is currently no way for another individual to get their wireless phone number unless the respondent chooses to give it to them. Nine out of ten wireless phone owners of all ages said they thought this was a good thing. The consensus on this point is unequivocal.

We asked cell phone owners whether they would want to have their wireless phone number included in a Directory Assistance Data base so that others could locate their number. Only one in ten wireless phone owners age 18-49 indicated that they would want to be included in such a data base.

Far fewer of those age 50-64—6 percent—indicated that they would want to be included in a wireless directory, and among those age 65 and older, just 1 in 20—5 percent—said that they would want to be included in a Directory Assistance Data base. The consensus on this point is also clear and unambiguous.

Finally, we asked wireless phone owners to assume that a cell phone directory would in fact be compiled and then requested that they choose one of two options as the best method for creating a directory, opt-in and opt-out.

Respondents of all age groups overwhelmingly chose opt-in. They indicated that a wireless directory should only include the cell phone numbers of those wireless users who elect to participate. In fact, only about 6 percent of all cell phone owners selected the opt-out method as described in option #1. On this point as well, the consensus is clear cut and unmistakable.

This survey underscores the need for the bipartisan legislation, H.R. 3558 and S. 1963, introduced by Representatives Joseph Pitts (R-PA) and Edward Markey (D-MA) in the House and Senators Arlen Specter (R-PA) and Barbara Boxer (D-CA) in the U.S. Senate. AARP supports these bills and believes that consumers deserve the right to maintain the maximum amount of control over the disclosure of their wireless phone numbers.

In this regard, we are not convinced that wireless Directory Assistance can be managed in a manner that effectively safeguards customer privacy unless Congress creates legally enforceable rights to ensure that this occurs.

Some critics of H.R. 3558 and S. 1963 contend that these bills are unnecessary in a competitive wireless industry and make the point that most Americans live in a market served by three or more wireless providers. They argue that with competition in the marketplace will enable dissatisfied customers to simply take their business elsewhere.

One problem with this line of reasoning, however, is that many cell phone subscribers would have to pay a severe penalty to take advantage of other choices in their service area. In effect, they are trapped by long-term contracts. They include very high fees, $150, $175 or more for early termination.

The development of a wireless directory without sensible and effective privacy safeguards is not a risk worth taking. Congress should enact industry-wide privacy protections for cell phone subscribers now. Thank you.

[The prepared statement of W. Lee Hammond follows:]

PREPARED STATEMENT OF W. LEE HAMMOND, MEMBER, AARP BOARD OF DIRECTORS

Chairman Barton and Members of the Committee: My name is W. Lee Hammond and I am a member of AARP's Board of Directors. On behalf of AARP and its 35 million members, thank you for inviting us here this morning to testify on H.R. 3558, the "Wireless 411 Privacy Act," introduced by Representatives Pitts and Markey. AARP supports this legislation because it will maintain consumer privacy by giving cell phone owners a choice as to whether their cell phone number is included in a wireless directory, and will protect consumer pocketbooks by shielding them against charges for keeping it private.

The number of cellular or wireless telephone subscribers in the U.S. has grown substantially over the past decade, increasing from roughly 16 million in 1994 to 97 million in 2000, and to more than 160 million today. Many of these subscribers are older Americans. In fact, consumers age 50 to 64 are almost as likely as those age 18 to 49 to have cell phones. While consumers age 65 and older are somewhat less likely to have cell phones, cell phones are of growing importance to this age group as well. In fact, cell phone users age 65 and older are most likely to say that security in case of an emergency is the main reason they have a cell phone. In contrast, younger cell phone users are most likely to list convenience as the chief reason they have a cell phone.

Privacy protection is a critical issue for cell phone users of all ages. While many subscribers to more traditional landline telephone service also want to keep their home numbers private, cell phone subscribers have additional incentives to do so. First, the privacy of wireless subscribers has always been safeguarded. Therefore, many cell phone users now expect to receive calls only from those individuals to whom they have personally given their number. Second, wireless service providers, unlike their landline counterparts, charge for incoming as well as outgoing calls. As a result, wireless users have to pay for any unwanted, incoming calls.

A recent study by the AARP Public Policy Institute, which surveyed wireless telephone users age 18 and older, confirms that cell phone owners place a high value on the privacy of their cell phone numbers.

As part of this survey, we asked cell phone subscribers whether they thought it was good or bad that there is currently no way for another individual to get their wireless phone number unless the respondent chooses to give it to them. Nine out of ten wireless phone owners of all ages said they thought this was a good thing. The consensus on this point is unequivocal.

We asked cell phone owners whether they would want to have their wireless phone number included in a directory assistance database so that others could locate their number. Only one in ten wireless phone owners age 18-49 indicated that they would want to be included in such a database. Far fewer of those age 50-64 (six percent) indicated that they would want to be included in a wireless directory, and among those age 65 and older, just one in twenty (five percent) said that they would want to be included in a directory assistance database. The consensus on this point is also clear and unambiguous.

Finally, we asked wireless phone owners to assume that a cell phone directory would in fact be compiled and then requested that they choose one of two options as the best method for creating a directory. Option #1 was to have the wireless providers add every cell phone number to their directory and then give cell phone owners the ability to have their number removed upon request. Option #2 was to add only those phone numbers of wireless users who give their permission to do so. Respondents of all age groups overwhelmingly indicated that a wireless directory should only include the cell phone numbers of those wireless users who elect to participate. In fact, only about 6 percent of all cell phone owners selected the opt-out method as described in option #1. On this point as well, the consensus is clear cut and unmistakable.

This survey underscores the need for the bipartisan legislation—H.R. 3558/S. 1963—introduced by Representatives Joseph Pitts (R-PA) and Edward Markey (D-MA) in the House and Senators Arlen Specter (R-PA) and Barbara Boxer (D-CA) in the U.S. Senate. AARP supports these bills and believes that consumers deserve the right to maintain the maximum amount of control over the disclosure of their wireless phone numbers.

In this regard, we are not convinced that wireless directory assistance can be managed in a manner that effectively safeguards customer privacy unless Congress creates legally enforceable rights to ensure that this occurs. Some critics of H.R. 3558 and S. 1963 contend that these bills are unnecessary in a competitive wireless industry and make the point that most Americans live in a market served by three or more wireless providers. They argue that with competition in the marketplace, customers will simply take their business to a wireless provider who is willing to meet their needs.

Nevertheless, the existence of numerous competitors in the wireless telephone market does not necessarily ensure that consumers can choose among these competitors or freely switch providers. In fact, among all wireless subscribers who responded to a 2003 AARP survey, just 33 percent have ever switched companies to get a cheaper rate. Even fewer older respondents report that they have changed their wireless service provider.

The rate of consumer switching in the wireless industry contrasts dramatically with that of the long-distance telephone industry. According to another AARP survey released in 2000, 62 percent of consumers who made long-distance telephone calls said they had changed their long-distance company to get a cheaper rate. One explanation for the lack of customer turnover in the wireless industry is the fact that most wireless telephone companies require their customers to sign long-term contracts that include penalties of $175 or more for early termination.

Some in the wireless industry contend that the low turnover or "churn" rates are the result of overall customer satisfaction. However, AARP research suggests that the more consumers use their cell phones, the less satisfied they are with their service. More specifically, the heaviest cell phone users, who are generally in the best position to assess the overall quality of their service, are less likely to report being very satisfied with their service. When these cell phone users were asked why they remain with their current provider despite a low level of satisfaction, the most often-cited reason was that they wanted to avoid paying an early termination fee.

The development of a wireless directory without sensible and effective privacy safeguards is not a risk worth taking. The consensus on this point is unequivocal. Congressional action is necessary. In this regard, we appreciate the work of the sponsors of H.R. 3558 and this Subcommittee for their leadership in crafting legislation that ensures consumers have a choice as to whether their cell phone number is included in a wireless directory and protection against charges for keeping it private. We urge you to enact industry-wide privacy protections for cell phone subscribers now. The industry is poised to implement a wireless directory assistance service; Congressional action could not be timelier.

Mr. BASS. Thank you, Mr. Hammond.

Mr. Cox.

## STATEMENT OF PATRICK M. COX

Mr. COX. Thank you, Mr. Chairman. Good afternoon. I am Pat Cox. I am the CEO of Qsent. I would like to comment today on the wireless 411 service being proposed and talk about some of its affects on privacy and how the service will work as well.

Qsent has been selected by six of the largest wireless carriers to aggregate and provide a secure dynamically controlled privacy protected data base solution for voice-based 411 services today. The service will be designed to provide privacy control and consumer choice or opt-in. Clearly all the concerns I have heard today really are being absolutely addressed by the industry.

We believe it is important that the offering be nationwide. We believe it is important to make the offering not a mobile directory per se but be put as part of the basic 411 service infrastructure that exist today so when any user calls 411 they can get access to

wireless subscriber information when and only when and if that wireless subscriber has decided they want to include their information.

Those 10 percent, and some studies have indicated as high as maybe 60, but those 10 percent of the current subscribers today that want to be in this data base, want to be in the solution, it is highly important for them. I happen to be one of those folks could really take advantage of being included in the directory. I understand most of you out there don't see the value personally. I get it. I fully get it.

And because of that it would be a complete train wreck for the industry to start a service offering with all of you in the data base. Could you imagine the backlash? It is just not going to happen. All these fears that are being talked about just aren't realistic. They aren't realistic in terms of the business and legal liability associated, let alone customer goodwill and satisfaction.

We fundamentally believe there are four pieces here that need to be met with clearly. That is, the right to choose, opt-in. This will be an opt-in service. The second, the right to change. Something I haven't heard mentioned here but this is a major part to think about. If a consumer decides they are no longer desiring to be in the data base, they can make a phone call, go to the web, go to a store, and say, "Take me out." That night they are out.

Show me another industry that has that kind of real-time access to privacy control. This is an 80-year tradition in the telephone industry to be able to provide real-time access and control of your privacy. Not only that, with directories such as this you can say, "Don't include my address," or "Don't include my first name." A lot of folks put their husband's name in but not their name if they are widowers or whatever it might be.

There is a lot of control over how information is displayed. Specifically, Qsent's job in this project is to make sure that no lists are created so that the lists don't get in the hands of telemarketers, lists don't go in the wrong place. And also to label numbers as wireless because there are a lot of great protections.

There are at least four laws that have been enacted by you that protect the consumer's right to not be bothered by telemarketers and be spammed to, but they have got to be marked wireless.

The current directory today does not mark phones as wireless. This proposed service does. It allows greater protections than is being afforded currently.

The last piece, the right to security and the right to do it without cost. Really important that there will no fees to be in, no fees to be out. This is an industry standard proposition.

I would say on the chart that the CTIA put up here is a very important point. Wireline companies can and do take money, $3 or $4 a month, from wireless subscribers today to be in a directory. Such large landline companies as Verizon provide this as an opportunity but companies like Sprint or T-Mobile who don't have large landline operations can't do these types of things.

Hopefully that can shed some light possibly on why it makes sense for some carriers to play in an environment where they can charge $3 or $4 a month to be listed in a directory and other car-

riers don't want to because they don't have the landline opportunity. They don't print phone books and don't provide that.

I think it is really clear there is a lot of value, an extreme amount of value in the 411 directory. Eighty percent of landline participants opt-in to the directory. They are included. Clear consumer need. It solves a big problem.

The specific problem I have in the last 30 seconds I want to cover is clearly this is not a philosophical argument as to why we don't want legislation. It is because simply we agree upon privacy but it starts getting down to the fine print, just like the contracts that were pointed out earlier, such as this is a call-forwarding service only and defining how that works, or blocking numbers. Those types of technological decisions and technology choices will put companies like this gentleman's out of business. It is going to have unintended consequences. It restricts the ability for investment by the investment community in value-added services, new products, new features, and new benefits. I believe today it is very, very clear that the services will be handled in an appropriate manner.

[The prepared statement of Patrick M. Cox follows:]

PREPARED STATEMENT OF PATRICK COX, CHIEF EXECUTIVE OFFICER, QSENT, INC.

Good afternoon, Mr. Chairman and Members of the Committee. Thank you for inviting me to testify on Senate Bill S. 1963, the "Wireless 411 Privacy Act". My name is Patrick Cox and I am CEO of Qsent, Inc. Prior to founding Qsent, I was the founding CEO of MetroOne Telecommunications, Inc., the first independent operator services company to provide 411 services to wireless phone users.

I am here today because Qsent was selected by 6 of the nation's leading wireless carriers to facilitate the delivery of wireless directory assistance information through the existing 411 providers, the Operator Services Companies (OSCs). Simply stated, Qsent was selected because these large, diverse, fiercely competitive companies trust us with one of their most important assets: customer listing information. In our current business, we've demonstrated our commitment to consumer choice and privacy as well as our ability in managing highly secure services. My company's background and expertise makes us uniquely qualified to work with the wireless carriers and their associated OSCs in making the Wireless 411 Service a success from the consumer's perspective.

Mr. Chairman, you and the other members of this Committee have been leaders in adapting our laws to meet the changing needs of the information age. You recognize the importance of creating an environment where new technologies can be adapted to provide consumers with more and better services without compromising their rights and privacy. I am concerned that by adopting this legislation, you may stall technology growth and limit new consumer and business services that provide real value. I applaud your commitment to privacy, and at the same time I believe this legislation, and the bill before Governor Schwarzenegger in California, are based on fundamental misconceptions about the Wireless 411 Service. The legislation outlines "fixes" to problems that do not and will not exist, and in doing so, will restrict consumer choice in unintended ways.

THE WIRELESS 411 SERVICE

The Wireless 411 Service is designed to be the consumer-choice and privacy-protected inclusion of wireless listings in the national 411 infrastructure, making wireless numbers available in the existing 411 service. In fact, it will not be a directory like standard 411, but based upon a dynamic privacy-protected database accessible only in real-time for each 411 inquiry by the operator. The service is not yet available, but the following describes the fundamental design principles.

Subscribers will be able to pre-authorize (opt-in) through their carrier, the availability of their wireless phone number information for 411 purposes. It is expected that individuals will be able to choose to participate in the Wireless 411 Service at any time.

If the individual chooses to opt into the Wireless 411 Service, their carrier will make their listing information available for the privacy-protected database. When a wireless number inquiry is made, the data aggregator (Qsent) will provide the car-

rier's Operator Services Company (OSC) access to the data. The OSC will neither temporarily store nor permanently retain the subscriber information.

If an individual chooses not to opt into the Wireless 411 Service, their listing will not be made available in the privacy-protected database. If no decision is made by the consumer to opt-in, the individual is automatically opted out. It is critically important to the success of this service that it begins with no participants and grows only as individuals explicitly opt-in. There is far too much business risk to the carriers and privacy risk to individuals for it to work any other way.

Individual carriers will be responsible for outlining services and options to subscribers, managing the opt-in process and providing Qsent with the approved wireless phone number information. With their greatest asset on the line—customer trust—there are huge incentives to follow this course.

Qsent will collect opt-in wireless listing data from participating carrier data sources and provide the information through each carrier's selected OSCs—the same OSCs that provide landline 411 today. The information will be placed into Qsent's dynamic privacy-protected database and will only be accessible by an OSC in response to a real-time customer query for an opted-in wireless number.

Qsent will not create or allow to be created a wireless phone number directory, either printed, electronic or online, in whole or in part. Measures are in place, such as employee training and technical controls to ensure that no printed, electronic, or online directory is created.

PRIVACY

Protecting Privacy is a fundamental requirement for Qsent's business and for the Wireless 411 Service. We not only focus on privacy because it is the right thing to do, but also because it is good business practice. Wireless carriers have a crucial valuable asset, the trusted relationships they build with their customers. The Wireless 411 Service will strongly support this relationship. In services such as Wireless 411, consumer participation is an important factor for success. Building trust through strong privacy principles substantially increases the likelihood that individuals will participate. We understand how privacy is personal to each of us, to our family, to your constituents, and to our customers. We've designed all Qsent services, including the Wireless 411 Service, with a foundation of privacy protection. The Wireless 411 Service provides the wireless carriers with the ability to assure consumer trust. Qsent believes the following principles are critical to a successful Wireless 411 Service and are designed into the foundation of the solution.

*The right to choose.*

- A Wireless 411 Service privacy policy will be made available to customers in plain-English—not legalese.
- Customers must opt-in to have their phone number included in the service.

*The right to change your mind.*

- Customers may choose to have their number removed from the service at any time. When they do this, no residual uniquely identifiable information will remain (as a result of having been part of the service) anywhere within or outside of the service.

*The right to security.*

- Customer data residing in the Wireless 411 Service privacy-protected database will be disclosed only for the purpose of providing voice-accessed 411 services, and will not be disclosed in either printed or electronic form.
- A method will be provided for customers to have their numbers removed from the service or to register complaints about the service.
- Opt-in requires authorization of an account owner who is 18 years of age or older.

*The right to exercise these fundamental choices at no charge.*

- Qsent does not charge carriers for storage of listings, additions, or deletions. Additionally, we understand that each participating carrier will not charge for such services.

These four fundamental principles are built into all Qsent practices, into the Wireless 411 Service and into the provision of Wireless 411 Services at the OSCs. Qsent will make consumers' listing information available only as part of a real-time, individual query initiated by the delivery of 411 service. There will never be a bulk distribution of uniquely identifiable information. The OSCs will not store or retain the data. These efforts enable individuals and enterprises to control how personally identifiable information is disclosed to third parties in a clear and simple way.

CONSUMER BENEFITS

Today, about 80% of consumers choose to have their landline phone numbers listed in a directory, and there are many who now voluntarily list their cell phones as well. Clearly, there is a strong value to them in doing so, whether that value is business or personal. Further, in an increasingly electronic economy, directories are what enable networks like the Internet and email to operate efficiently, and for consumers and businesses to gain the most value from them. Most importantly, directories play a key role in helping people stay connected. The Wireless 411 Service is an example of how traditional directories will evolve to deliver these same benefits in a way that protects privacy and preserves consumer choice.

According to the FCC, of the 165 million cell phone users in the U.S. today, 20% consider their wireless phone to be their primary communications device, with 5 million reporting that their mobile phone was their only phone. And even more astounding, half of all telephone subscriptions in the U.S. this year will be mobile phones. Given the growth and dependency on wireless devices, a Wireless 411 Service will meet the growing demands of those subscribers who want such a service and specifically choose to participate.

For business people, particularly small business owners who are mobile such as real estate professionals, contractors and consultants, the benefit is clear. For personal safety, consumers may also choose to participate in order to be contacted in an emergency situation wherever or whenever it occurs. This could be a teenager searching for a parent's forgotten cell number after a roadside accident or a frantic parent in a emergency trying to contact a child who is with a friend's family.

Finally, for the large and growing number of individuals, particularly young people for whom their cell phone is their only phone, participating in the Wireless 411 Service will be their means for people to find them—their means to be both mobile and available, if they so choose.

So why don't more wireless subscribers choose to be listed in traditional 411? The answer; it's difficult, costs money and opens them up to unwanted calls because it isn't privacy protected. In fact, a telemarketer who gets a directory today has no way of knowing which listings are cell phones if they want to specifically avoid calling them. With the Wireless 411 Service, the consumer benefits are realized while the negative consequences have been designed out.

LEGISLATION

Let me share with you my thoughts on the proposed legislation specific to what I expect to be the practical affect on consumers and businesses.

The Wireless 411 Service is a natural evolution of an increasingly pervasive technology. The idea of adding the capability for a cell phone user to call 411 for service assistance in reaching another subscriber who has chosen to be listed seems a natural course in the innovation of wireless technology. The design of the Wireless 411 Service was developed with consideration for the existing consumer privacy laws already in place.

Today, there are a number of consumer privacy laws designed for landline phones that cross-over to protect wireless consumers. These include: the National Do Not Call Registry, CAN SPAN Act of 2003 and the Telephone Consumer Protection Act of 1991 (TCPA). As of June 2004, 62 million numbers were on the Do Not Call list. This has proven to be an effective means to screen out telemarketing calls. The TCPA prohibits all autodialed calls to wireless phones, whether it is a marketing call or not. The CAN SPAM Act and the rules recently promulgated by the FCC prohibit unsolicited commercial messages to wireless phones and pagers, providing yet another layer of protection for the consumer. The Wireless 411 Service is compatible with, and in fact can help with the compliance of these laws.

Section (C) CALL FORWARDING of the Wireless 411 Privacy Act appears to be an attempt to ensure that callers only receive desired calls, but the method mandated in this legislation will not allow that to occur. First, accepting or rejecting the notification of an unwanted call is no less invasive than receiving the call but not taking it. Second, there is no method or technology available to effectively authenticate the identity of the caller; therefore, it would be relatively easy for someone to claim a false identity in order to get through. The inability to authenticate the true identity of a caller to a cell phone stems from the fact that there is no technology that displays the Caller ID name for an incoming call to a cell phone. The name can only be displayed if the name already exists in the personal address book in the cell phone. Therefore, there is no way to notify the user of the caller's identity before the call goes through. Third, certain state PUC regulations may require detailed call billing. If the goal of call forwarding is to obscure the number, that

couldn't be accomplished because the wireless number would appear on the call detail reports.

Eventually, many technology companies will develop competing products that will allow you to only receive calls from certain people or allow the true integration of caller ID for cell phones. Consumers have the right to choose these service offerings. Consumer choice should not be constrained by Congressional legislation.

The Wireless 411 Service will have a dynamic privacy protected database from which no printed or electronic directory will be created. However, the pending legislation calls for the prohibition against any future published directory. I do not believe this service should be strictly prohibited through legislation simply because subscribers themselves may find that they want to put their wireless phone number in the white or yellow pages, as millions of businesses do today.

CONCLUSION

We've designed the Wireless 411 Service to ensure that consumers know their information will be secure and private. Most importantly, the greatest protection a consumer can have is personal choice. The Wireless 411 Service will provide this. The legislation before us today will stifle innovation and limit consumer choice while not adding any real privacy protection.

Thank you.

Mr. BASS. Thank you, Mr. Cox.

Mr. Ahn.

## STATEMENT OR SUNNY K. AHN

Mr. AHN. Thank you, Mr. Chairman, members of this committee. I appreciate the opportunity to testify before you today on the topic of Wireless Directory Assistance. My name is Sunny Ahn and I am the CEO of Context Connect.

Over the past 4 years Context Connect has developed, patented, and continues to improve upon an innovative set of technologies that together provide a privacy-based platform for DA services. Our technologies give consumers a portfolio of choices in providing them not only with privacy, but with control of their DA services as well.

We have worked with telecommunications carriers, enterprises, and other service providers in the U.S., Europe, and the Asia Pacific regions. As such, I would like to share with you some of our thoughts and experiences to date.

Let me start by addressing the core issue of privacy and how it relates to Directory Assistance directories. One of the problems that I continue to see in our industry today is how we use the word "privacy" without making the distinction between privacy and control, which are two very different things and are both important.

Privacy, in the context of Directory Assistance, constitutes protecting consumers' personal information, in particular not revealing one's phone number or name and address information without their permission. Control, on the other hand, is the means by which we manage our connectivity: that is, determining how, when and who can contact us via a directory service, whether one's personal information is kept private or not.

There is technology today that addresses both the privacy and the control aspects of Directory Assistance. For example, subscribers can create directory listings that protect their personal information.

Masking technology on the consumer's phone number is available on two levels.

One, at the time of a Directory Assistance inquiry where the call center agent does not reveal the phone number and the second on a monthly billing record.

On the latter point, masking technologies that protect consumer numbers from becoming public information are currently in use and commonly accepted. For example, technology that protects consumers' credit card or bank account numbers mask all but 4 of the 16 digits on paper receipts, websites or other places where the information might be captured. One caveat is that there are regulatory, financial and integration challenges that will certainly have an impact on whether this aspect of masking can be reasonably accomplished and these should not be overlooked.

Subscribers can also protect or mask their name and physical address. This "name and address" information can be protected by use of a domain-name service for mobile devices. This concept is similar to the way individuals create e-mail addresses or URLs for websites. Subscribers can choose how they want to be listed, whether it is professional, personal or private in nature, based on their relationships with people, rather than having to use their names and physical addresses.

Technology allows individuals to create single or multiple directory listings according to their own parameters about how they want to be located.

For example, my business colleagues could dial 411 and contact me using the listing "Sunny at Context Connect." Or, my friends could call me at "Sunny at the Newburyport Tennis Club." In both cases, the caller does not have access to either my phone number or my "name and address" information unless I decide to reveal it.

Technology also gives consumers control over how they want to be connected. For example, consumers can choose how they receive their Directory Assistance calls, either through a directly connected voice call, a text message, or a call completed through a third-party partner. We can also allow individuals to accept, decline, or redirect calls to another device such as a land-line phone, voice mail or even e-mail.

Some of these services can be provided where the subscriber does not have to use their own minutes to receive a Wireless Directory Assistance call. We can also provide choices as to when people choose to be contacted via Directory Assistance, say only before 5 p.m. on weekdays.

And last, we can not only provide consumers with choices regarding who can reach them via a directory service, but we can even allow them to revoke that capability at some point in the future without their privacy ever being compromised. My point here is to establish that technology is already available that can ensure consumers privacy over their personal information while providing them with options to control how they want to be contacted if they elect to be included in a Wireless Directory Assistance Service directory.

In addition, these technologies continue to evolve rapidly; many of these were not even available when this legislation was first proposed last November. In our experience working on Directory Assistance services in the U.S. and around the globe, there is no

question that consumers are strongly demanding more efficient ways to connect.

I would like to reference the latest study by the Pierz Group that was conducted in August 2004. According to that study, if wireless services were currently constructed with consumer protections similar to the traditional Directory Assistance fixed line services, only 11 percent of wireless subscribers would participate by listing themselves in that directory.

However, if a Wireless Directory Assistance Service included even a basic level of privacy and control features, participation would increase to over 50 percent. And, if consumers were offered comprehensive privacy protections, estimated participation would increase even further to over 60 percent.

These survey findings are very consistent with our own experience in the U.K. and New Zealand where the majority of mobile subscribers would participate with appropriate privacy tools. Interestingly, in the UK, where 40 percent of fixed line customers have chosen to not be included in the Directory Assistance directory, nearly 50 percent of them would actually come back into the directory if basic privacy and control tools were given.

The key here is if marketed as a mobile directory service a high penetration of subscribers would be needed in the director. However, other niche directory services could exist and succeed if marketed appropriately as we have seen in the UK in other European countries.

Another proof point of the receptivity of the market to offering a suite of privacy control options has to do with the experiences of one of our customers who has successfully implemented a DA service including wireless phone numbers. That customer is focused on providing directory services to a large vertical market most of who use mobile phones.

Mr. BASS. Mr. Ahn, can you wrap it up?

Mr. AHN. Sure. Well, in conclusion, it is clear from the market research conducted to date that there is a strong market need and demand for Wireless Directory Assistance Services. Annually, billions of calls are already placed in the U.S. through existing directories. However there is no single Directory Assistance service that is appropriate for everyone. The key, therefore, is to construct these services in a way that gives control to the consumer and that provides a viable directory for all concerned. Thank you.

[The prepared statement of Sunny K. Ahn follows:]

PREPARED STATEMENT OF SUNNY K. AHN, CEO, CONTEXT CONNECT

Thank you Mr. Chairman and Members of this Committee. I appreciate the opportunity to testify before you today on the topic of Wireless Directory Assistance. My name is Sunny Ahn and I am the CEO of Context Connect, Inc.

Over the past four years Context Connect has developed, patented and continues to improve upon an innovative set of technologies that together provide a privacy-based platform for Directory Assistance Services. Our technologies give consumers a portfolio of choices in providing them not only with privacy, but with control of their directory services as well. We have worked with telecommunications carriers, enterprises, and other service providers in the United States, Europe, and the Asia Pacific regions. As such, I would like to share with you some of our thoughts and experiences to date.

PRIVACY VS. CONTROL

Let me start by addressing the core issue of privacy and how it relates to Directory Assistance directories. One of the problems that I continue to see in our industry today is how we use the word "privacy" without making the distinction between privacy and control, which are two very different things and are both important. Privacy, in the context of directory assistance, constitutes protecting consumers' personal information, in particular not revealing one's phone number or "name and address" information without their permission. Control, on the other hand, is the means by which we manage our connectivity: that is, determining how, when and who can contact us via a directory service, whether one's personal information is kept private or not.

AVAILABLE PRIVACY AND CONTROL TECHNOLOGIES

There is technology today that addresses both the privacy and the control aspects of Directory Assistance. For example, subscribers can create directory listings that protect their personal information. Such technology enables a call to be placed through a Wireless Directory Assistance Service without requiring or revealing the call recipient's phone number.

Masking technology on the phone number is available on two levels: one at the time of a Directory Assistance inquiry where the call center agent does not reveal the phone number and the second on a monthly billing record. On the latter point, masking technologies that protect consumer numbers from becoming public information are currently in use and commonly accepted. For example, technology that protects consumers' credit card or bank account numbers mask all but four of the sixteen digits on paper receipts, websites or other places where the information might be captured. One caveat is that there are regulatory, financial and integration challenges that will certainly have an impact on whether this aspect of masking can be reasonably accomplished and these should not be overlooked.

Subscribers can also protect or mask their name and physical address. This "name and address" information can be protected by use of a domain-name service for mobile devices. This concept is similar to the way individuals create email addresses or URLs for websites. Subscribers can choose how they want to be listed, whether it is professional, personal or private in nature, based on their relationships with people, rather than having to use their names and physical addresses. Technology allows individuals to create single or multiple directory listings according to their own parameters about how they want to be located. For example, my business colleagues could dial 411 and contact me using the listing "Sunny at Context Connect." Or, my friends could call me at "Sunny at the Newburyport Tennis Club." In both cases, the caller does not have access to either my phone number or my "name and address" information unless I decide to reveal it.

Technology also gives consumers control over how they want to be connected. For example, consumers can choose how they receive their Directory Assistance calls, either through a directly connected voice call, a text message, or a call completed through a third-party partner. We can also allow individuals to accept, decline, or redirect calls to another device such as a land-line phone, voicemail or even email. Some of these services can be provided where the subscriber does not have to use their own minutes to receive a Wireless Directory Assistance call. We can also provide choices as to when people choose to be contacted via Directory Assistance, say only before 5pm on weekdays. And lastly, we can not only provide consumers with choices regarding who can reach them via a directory service, but we can even allow them to revoke that capability at some point in the future without their privacy ever being compromised.

My point here is to establish that technology is already available that can ensure consumers privacy over their personal information while providing them with options to control how they want to be contacted if they elect to be included in a Wireless Directory Assistance Service directory. In addition, these technologies continue to evolve rapidly; many of these were not even available when this legislation was first proposed last November.

In our experience working on Directory Assistance services in the U.S. and around the globe, there is no question that consumers are strongly demanding more efficient ways to connect. I would like to reference the latest study by the Pierz Group that was conducted in August 2004.

According to that study, if wireless services were currently constructed with consumer protections similar to the traditional Directory Assistance fixed line services, only 11% of wireless subscribers would participate by listing themselves in that directory. However, if a Wireless Directory Assistance Service included even a basic level of privacy and control features, participation would increase to over 50%. And,

if consumers were offered comprehensive privacy protections, estimated participation would increase even further to over 60%.

These survey findings are very consistent with our own experience in the U.K. and New Zealand where the majority of mobile subscribers would participate with appropriate privacy tools. Interestingly, in the UK, where 40% of fixed line customers have chosen to not be included in the Directory Assistance directory, nearly 50% of them would actually come back into the directory if basic privacy and control tools were given.

Another proof point of the receptivity of the market to offering a suite of privacy and control options has to do with the experience of one of our customers who has already successfully implemented a Directory Assistance service that includes wireless phone numbers. That customer is focused on providing directory services to a large vertical market segment, most of which use mobile phones. Because they were able to mask the phone numbers and provide additional privacy and control features, nearly 75% of all their prospects that have heard of the service have opted to be included in the directory. While this service provider is not restricted with regulatory and industry coordination challenges, this further demonstrates that when marketed appropriately, privacy and control tools can increase the participation within a directory and ultimately improve the usefulness of that directory to consumers.

CONCLUSION

In conclusion, it is clear from the market research conducted to date that there is a strong market need and demand for Wireless Directory Assistance Services. Annually, billions of calls are already placed in the U.S. through existing directories. However there is no single Directory Assistance service that is appropriate for everyone. The key, therefore, is to construct these services in a way that gives control to the consumer and that provides a viable directory for all concerned.

Subscribers have very legitimate and important privacy concerns. Most of us sitting here in this room use a wireless phone. We recognize that the continued confidentiality of personal information and control on when, where and how each of us want to be connected to is a very personal concern. Subscribers should and can have the ultimate decision on what personal information goes into a directory, if any. Context Connect and other companies have technologies that can address these concerns thoughtfully, carefully and with flexibility. As the market and these technologies continue to evolve, we need to allow flexibility for industry participants to move quickly to meet and exceed the demands of consumers who are increasingly knowledgeable and sophisticated in their technology purchases.

Context Connect supports providing the most comprehensive privacy and control features available, and also highly encourages innovation and progress within our industry to ensure maximum customer satisfaction.

Mr. BASS. Thank you.

The Chair recognizes himself for a round of questions. Steve, what is wrong with just legislating your proposed scheme there that you have?

Mr. LARGENT. Well, if you just look at the legislation that came out of the Senate Commerce Committee, what has been portrayed as a simple solution, a no-brainer, is really much more complex than that. The fact is, Mr. Chairman, that this industry is highly competitive. It is highly innovative. It continues to offer new and better services.

One of the comments that was made is that it is hard to get out of contracts. The fact is that there are many companies that are offering prepaid phones where you don't have to have a contract. They are offering service with no contractual obligation.

It was also mentioned that this is a service that you have to pay for incoming calls. Not true. Most companies are offering plans where you don't have to pay for incoming calls. That is also a nonissue. But it highlights the point that the industry continues to evolve and offer new and better services.

What legislation like this does, it basically puts a regulatory straightjacket on an innovative industry. It has the potential of

killing a company like Sunny Ahn, that you just heard from on this very panel, to offer new and innovative services through 411 service. And so that is part of it.

Another thing, again, going back to the Senate bill, I mean, you talk about this should be a simple solution. It is not. They put masking provisions in there so that you can't put down the phone numbers that are now mandated on phone bills of who you called or who called you. You want to say that you want all those numbers masked that you are now mandated to put on there if they happen to be customers who want to opt-out of 411 service.

Now you have really got to put together a data base of all customers whether they opt-in or opt-out so you can figure out who is in and who is out so that you can mask those numbers on the phone bill of those people that are out. It becomes very complex.

Mr. BASS. I guess I'll repeat it. Is there any problem besides—your response was you need flexibility to provide innovation. Is there any problem with legislating what you have suggested as your current policy? What ways would you change that would make it better?

Mr. LARGENT. There would be no problem—I would tell you there is no problem whatsoever legislating what we are proposing today. But I can't tell you what this might look like without legislation as it continues to grow and move forward and become robust and a richer experience for our consumers.

But I can tell you that if you legislate our proposal today, you freeze us in place and you lock out technology companies like Sunny's. We have seen that time and time again. It has an incredible chilling affect on our ability to offer new and more innovative services in this industry which we have proven time and time again to do.

Mr. BASS. Mr. Ahn, would legislating Mr. Largent's proposal there put you out of business?

Mr. AHN. Well, there are obviously a number of service providers that are out there. In fact, I would characterize them as certainly a main focus of our business, the carriers, but there are service providers that are out there. They are just dying to get into the directory space because of legislation, you know, whether it is available or not. But I think we do have opportunities throughout but certainly carriers are one of our key constituents in terms of focus.

Mr. BASS. Would enactment of legislation along the lines of Mr. Largent's proposed scheme put you out of business?

Mr. AHN. I think for the carriers with an industry-based solution that would be a difficult thing for us to follow, correct.

Mr. BASS. Mr. Largent, you said that contracts are different. That is true. Is it not true, though, that most wireless subscribers lock themselves into a fixed term because they don't want to pay as much cash for the handset or whatever other benefit is offered. Under your proposal there how would—if you have a 2-year contract and you are paying a low price for the handset or whatever other benefit, free calling and so forth, how could you get out of a contract without significant expense and bother if you found out that the wireless company was going to list your name in a directory?

Mr. LARGENT. Well, the voluntary consumer code that all of our major companies have participated in actually allow for customers to get out of their contract if the carrier changes the terms of those contracts.

Mr. BASS. But the terms currently say you can list their names without their consent, many of these contracts. Is that not correct?

Mr. LARGENT. That is correct.

Mr. BASS. They would have their name listed. What percentage of the wireless contracts do you think have that phraseology in it?

Mr. LARGENT. You know, I'm not sure what the percentage would be, Mr. Chairman. But, again, we're talking about the world that we are proposing and the world as we know it today. The fact is that the proposed world that we are debating today is about a total opt-in service.

Mr. BASS. One question is how easy would it be for customers to opt-out under your proposal? Would it take time if they wanted to?

Mr. LARGENT. The gentleman that handles the technology side of that, it would be almost instantaneous.

Mr. BASS. Okay.

Mr. LARGENT. Can I say one other thing, Mr. Chairman? You asked what is the problem. Our proposal actually goes further than the bill that is under consideration meaning that the bill language today says if you are a new customer, you have to opt-in. If you are an existing customer, you have to opt-out. We are saying it is total opt-in.

If you are a new customer or if you are an existing customer, we are going to ask you to opt-in into this service or else you are automatically opted-out. Just the opposite of the current landline situation where you are automatically in unless you proactively opt-out and have to pay for it.

Mr. BASS. What is your observation about the possibility that companies might change this contract language involving the use of their name for directory if no law is passed? If we past no legislation, what is your best bet as to whether or not the wireless companies would be willing to take that language out?

Mr. LARGENT. That is an excellent question. In fact, that was one that was posed by Chairman Barton and Chairman Upton, as well as Chairman McCain in the Senate. They polled our CEOs and asked that very question, "What is your intent on this language and on the opt-in provision that you are proposing?" They got responses from the participating carriers. Again, Verizon is not participating. But of the participating carriers the other six major carriers in the country both responded to the letter and they all said that they would impose opt-in.

Now, you can say there are 170 different carriers. That is true but the carriers that we are talking about represent more than 90 percent of all the cellular customers in the country today.

Mr. BASS. I have here responses from the companies that without objection I would like to include them in the record. I have no further questions.

[The material follows:]

Gary D. Forsee
Chairman and Chief Executive Officer

KSOPHF0410-4A173
6200 Sprint Parkway
Overland Park, KS 66251
Voice 913 794 1100
Fax 913 794 1113
gary.forsee@mail.sprint.com

September 20, 2004

The Honorable John McCain
Chairman
Senate Committee on Commerce,
Science and Transportation

The Honorable Joe Barton
Chairman
House of Representatives Committee on Energy and Commerce

The Honorable Fred Upton
Chairman
House of Representatives Subcommittee on Telecommunications and the Internet

Dear Chairmen:

Thank you for your interest in Wireless Directory Assistance (WDA). Provided below are responses to the questions you asked in your letter to me dated September 15, 2004.

As you are aware, there are more wireless telephone users now than any time in history. Many wireless users, both residential users and businesses, wish to make their wireless telephone numbers available to others through directory assistance. Currently, there is no convenient method in place for wireless users to do that. To meet subscriber demand, Sprint is considering offering WDA. Although Sprint's plans in this area are not yet finalized, Sprint commits that the following points will be at the core of any offering.

Question 1. If you offer wireless directory services, will your subscribers be given a choice of whether to have their numbers(s) listed in a directory or not? If so, how would they exercise such choice (i.e. opt-in or opt-out), and would it vary depending on whether it was a new existing subscriber making the choice?

**Answer:** Wireless numbers will only be made available to WDA if a specific customer directs Sprint to make them available. This opt-in method will apply to both existing subscribers and to new subscribers. Subscribers' telephone numbers will <u>not</u> be made available to WDA, by default. In addition, subscribers will be able to revoke their opt-in consent at any time.

Question 2. Do you plan to charge subscribers to keep their wireless number(s) unlisted?

**Answer:** Sprint does not plan to charge existing or new subscribers for keeping their number out of WDA listing. Also, Sprint has no plans to charge existing or new subscribers to remove their listing from WDA.

Question 3. Are your current terms of service with customers consistent with your responses to questions 1 and 2?

**Answer:** Subscriber consent will not be obtained through service contracts. Sprint's current subscriber contracts do not specifically address WDA. In all cases, subscribers will have to specifically direct Sprint to make their numbers available to WDA before Sprint will do so. Even if an older version of Sprint's service contract references directory assistance, Sprint will adhere to the commitments listed in response to questions 1 and 2.

Sprint believes that carrier WDA plans are consistent with important privacy objectives and will increase customer choices. Absent an effective opt-in WDA approach as Sprint has outlined above, inter-modal competition will be harmed and customers who only have a wireless phone and want to be reached will be needlessly out of touch. If you have any questions regarding this response or require further information, please contact Bill Barloon at 202-585-1928.

Sincerely,

Gary D. Forsee

T-Mobile

T-Mobile USA, Inc.
12920 SE 38th Street, Bellevue, WA 98006

September 20, 2004

The Honorable John McCain
U.S. Senate
241 Russell Building
Washington, DC 20510

The Honorable Joe Barton
U.S. House of Representatives
2109 Rayburn Building
Washington, DC 20515

The Honorable Fred Upton
U.S. House of Representatives
2161 Rayburn Building
Washington, DC 20515

Dear Chairmen McCain, Barton, and Upton,

This letter responds to your request for information about T-Mobile's efforts to offer subscribers the opportunity to list their wireless numbers in an electronic 411 directory, set forth in your letter dated September 15, 2004. T-Mobile USA, Inc. and a number of other wireless carriers, with the assistance of the Cellular Telecommunications & Internet Association, are in the process of creating 411 service for wireless subscriber phone numbers. First, I'd like to provide you with an introduction to T-Mobile.

T-Mobile is one of the fastest growing nationwide wireless service providers, offering digital voice, messaging, and high-speed wireless data services to more than 15.4 million customers in the United States. A cornerstone of T-Mobile's strong consumer appeal has been its Get More® business strategy to provide customers with the best overall value in their wireless service. T-Mobile has more than 22,000 employees across the country dedicated to delivering on its Get More® strategy to provide customers with more minutes, more features, and more service. These efforts were recognized in the J.D. Power & Associates' 2004 U.S. Wireless Regional Customer Satisfaction Index Study, in which T-Mobile received the highest rankings in all six regions of the country. Mobile professionals and homeowners, including those who have replaced their traditional wireline phone with a wireless phone, have expressed a desire to have their wireless numbers listed in a wireless directory. T-Mobile plans to offer this compelling service to customers who request it and, in so doing, is working with other wireless carriers and the CTIA to design this service to meet our customers' expectations of privacy. (It is worth noting that some landline carriers may not be as eager to provide wireless customers who have "cut the cord" with the opportunity to be listed in a wireless directory.)

As a result of our Get More® commitment, one issue has remained foremost in T-Mobile's mind throughout the design and development of wireless 411 service -- the privacy expectations of our subscribers. To that end, T-Mobile is working to ensure that the design of the database of wireless numbers contains privacy protections for subscribers who choose to be listed in a 411 database. These protections include listing a subscriber's wireless number in the 411 database only after the subscriber has made the choice to "opt-in" to the service and ensuring that the numbers in the 411 database will not be sold to telemarketers.

Below are the questions posed in your letter and T-Mobile's responses.

1. **If you offer wireless directory services, will your subscribers be given a choice of whether to have their number(s) listed in a directory or not? If so, how would they exercise such choice (i.e. opt-in or opt-out), and would it vary depending on whether it was a new or existing subscriber making the choice?**

If T-Mobile offers wireless directory services, T-Mobile subscribers will be required to affirmatively opt-in to the electronic 411 directory. T-Mobile includes in its written service agreement an opt-in box on the front page that customers may check to list their numbers in the wireless directory. This opt-in provision is clearly identified under a section entitled "Important Customer Information." Customers who activate service online, or via telesales, also will be required to affirmatively opt-in to list their numbers in the directory.

Like new customers, existing customers must opt-in to list their numbers in the wireless directory. T-Mobile is determining how best to communicate the opt-in election to existing customers. T-Mobile is looking into providing customers the choice to opt-in through existing password-protected, personalized customer Web pages, where they manage their accounts online.

2. **Do you plan to charge subscribers to keep their wireless number(s) unlisted?**

T-Mobile does not plan to charge subscribers to keep their wireless numbers unlisted, regardless of the quantity of numbers the subscriber wishes to keep unlisted. This decision is consistent with the policy of other carriers participating in the wireless directory.

3. **Are your current terms of service with customers consistent with your responses to questions 1 and 2?**

As noted in response to question 1, T-Mobile's service agreement for new customers contains an opt-in provision in order for customers to choose to list their number in the wireless 411 directory. T-Mobile's service agreement contains no provision authorizing charging customers for unlisted numbers and, as noted above, T-Mobile has no plans to charge subscribers to keep their wireless numbers unlisted. It bears repeating that



SE 38th Street, Bellevue, WA 98006

whether a subscriber is new to T-Mobile or is one of our many loyal, existing customers, and whether he or she is entering into a paper contract in a retail store or an electronic contract online, T-Mobile plans to include wireless numbers in the 411 database only when the subscriber has affirmatively elected to be included in such directory.

In conclusion, we are confident that our opt-in approach addresses our customers' desire for wireless directory service and their desire for choice and privacy. I hope this information is useful to you and please know that T-Mobile will gladly provide additional information at your request.

Sincerely,

Robert Dotson
President and Chief Executive Officer
T-Mobile USA, Inc.



12920 SE 38th Street, Bellevue, WA 98006

cingular WIRELESS

**Stan Sigman** • President & CEO • phone 404.236.6020 • fax 404.236.6045

September 17, 2004

To: John McCain, Chairman, Senate Committee on Commerce, Science & Transportation
Joe Barton, Chairman, House of Representatives Committee on Energy & Commerce
Fred Upton, Chairman, House of Representatives Subcommittee on Telecommunications & Internet

Thank you for the opportunity to provide specific information on Cingular's approach to offering wireless directory assistance to our customers. There has been a great deal of misinformation reported on this topic and I am pleased to have the chance to set the record straight by communicating directly with the committee members that are reviewing this matter. Cingular is dedicated to ensuring that the customer's right to choose is respected.

Your request consisted of three questions which I have restated and answered below:

1. If you offer wireless directory services, will your subscribers be given a choice of whether to have their number(s) listed in the directory or not? If so, how would they exercise such choice, and would it vary depending on whether it was a new or existing subscriber making the choice?

   Cingular subscribers will be given the choice to have their number(s) listed through an opt-in method. Opt-in will not be tied to the selection of a service plan or any other available feature, but will be a stand-alone option that may be presented to the customer at the point-of-sale, during a call into customer service or on Cingular's website. The opt-in process will be the same for both new and existing customers.

2. Do you have any plans to charge subscribers to keep their wireless number(s) unlisted?

   Cingular subscribers will not be charged if they elect to keep their wireless number(s) unlisted. We believe that there should not be any financial disincentives for those customers that choose not to participate in listing their number(s). In addition, there will not be any charges applied if a customer that has previously opted-in changes his mind and asks to be removed from the database.

3. Are your current terms of service with customers consistent with your responses to questions 1 and 2?

   Yes.

We at Cingular are committed to protecting the privacy of our subscribers and are taking the necessary precautions to ensure that if a customer elects to be listed; his or her wireless account information will not be used for any purpose other than directory assistance. I believe that sufficient safeguards exist to protect the privacy rights of consumers and that wireless carriers have an inherent vested interest in preserving them.

**Cingular Wireless** • 5565 Glenridge Connector • Suite 2000 • Atlanta, GA 30342 • www.cingular.com

# Congress of the United States

Washington, D.C. 20515

September 15, 2004

Mr. Stanley T. Sigman
President and CEO
Cingular Wireless
5565 Glenridge Connector, 20th Floor
Atlanta, GA 30342

Dear Mr. Sigman:

Recent press accounts indicate that a consortium of five of the six national wireless carriers, with the assistance of the Cellular Telecommunications & Internet Association, are creating a multi-carrier database of subscribers' phone numbers in order to provide the wireless phone numbers of their customers to consumers who call directory assistance services (also known as "411" services). While presenting an opportunity for wireless telephone consumers, including subscribers without wireline phones and small business users, to make their telephone numbers more widely available to friends and to potential customers, this action also raises issues of wireless telephone number privacy that are of great interest to the American public and to Congress.

In response to consumer concerns about such proposed services, several bills on wireless directory assistance have been introduced this Congress. The Senate Committee on Commerce, Science, and Transportation has scheduled a hearing on these services and related legislation for Tuesday, September 21, 2004, during which testimony will be heard from industry representatives and other interested parties. The House of Representatives Committee on Energy and Commerce also plans to hold a hearing on these services in the following weeks.

In anticipation of these hearings and to assist the Committees in understanding the views of all six national wireless carriers (some of which may not have the opportunity to testify), we would appreciate receiving your responses to the following questions prior to the first hearing:

1. If you offer wireless directory services, will your subscribers be given a choice of whether to have their number(s) listed in a directory or not? If so, how would they exercise such choice (i.e. opt-in or opt-out), and would it vary depending on whether it was a new or existing subscriber making the choice?

2. Do you plan to charge subscribers to keep their wireless number(s) unlisted?

3. Are your current terms of service with customers consistent with your responses to questions 1 and 2?

September 15, 2004
Page 2

If you have any questions regarding this request, please contact Bill Bailey or Paul Martino of the Senate Commerce Committee at (202) 224-5184, or Howard Waltzman or Will Nordwind of the House Energy and Commerce Committee at (202) 225-2927. We appreciate your efforts to provide this information to the Committees and to Congress by Monday, September 20.

Sincerely,

John McCain
Chairman,
Senate Committee on Commerce,
Science and Transportation

Joe Barton
Chairman,
House of Representatives Committee
on Energy and Commerce

Fred Upton
Chairman,
House of Representatives Subcommittee
on Telecommunications and the Internet

Tim Donahue
President and Chief Executive Officer

September 21, 2004

The Honorable John McCain
Chairman
Committee on Commerce, Science and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Fred Upton
Chairman
Subcommittee on Telecommunications and the Internet
House Energy and Commerce Committee
Washington, D.C. 20515

Dear Chairmen McCain, Barton and Upton:

Thank you for your September 15, 2004, letter regarding wireless directory assistance and Nextel Communications' interests in providing such services to our customers. In furtherance of our efforts to meet the demands for new services and applications, Nextel will offer wireless directory assistance only to those who are interested. Nextel customers will be provided information on this new option, including instructions on "opting-in" or "opting-out" of the service.

We will do so under the strictest adherence to our strong policy on protecting customer privacy. In response to your specific questions, please be advised of the following:

1) Nextel will offer wireless directory assistance to its customers, each of whom will determine whether their number will be listed in the directory. Further, if a customer chooses to have their number included in the directory, it will be done only if the subscriber gives a clear, unambiguous and verifiable affirmation of their decision and at no charge. This will apply to existing and prospective customers. For those subscribers who wish to remain unlisted they will not have to take any action.

Nextel Communications, Inc.
2001 Edmund Halley Drive Reston, VA 20191 Phone 703.433.4320

2) For those customers who choose not to have their numbers listed in our wireless directory, Nextel will not charge any fee, nor impose any fine or penalty. Further, customers who become listed may choose to "opt-out" of the program at any time and at no charge.

3) Nextel is in the process of modifying both its subscriber agreement and its privacy policy to reflect the guarantee that our customers will have the choice of participating in our wireless directory assistance, with no charge either for participation or non-participation in the program.

Nextel and its employees are strongly committed to protecting the privacy of our customer, including under one directory assistance program. Nextel will not publish the wireless directory assistance information or provide access to the directory assistance database to any entity other than the directory assistance provider. Be assured that we will take all necessary steps to protect our customers' privacy within the dynamic wireless communications market.

Sincerely,

Tim Donahue
President and Chief Executive Officer

September 20, 2004

The Honorable Joe Barton
Chairman
House Committee on Energy and Commerce
2125 Rayburn Office Building
Washington, D.C. 20515

Dear Chairman Barton:

Thank you for the opportunity to explain AT&T Wireless' policies regarding the planned Wireless 411 database. We are pleased to respond to your letter dated September 15, 2004.

Protecting customer privacy is one of our highest priorities, and this commitment is reflected in our approach to Wireless 411. I have attached a document that provides an in-depth response to the specific questions outlined in your letter. You will note when you review our response that it is our intention only to participate in a Wireless 411 database if it is completely optional for our customers, is of no cost to participating or non-participating customers and meets the strict standards of our privacy policy. If a participating customer later decides to remove his/her wireless number from the database, it will be quick and easy to do so.

We believe that Wireless 411 service can offer significant benefits to our customers. Laws that restrict the offering of wireless 411 service could hamper our delivery of this valuable benefit.

- More small businesses and sole proprietors are using wireless phones as their primary or only means of voice communications with customers and suppliers. We do not believe that this technology choice should put a business at a disadvantage in comparison to competitors that utilize land line phones and can therefore list their phone numbers. The Wireless 411 service will allow our business subscribers to make their phone numbers accessible to their customers and suppliers.

- In addition, a growing number of consumers have chosen to use a wireless phone as their only phone. These consumers should have an opportunity to make their contact information available to friends and relatives through directory assistance services.

- Finally, we believe there are customers who will choose to participate in Wireless 411 for the peace of mind that comes with having their phone number accessible in an urgent situation.

Again, thank you for the opportunity to share our policies concerning our planned Wireless 411 service. We are confident that Wireless 411 offers significant consumer benefits, and we remain committed to providing our wireless service in a way that protects customer privacy.

Sincerely,

John D. Zeglis
Chairman and CEO
AT&T Wireless

Cc: Chairman John McCain
Chairman Joe Barton

**AT&T Wireless' Response to September 15, 2004 Letter re: Wireless 411**

1. If you offer wireless directory services, will your subscribers be given a choice of whether to have their number(s) listed in a directory or not? If so, how would they exercise such choice (i.e. Opt-in or opt-out), and would it vary depending on whether it was a new or existing subscriber making the choice?

   *Customers will be given a choice whether to have their number(s) listed in the database. Only customers who* ***specifically request*** *to be included will have their number available for lookup through Wireless 411. In other words, customers must opt in by taking an affirmative step to make their numbers available. This policy applies to* ***all*** *of our customers.*

2. Do you plan to charge subscribers to keep their wireless number(s) unlisted?

   *No. Just like today, we will not charge to keep a number unlisted.*

3. Are your current terms of service with customers consistent with your responses to questions 1 and 2?

   *Yes. All AT&T Wireless customers – regardless of the language in earlier contracts -- will have the choice whether to be included in the Wireless 411 database. In addition, no customer will be charged to keep their phone number unlisted. We believe this approach best meets the desires of consumers.*

   *As of June 2004 the language in the AT&T Wireless Privacy Policy, which is referenced in our Service Agreement reads as follows:*

   ***"AT&T Wireless does not currently disclose wireless numbers in directory assistance listings or published directories. If we do so in the future, you will be able to choose whether your number is listed."***

It should be noted that in addition to the above privacy measures, the names and numbers included in the Wireless 411 database will not be printed in a directory or published online. The database will not be for sale to third parties. Wireless 411 service will only allow 411 callers to get a wireless subscriber's phone number if that subscriber chooses to make it available, and then only in response to a specific request for an individual. In addition, customers who have chosen to list their numbers can choose to remove their numbers from the database at any time. We plan to update customer preferences in the database on a daily basis.

Mr. BASS. Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. Along that same line, Mr. Largent, is the industry changing the language in these contracts?

Mr. LARGENT. Some companies have already done that so all of the new contracts that are out there are already changed. I think every company is in the process of changing those contracts as we speak.

Mr. STUPAK. How long will the industry be committed to the opt-in approach for these cell users?

Mr. LARGENT. As long as our customers tell us that is the way it needs to be. Obviously you have heard all the numbers today. The overwhelming majority of our customers insist upon having an opt-in provision in this 411 service.

Mr. STUPAK. You said that this legislation would probably stifle technology and innovation. Could you just elaborate on that a little bit more? Being a representative of the industry how do you see it stifling technology and innovation? I understand the competition part.

Mr. LARGENT. Sure. Well, the one thing we haven't spoken about is the fact that not only is this legislation being proposed at the Federal level but there are several states, in fact, California being one of them, that has already passed legislation regulating 411 service in the State of California that is even more burdensome than the bill that is under consideration here.

In fact, a number of our carriers are questioning whether they want to continue down this path even though they feel the demand from their customers, even 10 percent of their customers, to do this the regulatory burden becomes so great that they are saying it may not be worth it to go down this path. If that is, in fact, the case, then you not only put out a company—you harm a company like Sunny's but also Pat's.

Mr. STUPAK. The 411 proposal that your industry has, would every wireless company be required to be part of it? I realize Verizon is not in support of it but, I mean, you can't say to your members, "If we do 411, you are required to come into this directory?"

Mr. LARGENT. No. In fact, again, the competitive industry not all the companies are participating. Verizon is not. Six of the other seven largest carriers who, again, if you add Verizon who you would say is opting-out, they represent about 93 percent of the wireless customers in the country today. There are a lot of tier two and tier three carriers. Maybe they will be a part of this and maybe they won't. I can't say.

Mr. STUPAK. I have no other questions, Mr. Chairman. Thank you.

Mr. BASS. The gentleman yields back. The Chair would like to welcome the distinguished chairman of the committee, Mr. Barton, and recognize him for 10 minutes for questions.

Chairman BARTON. Mr. Chairman, I have no questions. I apologize for being a little bit late and missing Senator Boxer. I did want to come and at least welcome these fine fellows to our committee, especially former Congressman Steve Largent. We are glad to have you here.

Mr. LARGENT. Thank you.

Mr. BASS. The gentleman yields back.

Mr. Walden.

Mr. WALDEN. Thank you very much, Mr. Chairman. I just want to make sure I have this straight. If I am a cell phone users, which I am, and under the proposed system the only way my number could be made available in a directory service is if I say it can be made available. Is that accurate under your proposal, Mr. Largent?

Mr. LARGENT. Yes, sir.

Mr. WALDEN. And so everybody out there with cell phones today would have the ability under your proposal to not be listed if they didn't want to be?

Mr. LARGENT. That is right.

Mr. WALDEN. Now, what happens if I—one of the issues I have, of course, speaking of cell phones, is the way they ring in the middle of committee meetings, but it is okay in this case. The issue is when people call me, I get billed. Don't it?

Mr. LARGENT. Not necessarily.

Mr. WALDEN. Could you elaborate more on that?

Mr. LARGENT. Sure. Again, because this is such a competitive robust industry, carriers are responding to their customers' concerns. In fact, the average cost, the monthly bill of a wireless customer has gone down the last 10 years, not up. We offer more services and we offer them for free in many cases like this service, free service. You don't pay to opt-in and you don't pay to opt-out. You don't pay for caller ID. You don't pay for a number of things that are offered over your wireless service. What was your question again?

Mr. WALDEN. I don't want to be charged——

Mr. LARGENT. Oh, yeah. So a lot of carriers have plans—have devised plans where you don't have to pay for incoming calls so it is not a given that you pay for incoming calls.

Mr. WALDEN. What percent of your carriers have those sorts of plans? Do you know?

Mr. LARGENT. My guess is the majority, the overwhelming majority of our major carriers who, again, represent 93 percent of all customers in the country have a plan, or even multiple plans, that do not charge for incoming calls.

Mr. WALDEN. All right. Or at least in the first minute or so.

Mr. Cox, do you want to elaborate on that?

Mr. COX. Yeah. I believe most carriers don't charge for the first minute of incoming calls in case it is a wrong number or a misdial.

Mr. WALDEN. Okay. All right. So what are the privacy issues then if this is how you are proposing this? Mr. Hammond, do you want to tell me? Some of the issues you raised in your testimony seem to be addressed by this proposal. Don't they?

Mr. HAMMOND. Some of them are.

Mr. WALDEN. What remains?

Mr. HAMMOND. Mr. Walden, I think it is more of a concern of making sure that they continue to be addressed.

Mr. WALDEN. All right.

Mr. HAMMOND. We have heard the number of changes that have taken place over the past several months and there is nothing to indicate that those changes couldn't continue to take place in the

future. Certainly there will be technological advances but I think it is appropriate to set a level if privacy expectation by allowing a consumer to determine whether they want to be in or out of the Director Assistance Program.

Mr. WALDEN. Mr. Largent, do you want to comment on that? I mean, what would be wrong with us saying at a minimum every consumer should have the right to opt-in if that is what you are proposing to do?

Mr. LARGENT. Again, let me offer a personal view and that is that it seems to me that Congress has a lot more important things to do in instances where there has been demonstrated consumer harm. This is a service that is still on the chalkboard. Again, I think this is an industry that continues to change.

Mr. WALDEN. So is it your view that this legislation is chasing a problem that doesn't exist and probably won't exist?

Mr. LARGENT. Well, the problem not only doesn't exist. The service doesn't exist yet. Again, it is a very dynamic industry that continues to change. In fact, I would mention talk about a dynamic industry that continuously evolves and changes. I mean, it is exciting to me to be able to say or learn that the AARP is going to get into the wireless business offering services to their own members. I think that is a wonderful thing. Again, it just shows you how diverse the industry is.

Mr. WALDEN. And, Mr. Cox, could you elaborate a little bit more on the issue, I guess, in this case is it plumbing? Is it John's Plumbing Company, Mr. Largent? In my case it was a contractor. John Plumbing. That is a good one. In my case it was a contractor whose whole business was on his cell phone. Now, what happens today and what would happen under this system?

Mr. COX. One of the clear advantages to not having legislation, the only no-brainer here is to not make a law here. It is not so much whether people should opt-in or opt-out. It is clear, everybody, agrees it is an opt-in. The data base starts at zero. That is clear and agreed to by everybody.

The question comes in how do you do it. For example, California says it requires a wet ink signature on a piece of tree paper. That would be like asking Amazon.com to have a wet signature on a tree piece of paper before they could ship a book. It breaks the business model. For phones today the AARP won't be setting up retail locations to have their consumers leave their home and drive down to sign forms. They want to conduct business over the phone, over the web.

The devil is always in the details. It is the structure of how these things, these protections, would be created that kill the innovation, that kill the prospect of service and end up not servicing the customer. It makes it harder for people to be able to get the control and access they deserve. It is a huge problem. That being said, one of the proposed pieces also is that it becomes now illegal for John's Plumbing to be listed in the phone book when John needs very much——

Mr. WALDEN. Under the legislation.

Mr. COX. Under the proposed legislation in Section D it would now become illegal where it is now legal if John chooses. He has

to pay for it but it becomes illegal for him to be in the phone book. That phone book listing for him is key to his success.

Not only that, it allows him to pay literally thousands of dollars into the telephone company in the form of advertising which subsidizes and creates lower consumer rates on basic telephone service. Businesses pay more for advertising . Businesses pay more for phone bills. If you take away a business' opportunity to advertise and be represented in a directory, it kills the rate structure we have today.

Mr. WALDEN. Thank you. Thank you, Mr. Chairman, for letting the witness complete his answer.

Mr. BASS. The gentleman's time has expired. Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. This is an interesting hearing and I am glad I spent time and stayed around. Usually we address problems after they are happening. Here we are making an assumption that there is going to be a problem. I think the debate is really because, Steve, there are groups that don't trust your industry and they think they are going to rip off the public and sell information.

That is obviously a very political challenging hurdle to overcome because it has mass appeal. Really the question is is there an opt-out—I mean an opt-in? Are people going to be forced to pay in? I think if those things get addressed, then it is not that difficult. I would encourage this to—I grabbed it from your staff, a smaller portion of your little diagram. I think it is very helpful in synthesizing this whole debate.

As you know, I worked with—I helped draft and pass E911 as a national cellular number. Now we are doing Enhanced 911. My question is also the cellular industry is keeping data bases. They have to keep data bases for the system to operate.

I was on the floor last night talking about the 911 Commission Report and talking about the opportunity to call forward based upon a terrorist attack, weaponized anthrax, dirty bomb. The ability through your industry and the industry of the cellular phone companies to be able to say there is a plume and you know the wind direction to be able to identify and call forward on the cell phones to identify people to disperse and actually which way to go because you don't want to go down—you want to disperse but you don't want to keep going downwind if there is a terrorist attack. There is a data base but right now there is no ability based on current law to call those numbers. Is that correct?

Mr. LARGENT. If I understand your question, there is no central data base. Every carrier obviously has their customers' information that is highly protected for obvious competitive reasons.

Mr. SHIMKUS. So as far as the 911 Commission—I'm sorry to go off topic but that is pretty relevant with our bill coming up on the floor next week—how do we get there? The cellular industry has been lifesaving and when we can pass Enhanced 911 we are going to hope to offer that to an amendment on the 911 Commission bill and hopefully get the support of my colleagues and put that as part of the bill.

How do we get to that point where our first-line responders or TTIC or all these other whoever, how do they get access? We need to talk through how a cellular phone can be used in the event of

a catastrophic terrorist attack to inform folks. If you folks here, you tech folks, and even the consumer advocates because it will address issues of consumer privacy. I mean, you have to call to warn people to get out of the way. There is a data base that has numbers but have you gotten permission to call that number.

Mr. LARGENT. If I could respond to that, two things. One, you began your question by talking about there are some that don't trust the industry. I would say that we are talking and debating today about an issue that has not been created. There has been no demonstrated harm. We are also talking about an industry that has at least a 15-year track record of protecting consumer privacy. I just wanted to make that statement.

Mr. SHIMKUS. If I may jump in, even with our Enhanced 911 bill you all supported the legislation that would keep us from identifying locations so when you are driving down the interstate you don't get a call saying, "Pull off at exit 45 for your nearest McDonald's." That was part of that legislation that we passed through the House. Through this committee and on the floor of the House.

Mr. LARGENT. Not only that, this is an industry that also worked assiduously with the Congress to make sure that wireless numbers were not made available to telemarketers. It is a Federal offense. Because of legislation that we helped promote it is a Federal offense for telemarketers to call wireless numbers. We have guarded our customers' privacy doggedly.

Mr. SHIMKUS. When you go back and do staffing, and really the turnaround time is pretty quick. Like I said, we are going to be addressing the 911 Commission Report next week. We are going to offer the E911 as an amendment to the bill.

We are probably not going to be able to structure legislation to address the national data base and how do you use that to call. We need to start the tech folks and the associations really need to address that because my experience with the cellular industry it has been a lifesaving association and time saves lives and the cellular industry has done that. I appreciate that work.

Mr. Chairman, that ends my time and I yield back.

Mr. BASS. Mr. Gillmor. Mr. Gillmor waives.

Mr. Pitts.

Mr. PITTS. Thank you, Mr. Chairman.

Steve, the recent promises to make this directory completely opt-in is from, did you say, 5 or 6 of the major carriers? Is that correct?

Mr. LARGENT. All of the participating carriers.

Mr. PITTS. How many is that?

Mr. LARGENT. We have six of the seven largest carriers.

Mr. PITTS. Okay. What does that mean then for the remaining 180, tier two, tier three carriers that do not and are not represented?

Mr. LARGENT. It means that they are not participating in the Limited Liability Corporation that CTIA helped formulate of the carriers who are participating, which means that if a carrier is not participating in the LLC, then, again, their customers are just like Verizon who have made—I mean, they are the one large carrier that have made the decision not to offer this service to their customer.

Mr. PITTS. I know Verizon has said that. Does that mean the folks with those other carriers could be concerned that their numbers and personal information including address could be in a data base without them knowing it?

Mr. LARGENT. If a customer is with a carrier who is not participating in this Limited Liability Corporation that has been structured by the industry, then they aren't at any greater risk after the service is introduced then they are before because their personal data is held only by their carrier of choice.

Mr. PITTS. What is the legal status of the existing service agreements that contain legal authorization to list numbers in a public directory?

Mr. LARGENT. Again, let's talk about the universe of carriers who have elected to participate in offering this service. Every one of the CEOs of those companies is in process or has already restructured those contracts, and has sent a letter to Congress stating that in those instances where they have existing customers who have contracts that contain the language that permit the carriers to do this without seeking anymore permission, that those carriers will go back to those existing customers and say, "We are going to offer this new service. Would you like to participate? Yes or no?"

Mr. PITTS. And how did they change the contracts?

Mr. LARGENT. Well, they have changed the contracts on a going forward basis. In other words, any new customer who comes in to their service, the contract now looks differently. It does not contain that language and for the foreseeable future that will be the case.

Mr. PITTS. But with existing contracts they are with a letter saying they are not going to hold them to that privacy section where they signed away their privacy rights. Is that right?

Mr. LARGENT. They are saying, Congressman Pitts, if you have a contract with Carrier X and Carrier X is participating in this service and the contract that you have with Carrier X says, "Mr. Pitts, we can list your number if we want to," and you sign that contract, if your contract looks like that, Carrier X has said in a letter to Congress that for customers like yourself they will proactively go to you and say, "Mr. Pitts, would you like to have your number listed in this service?" If your answer is no, then the world that you live in today looks no different tomorrow after this has been implemented.

Mr. PITTS. Now, can you tell me if a letter to a bunch of politicians is going to hold up in a court of law? Are they legally binding?

Mr. LARGENT. No, they are not. Clearly they are not.

Mr. PITTS. So what happens if they change their mind in a couple of years?

Mr. LARGENT. Two things can happen. One is that customer can go to another carrier who does not offer the service. The second thing that could happen, and I hope this, in fact, is the case, that Congressman Pitts will still be in Congress and then you can actually come before Congress and say, "We have many instances, or an instance, of consumer harm and we need to do this right now." You can pass legislation and you can do it post haste.

Mr. PITTS. Is there any other way besides that that we can ensure that the contracts won't change again in another 6 months?

I mean, is the market place really free when consumers are locked into 2-year contracts?

Mr. LARGENT. I would say there has never been a freer market or more competitive market than there is in the wireless industry. That is across telecommunications or any other industry you want to look at. The answer to your question is no. I cannot stand here and tell you today that there is no way that the industry is ever going to move off of where we are today because the one thing that you can say has been consistent about the wireless industry is that it continues to evolve. The evolvement of this industry has been better for consumers, not worse. It has protected their interest better, not worse. My expectation is that trend will continue.

Mr. PITTS. Now, will documentation be provided that proves the industry will continue to pursue and opt-in for the directory?

Mr. LARGENT. I guess I would ask what kind of documentation would be satisfactory to you?

Mr. PITTS. Anything in writing.

Mr. LARGENT. Well, you have that in writing before you as part of the record right now.

Mr. PITTS. You're talking about the letter. Is that correct?

Mr. LARGENT. Yes, sir.

Mr. PITTS. Will carriers who choose not to participate at the current time be subject to the promise that you have made today if they decide to participate in the future?

Mr. LARGENT. Yes.

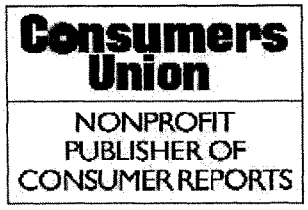
Mr. BASS. Let me interrupt you for a second, Mr. Pitts. Your time has expired. However, Mr. Gillmor does not wish to be recognized. Do you have further questions?

Mr. PITTS. I'll yield back.

Mr. BASS. Mr. Pitts yields back. Does anybody else wish to ask any further questions of this panel? Seeing none, we thank the panel for being here today and with that we will adjourn this subcommittee hearing.

[Whereupon, at 11:40 a.m. the subcommittee hearing was adjourned.]

[Additional material submitted for the record follows:]




Statement for the Record by

SUSANNA MONTEZEMOLO

Legislative Representative
CONSUMERS UNION

Before the House Committee on Energy and Commerce
Subcommittee on Telecommunications and the Internet

On H.R. 3558, the "Wireless 411 Privacy Act"

September 29, 2004

Chairman Upton, Ranking Member Markey, and Members of the Subcommittee on Telecommunications and the Internet, thank you for the opportunity to submit for the record this statement on H.R. 3558, the "Wireless 411 Privacy Act." Consumers Union,[1] the independent, non-profit publisher of *Consumer Report* and other publications, has been active in educating consumers about how to protect their personal and financial privacy. Through our popular campaign, www.EscapeCellHell.org, Consumers Union has triggered nearly 16,000 grassroots activists to e-mail their Senators and Representative about the importance of protecting consumer privacy that could be jeopardized by a wireless 411 directory.

Since they came on the market some two decades ago, cell phones have become an incredibly convenient tool for consumers. Whether used for personal reasons or for business, the cell phone has obviously enabled consumers to become more mobile, which is important in today's fast-paced society. But consumers also view cell phones as more private than landline phones. Many consumers have come to expect that if their cell phone rings, the person on the other end will be someone to whom they personally gave out their phone number. Because most cell phone customers pay for their incoming calls, consumer control over their number should be viewed through the lens of both privacy and out-of-pocket costs.

Legislation is necessary to ensure that the more than 168 million cell phone customers in the U.S. have control over how and when – or even if – their cell phone numbers are included in any directory of cell phone numbers. Given that the Cellular Telecommunications and Internet Association (CTIA) has announced that it will come out with such a directory by the end of this year or early next year, **Consumers Union believes it is imperative that Congress act now to codify privacy protections for cell phone consumers** so that all consumers, in particular those who wish to remain unlisted, will be protected. It is not adequate to merely rely on industry promises to protect privacy, since such voluntary protections could easily disappear in the future.

Consumers Union supports H.R. 3558 the "Wireless 411 Privacy Act," because the provisions of the bill as filed are better for consumers than privacy protections based merely on industry promises. However, we believe that the legislation should be strengthened through an amendment to require that all customers affirmatively "opt-in" to the directory in writing. The Senate Commerce Committee last week voted to adopt such an amendment, offered by Senator Boxer, one of the bill's sponsors in the Senate. We urge the House Commerce Committee to schedule a markup and do the same. Consumers Union also strongly supports the prohibition on cell phone companies charging new fees to consumers who wish to remain unlisted and the prohibition on publishing a directory in electronic or paper form.[2]

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* and *Consumer Reports Online* (with approximately 5 million paid circulation) regularly carry articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2]The Senate Commerce Committee also amended the bill to eliminate the call forwarding provision. Consumers Union takes no position on the call forwarding provision of the legislation, except that if this provision is removed, it becomes even more important to ensure that both new and current customers have affirmatively opted into the directory and

Consumers Union also supports the legislation that California Governor Arnold Schwarzenegger recently signed into law, which will ensure that all Californians' privacy is protected when the industry offers its 411 directory. The new law requires that cell phone companies obtain their customers' written consent prior to listing their number in the directory. We believe that the federal government should follow California's lead and create a minimum standard of privacy protection through H.R. 3558, with an all opt-in amendment.

Consumers Union is neutral with respect to the creation of a directory assistance ("411") service for cell phone numbers. The directory could benefit some consumers, while harming others. For example, such a directory could be beneficial for consumers who use their cell phone as their primary phone and those whose business requires them to be constantly reachable, even when they are out of the office. Other consumers, however, such as those who give their cell phone numbers out selectively, could be harmed by such a system. As a result, we simply want to ensure that if a directory is created – and, at the moment, it certainly appears as if it will be – consumers' privacy and financial interests are protected.

**Support an Amendment to Require Opt-In for New Customers**

As initially filed, the legislation creates a dual system of obtaining consumers' permission to have their cell phone numbers listed in the directory. The legislation would require current cell phone customers to give prior authorization before their number is included in a directory. The Act would require cell phone companies and their agents to send a conspicuous, separate notice to current customers (as of the date of the directory launch) informing them of the right not to be listed in the directory. The service providers then would have to obtain express prior authorization, separate from other authorizations (such as those contained in cell phone contracts), before the consumer's cell phone number could be listed in the directory.

New customers, however, would not receive such a high level of privacy protection. The bill would require that cell phone companies give consumers the opportunity to opt-out of inclusion in the directory; a customer who did not want to be included in the directory but did not expressly tell a cell phone company that this was the case would still be included in the directory. By putting consumers' cell phone numbers into the directory by default, such an approach would jeopardize privacy and subject consumers to additional cell phone charges based on unwanted calls. The process of signing up for a cell phone calling plan is confusing and complex as it is; the customer is focused on finding the best rate – not protecting his or her privacy. Privacy rights of all customers, existing and new, are paramount and should be protected through a universal opt-in approach.

The dual approach – opt-in for existing customers and opt-out for new customers – engenders several problems as well. First, existing cell phone users who choose to switch cell phone companies may assume that the opt-in provision, under which they were originally covered, applies to their new contract as well. These consumers would have previously received an opt-in notice from their existing cell phone carrier, and it would be reasonable for them to assume that the same

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have easy mechanisms for withdrawing their consent, should they choose to do so. If the call forwarding model remains in the bill, , there must be guarantees in law to ensure that phone numbers are not revealed in any way, such as through billing practices.

would apply to a new cell phone company. This potentially could adversely affect the existing 168 million cell phone subscribers.

In addition, the definition of "new subscriber" leaves open to interpretation whether a renewing customer is a "new" customer. A renewing customer who has already declined to "opt-in" is not likely to understand that he or she must now "opt-out" to keep the number unlisted.

A simple fix to the problems associated with the dual opt-out/opt-in approach is to pass the version of the bill that was reported out of the Senate Commerce Committee on September 22, 2004. (This amended bill is similar to the California 411 privacy bill, which was signed into law last week.) In a bipartisan vote, the Committee adopted the only amendment offered. The amendment, sponsored by Senator Boxer, would require that all customers – existing and new – affirmatively opt into any wireless information directory. The amendment also would delete the call forwarding provision. Consumers Union has no position on the call forwarding provision, but we believe that the all opt-in approach is critical; the opt-out process for new customers is unnecessarily subject to mistakes and misunderstandings that could result in loss of consumer privacy and consumer payment of additional cell phone charges. A consistent process of obtaining consumer consent would best ensure that the law will provide the consumer protection it intends. We urge you to support this provision.

**Cell Phone Industry's Planned Directory Makes This Legislation Imperative**

Today, most cell phone numbers are not listed in a directory.[3] However, CTIA is planning to launch a 411 directory assistance database of cell phone numbers that would enable callers to dial cellular directory assistance for a fee. The directory is expected to generate as much as $2 billion per year through directory assistance charges and additional usage minutes by 2008, according to one consultant.[4]

CTIA has said cell phone companies will obtain customers' permission for inclusion in the directory and promises to respect consumers' privacy.[5] However, several carriers began getting this "permission" months ago by inserting language in wireless phone contracts allowing the carrier to include the cell phone number in a directory. When this practice became public, the industry responded with yet another promise— that it would give consumers a second chance to decline to opt-into a directory. Yet the industry has failed to provide details on how consumer consent would be implemented. Even Verizon Wireless, a company that has publicly opposed the directory, continues to include directory "opt-in" language in its Customer Agreement.[6]

The bottom line is that neither consumers nor Congress should rely on the shifting promises of the cell phone industry when it comes to guaranteeing important privacy and consumer rights. The "Wireless Privacy Act" enables the cell phone industry to move forward with the proposed directory, while ensuring consumers that their rights are protected in law and not subject to change at a moment's notice.

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[3] Some consumers pay to have their cell phone numbers listed in traditional "White Pages" directories, and many businesses list cell numbers in the "Yellow Pages."
[4] "Cellphone directory gets hoots, hollers," USA Today, July 28, 2004, p. 3B.
[5] "Wireless Directory Assistance" (news release), CTIA, August 25, 2004, www.ctia.org/news_media.
[6] www.verizonwireless.com; "Customer Agreement" accessed on September 7, 2004.

**Consumers Want and Need Control of Their Cell Phone Numbers**

The issue before the Committee is not whether to endorse a cell phone number directory; the directory will be created whether or not this legislation is adopted. Rather, the Committee must decide whether to guarantee in law that consumers will have clear, enforceable rights concerning whether their cell phone numbers are included in such a directory. The proposed directory has been in the news for months. While some consumers welcome a directory and others oppose it, there is overwhelming support for legislation that keeps the consumer in control.

To date, nearly 16,000 consumers had visited Consumers Union's website, www.EscapeCellHell.org and sent a message to their congressional representatives in support of the "Wireless Privacy Act." This is one of Consumers Union's most successful campaigns yet, topping even the number of consumers who visited our site and wrote to Congress in support of cell phone number portability, another popular, pro-consumer issue. Survey data also point to consumer support for privacy protections; in a recent survey, only 11 percent of respondents would list their cell phone number absent privacy protections, while 52 percent would do so with privacy protections in place.[7] Consumer support is also clear from the quick response of the California Legislature in adopting A.B. 1733, legislation that is similar in many respects to the "Wireless Privacy Act," but goes beyond it in requiring an affirmative, written opt-in consent for both current and new customers.[8] Indeed, we also recommend the Committee include a provision ensuring that where states have taken their own action, such as in California, the stronger state law will prevail over the federal law. The federal law should set a minimum standard for privacy protections that states can expand upon.

Consumers are concerned not only about the privacy effects of the proposed wireless 411 directory, but also about how the directory would affect their pocketbooks. Despite protections offered by the "Do-Not-Call" List and federal telemarketing laws, the new directory will subject consumers to other unwanted cell phone calls and text messages from people they would rather not hear from. Most cell phone plans charge consumers for incoming calls and text messages. The industry expects to reap billions of dollars in new revenue from consumers, including revenue based on additional usage charges. We want to make sure that consumers are willing to pay for the additional usage charges they will incur by taking calls from those who receive their number through the proposed directory. Many consumers may choose not to opt-in for financial reasons, even if privacy protections are upheld. Both reasons should be respected, and both would be protected under this legislation.

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[7] "Up to 52% of U.S. Mobile Subscribes Will Opt-In to Wireless 411 Directory Today, with Privacy Protection, According to the Pierz Group," PR Newswire, August 31, 2004. The full text of the survey has not been released, therefore we do not know which privacy protections respondents were asked about.

[8] AB 1733, which was signed into law by the governor last week, provides:

- Express written consent from a customer is required to list a cell phone number in the directory
- The consent form can't be hidden as part of a cell phone contract
- Consumers who agree to have their number listed can change their mind at any time and revoke permission
- Cell phone companies aren't allowed to charge consumers who want to remain unlisted

**Conclusion**

The "Wireless 411 Privacy Act" is a common-sense solution that allows the wireless industry to develop a new business while still respecting the privacy wireless consumers have expected for more than 20 years. It provides consumers a means to control their cell phone bills by remaining unlisted, thereby limiting exposure to uninvited calls. The Boxer amendment that the Senate Commerce Committee adopted last week should also be adopted by the House. This would reduce the potential for consumer confusion under a dual opt-in/opt-out approach. Finally, the legislation would simply put into law the promises made by cell phone carriers today, but would ensure that they are enforceable.

Given that CTIA has said that it plans to have a directory in place by the end of this year or early next year, we believe that it is absolutely essential that Congress act on this legislation now. There are only a couple more weeks left before this Congress adjourns. If Congress does not pass this legislation now, CTIA may come out with the wireless directory before Congress is able to act, and consumers may be harmed. For example, by then, some consumers may already have lost the privacy they so cherish or incurred fees to ensure their privacy that they should not have to pay.

We urge your speedy adoption of the "Wireless 411 Privacy Act" with the all opt-in amendment. Specifically, we urge the House Energy and Commerce Committee to quickly schedule a mark-up of the bill and to adopt the same language that the Senate Commerce Committee did. Doing so will clear the way for floor action and possible passage by the end of this session.

Thank you again for the opportunity to submit these comments into the record.

October 6, 2004

The Honorable Joseph R Pitts
House of Representatives
Washington, DC

The Honorable Ed Markey
House of Representatives
Washington, DC

Dear Mr. Pitts and Mr. Markey,

I wanted to respond to specific questions as a follow-up to the House hearing on wireless directory assistance and to clarify our position for the record:

1) *If the wireless industry implemented wireless directory assistance (WDA) with the control safeguards included in our bill, do you think that those consumers who want to use WDA would be able to take advantage of the service?*

Yes. Based on our experience and research to-date as well as information from other sources, there is no question that consumers want both privacy and control tools within a wireless directory assistance solution. Based on our experience in every market in which we operate, there is consistently 50% of mobile consumers that express an interest in both privacy and control tools for WDA.

2) *If those safeguards were in place, please explain how your company could provide services and features to those consumers who want to use a WDA service.*

As described in my testimony, consumers could select from a portfolio of privacy and control tools.

From the privacy side, tools would allow consumers to mask their phone number at both the time of inquiry and on the monthly billing record. Consumers could mask their "Name and address" information as well through contextual listings.

From a control side, technology would allow consumers to choose how they receive their Directory Assistance calls, either through a directly connected voice call, a text message, or a call completed through a third-party partner. We can allow individuals to accept, decline, or redirect calls to another device such as a land-line phone, voicemail or even email. Some of these services can be provided where the subscriber does not have to use their own minutes to receive a Wireless Directory Assistance call. We can also provide choices as to when people choose to be contacted via Directory Assistance, say only

before 5pm on weekdays and provide choices on who can contact them. All these technologies are available and can be provided to consumers.

3) *Do you agree that the safeguards in our proposal would not cripple your company and the WDA service but instead would build in protections for all consumers, especially those who want to retain control over their cell phone number?*

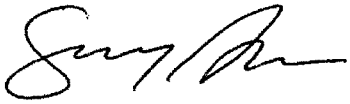
I completely agree that the safeguards in your proposal would not cripple our company. I do want to set the record straight on both my understanding and my response to a question I was asked during my testimony. As such, a question was asked to me whether WDA activities would "kill our business". Specifically, my understanding of the question was if a WDA solution did not happen, whether there was legislation on WDA or not, would it kill our business?

For the record, my response was meant to address the fact that if a WDA solution was not provided by the carriers, it would certainly have an impact on our business and we would likely alter our planned activities with the carriers. I was in no means saying that the safeguards within your proposed legislation would cripple our business. Our business is healthy with tremendous opportunities with other service providers and other directory opportunities including those that don't necessarily involve mobile devices.

My overall concern is that we allow a WDA solution for consumers to grow and materialize. It is a service that consumers want. But they certainly want one in which they can protect and control their information and determine how they are connected.

Please let me know if you have any questions. I thank you for the opportunity to follow-up on the hearing and clarify our position.

Regards,



Sunny Ahn
CEO
Context Connect

# Testimony of Dennis F. Strigl

## President and CEO, Verizon Wireless

## Wireless 411 Privacy

## United States Senate Commerce Committee

## September 21, 2004

Mr. Chairman, thank you for giving me the opportunity to testify here today and for your interest in this very important privacy issue. I also want to acknowledge Senator Boxer's strong interest in wireless privacy issues as well as my colleagues here at the table with me.

I believe that the competitive culture of the wireless industry drives the decisions our industry and my company make, and warns us of the dangers of unnecessary and counterproductive government regulation of a highly competitive market such as ours.

The wireless industry is intensely competitive, and that competition continues to bring extraordinary benefits to consumers. In addition to the six national carriers, several regional carriers as well as countless local providers compete head-to-head every day. Ninety seven percent of mobile customers can choose between at least three wireless carriers, and thirty percent of the population has a choice of 7 or more providers.

The wireless industry continues to introduce innovative pricing plans and service offerings, invest in and upgrade network performance and add new capabilities. Subscriptions are up, airtime use is up, and consumers have found text messaging and mobile entertainment applications to be quite popular. This Committee can take much of the credit for this level of competition, because in 1993 and again in 1996, you decided that our industry should be a model for deregulation and you prevented others from applying traditional rules and regulations to our operations. Coupled with advances in technology, and additional spectrum availability, your decisions have led to a resounding competitive success story.

The industry's implementation of Local Number Portability or LNP last year has facilitated the choices our customers now have. In effect, LNP has become the ultimate form of wireless consumer protection, because it has removed the major deterrent to changing companies. If a consumer is unhappy, he or she can take their phone number and their wallet and go elsewhere. If anybody needs proof of that, look no further than the losses some carriers experienced after Nov. 24 of last year, when LNP took effect.

Within the last year, LNP took an already competitive market and made it hyper-competitive. Companies are under a brand new microscope and must compete as never before. Differentiation has been magnified, and pricing, network quality, handset selection, customer service, new features like camera phones, and billing practices are central to a customer's carrier selection decision.

With carriers now focused on differentiation—because that is the best way to respond to customer demands—it would be counterproductive to inject a governmentally mandated "sameness." Instead we must trust the market to do its job and encourage choice, differences and innovation, and capital investment.

In all, I believe the wireless industry is a great American success story – for consumers and the economy. In just two decades:

- wireless consumer prices have dropped like a rock
- choices in carriers, services have burgeoned

- we've built a brand new industry, from scratch, into one of the drivers of the American economy.

But against that backdrop, I think we're missing the boat on creating a Wireless Telephone Directory. It's a subject that's controversial not just with customers, but within the wireless industry.

We at Verizon Wireless think a Wireless Telephone Directory would be a terrible idea, and we will not publish our customers cell phone numbers or otherwise participate in the plan you have heard about today.

Here's why we will not participate in a directory assistance program: Since we started this business, we have not published our customers' wireless phone numbers. We did this consciously, for the sake of preserving customers' privacy and control over their bill and discouraging interruptions from unwanted calls. We do not believe those basic reasons have changed.

In fact, we see more reason today than ever to protect customers' privacy. The floodgates are open to spam, viruses, telemarketing and other unwanted, unsolicited messages on landline phones, computers and in mailboxes. We think our customers view their cell phones as one place where they don't face these intrusions, where they have control over their communications.

And if there's any doubt, our customers – and some of your constituents - are reiterating loudly and clearly that they don't want their wireless phone numbers published.

I have received countless letters on this subject from our customers. Typically they all say, "I find your stance to be grounded in integrity...please keep my cell phone free of telemarketers and unsolicited callers." I have not received one letter that urges me to put the customer's number in a wireless directory. Clearly, there is not a groundswell of customer demand for a directory that would justify putting privacy in jeopardy.

To date, this industry has a strong record of proactive steps to preserve customers' privacy in an intrusive world. For example:

- The wireless industry fought to make auto-dial and telemarketer solicitation calls to wireless phones illegal.
- My company and other carriers have been aggressively deploying and updating anti-spam filters.
- Moreover, we have aggressively investigated, disabled and prosecuted illegal spammers.

We recently determined a source of illegal SPAM to our customers and obtained a permanent injunction against this Spammer.

Further, the Verizon Wireless' do-not-call, do-not-mail, do-not-email lists, and soon our do-not-SMS list, exceed requirements established by the Federal Trade Commission's do-not-call registry.

Our industry has surrounded customers' information with a wall of privacy. Why would we want to tear down that wall - that unique advantage --that we have spent two decades fortifying?

The old business adage that the 'customer is always right' is not some old-fashioned way of doing business that has become at odds with present-day business models.

Instead it is a basic tenet that remains rooted in sound business sense. In the end, no matter what business you're in, pleasing customers is more profitable than not pleasing them.

Verizon Wireless does not view the "opt-in" approach as a solution. We are concerned that customers will see opt-in as a disingenuous foot-in-the door-leading to "opt-out" clauses and fees for not publishing a number. Further, "opt-in" is an all or nothing proposition; it does not give customers any control over how and to whom their information is revealed.

Our plan at Verizon Wireless is straightforward.

First, we do not, and will not publish or make available our customers' wireless phone numbers for a paper directory or a directory database.

Second, we will be changing our customer contracts to proactively and clearly state: "We do not provide our customers' phone numbers for listing in directories." That change will eliminate any ambiguity concerning our current practice of preserving customers' privacy and our intentions for the future.

Earlier I observed that wireless has been a great American success story - for consumers and the economy. It's a brief history, punctuated by:

- Consumer prices dropping like a rock
- Choices going up
- Building a new industry from scratch into one of the drivers of the American economy

How fast and far the story continues in our third decade, depends on:

- The wireless industry remaining vigilant keepers of the privacy flame while building more capacity and adding more varied and better services to our wireless products; and

- Regulators, especially at state and local level, allowing the vibrantly strong competitive marketplace to work.

Thank you very much, Mr. Chairman. I look forward to the discussion today and I will be happy to answer any questions.

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