

THE WIRELESS 411 PRIVACY ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

SEPTEMBER 21, 2004

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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THE WIRELESS 411 PRIVACY ACT

TUESDAY, SEPTEMBER 21, 2004

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room SR-253, Russell Senate Office Building, Hon. George Allen presiding.

OPENING STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Good afternoon, I call this hearing to order. Senator Specter was to be speaking in the first panel, so to speak. If he doesn't get here on time, we're going to go straight to the panel, and I know we have many witnesses we want to hear from, so I'll make an opening statement, allow Senator Boxer to have an opening statement in the event that Senator Specter appears, he can make a statement, if not, we will proceed to the witnesses who have come here. Thank you for being with us today.

We are examining in this Committee, Senate Bill 1963, the Wireless 411 Privacy Act, which is sponsored by Senator Specter and Boxer. As many of us are aware, and everyone clearly in this room are, there are more wireless telephone users now than any time in history. There are over 160 million in the United States. Wireless phone service has proven valuable to millions of Americans because of their mobility, because of its service quality, its coverage, and its reliability.

Personally, going around Virginia in an RV with a laptop getting Internet coverage through Verizon, its not just theory, it was great practice to not have Blackberry coverage and kind of weak cell phone coverage. To be honest with you, in some places, it was great to be able to access information. Obviously, Mr. Largent would appreciate, I was on *CBS Sportsline.com*, getting play-by-play of my brother's pre-season game, and that coverage is, of course, very important to a few people. Congressman Largent understands what's important in the real world.

Senator McCain posed questions to 5 or 6 of the top wireless carriers, questions on this issue. Those questions have been responded to by those companies and they are from Cingular, Verizon Wireless, Spring, Verizon, and T-Mobile. At any rate, the questions and the answers will be made a part of the record.

The facts as we proceed in this hearing, are going to be pretty clear, but, according to the Cellular Telecommunications and Internet Association, there are more than 180 wireless services com-

peting in the United States which means that's great for consumers. Approximately 93 percent live in markets that are served by four or more wireless providers, and nearly 98 percent of Americans live in a market that is served by three or more providers.

Now, by all accounts, the wireless industry is intensely competitive, and that competition continues to bring extraordinary benefits to consumers. According to the FCC, cell phone use in terms of minutes has increased by 22 percent per consumer while service costs have fallen by 13 percent.

Overall, when we see this sort of a situation, consumers are the ultimate winners in a competitive marketplace, which enables them to determine for themselves or their businesses what they value and what they don't value when it comes to their mobile phones. More recently, wireless customers, both residential and businesses, have indicated a desire to make their wireless telephone number available to others through directory assistance.

To meet this consumer demand, the wireless industry is considering offering wireless directory assistance services, or 411. At the same time, there are efforts to create a nationwide directory and that, in doing so, has raised privacy concerns for consumers who don't want people calling them up, and want to keep their phone numbers private, that is one of the benefits of cell phones in some peoples' desires.

Now, today's hearing is to examine those privacy concerns and what the industry is actively considering to address them; when they're going to be providing, and, not all will be providing directory assistance, some may, but at any rate, look at the scope of it, what is being planned and what will be available to customers.

Now, generally speaking I think each company in a free market system ought to be able to make a decision for providing wireless directory for itself based on its own individual assessment of what its customers and the general marketplace demands. Likewise, I believe that each customer should have the freedom to make this decision for himself or herself based on their power to select the carrier they want for their particular needs or preferences.

I don't think it is necessarily mutually exclusive that either you have directory assistance through a company, or you have one that doesn't, I think that the marketplace and companies will say, "If you don't want your number in a directory assistance, you don't have to opt in for it." And it doesn't have to be just one way or the other, and I think that clearly in the competitive marketplace, the companies, at least I have faith in the companies acting that way.

So therefore, my general philosophy is before we move forward as a government with new laws and legislation, my preference is to allow consumers to use this vibrantly competitive market to pick features and services that they want. I'm hesitant to support additional regulations, however well intended, which effectively makes the choices for consumers.

[Responses to Senator McCain's questions to wireless companies follow:]

CONGRESS OF THE UNITED STATES
 Washington, DC, September 15, 2004

Mr. GARY FORSEE,
 Chairman and CEO,
 Sprint Corporation,
 Overland Park, KS.

Dear Mr. Forsee:

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?

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.

SPRINT

Overland Park, KS. September 20, 2004

Hon. JOHN MCCAIN,
Chairman,
Senate Committee on Commerce, Science, and Transportation.

Hon. JOE BARTON,
Chairman,
House of Representatives Committee on Energy and Commerce.

Hon. 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 new subscribers. Subscribers' telephone numbers will not 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.

Sincerely,

GARY D. FORSEE.
Chairman and Chief Executive Officer.

CONGRESS OF THE UNITED STATES
Washington, DC, September 15, 2004

Mr. JOHN D. ZEGLIS,
Chairman and CEO,
AT&T Wireless,
Washington, DC.

Dear Mr. Zeglis:

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.

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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:

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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?

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.

January 3, 2005

Hon. JOHN MCCAIN,
Chairman,
Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Chairman McCain:

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.

CONGRESS OF THE UNITED STATES
Washington, DC, September 15, 2004

Mr. STANLEY T. SIGMAN,
President and CEO,
Cingular Wireless,
Atlanta, GA.

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

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.

FRED UPTON,
Chairman,

House of Representatives Subcommittee
on Telecommunications and the Internet.

JOE BARTON,
Chairman,

House of Representatives Committee
on Energy and Commerce.

September 17, 2004

To: 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 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.

STAN SIGMAN,
President and CEO,
 Cingular Wireless.

CONGRESS OF THE UNITED STATES
Washington, DC, September 15, 2004

Mr. TIMOTHY M. DONAHUE,
 President and CEO,
 Nextel Communications,
 Reston, VA.

Dear Mr. Donahue:

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.

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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?
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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.

September 21, 2004

Hon. JOHN MCCAIN,
Chairman,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Hon. JOE BARTON,
Chairman,
Committee on Energy and Commerce,
U.S. House of Representatives,
Washington, DC.

Hon. FRED UPTON,
Chairman,
Subcommittee on Telecommunications and the Internet,
House Energy and Commerce Committee,
Washington, DC.

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.
- 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,
Nextel Communications.

CONGRESS OF THE UNITED STATES
 Washington, DC, September 15, 2004

Mr. ROBERT DOTSON,
 President and CEO,
 T-Mobile USA,
 New York, NY.

Dear Mr. Dotson:

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.

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

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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.

T-MOBILE USA, INC.
Bellevue, WA, September 20, 2004

Hon. JOHN MCCAIN,
 U.S. Senate,
 Washington, DC.

Hon. JOE BARTON,
 U.S. House of Representatives,
 Washington, DC.

Hon. FRED UPTON,
 U.S. House of Representatives,
 Washington, DC.

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 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.

Senator ALLEN. Again, I do want to thank our witnesses for being with us today, in the event we move to the witnesses after Senator Boxer's statements, and Senator Wyden, are you going to want an opening statement? I know, but are you going to want to make a statement as well? All right, after statements from Senators who are here, in the event that Senator Specter doesn't come in, I'll just go like this, that will be the signal so that you all can move forward so we can hear from you all as well. So that, with the concurrence of Senator Wyden, we'd now like to hear from Senator Boxer, one of the sponsors of this legislation.

Senator Boxer.

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you so much, Senator Allen, and I ask that my full statement be submitted for the record.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Mr. Chairman, thank you very much for holding this hearing. I also want to thank Senator Specter for inviting me to take the lead with him to protect consumer privacy as the wireless phone industry moves forward with a 411 directory of cellphone users.

The Specter-Boxer "Wireless 411 Privacy Act" would create a national privacy standard for wireless 411. It would give consumers a choice as to whether or not their cell phone numbers are listed in a directory, it would prohibit cell phone companies from charging customers for keeping their numbers private, it would allow the directory to connect a subscriber to someone trying to reach them but it would not allow the directory to give out telephone numbers, and it prohibits the publication of cell phone numbers.

These are protections consumers want. Both the AARP and Consumers Union have come out in support of the legislation.

There are more than 169 million wireless subscribers in the United States who will be affected by the creation of a wireless directory. These customers have always had control over who has access to their wireless telephone numbers. But, a wireless directory threatens that control. And, it threatens to raise consumer bills as well. That is because wireless customers in the U.S. pay for all incoming and outgoing calls. If consumers are listed without their consent, then consumers could be unfairly incurring unwanted charges or using up their allotted minutes of use by re-

ceiving calls they do not want. Our bill seeks to protect consumers from those threats.

Having reviewed the testimony of the experts here today, and in response to concerns some of my colleagues on this Committee have expressed, I have filed a manager's amendment to the 411 Wireless Privacy Act:

- First, due to concerns with the language requiring that the directory not reveal telephone numbers, I have removed that language.
- Second, I have also included state preemption language in order to establish a national standard of protection for the wireless directory and to provide the market with regulatory certainty.
- Third, for those small businesses who expressly wish to have their cellphone numbers listed, I have included an opt-in choice for consumers to allow a directory to publish their numbers.
- Lastly, because numbers will be distributed from the directory to anyone who requests a number, the manager's amendment creates an across the board opt-in choice for consumers.

The industry has said it can meet this level of protection and it is now up to us to provide those protections in the law in order to ensure that customers are treated fairly.

The industry claims that the legislation we are discussing today is a solution in search of a problem. But, our constituents have made it clear that an unregulated wireless 411 directory is a problem.

Mr. Chairman, most consumers do not know that there is boiler plate language in most existing wireless contracts that allow carriers to include wireless numbers in a directory. That is, almost all consumers have unknowingly already agreed to having their number included in a directory. And, while the industry has claimed it is voluntarily committed to a certain level of consumer protections, without a law, there is nothing to prevent a carrier from changing its mind.

The industry also claims that a highly competitive cell phone market empowers consumers simply to change to another provider if they do not like the terms and conditions of a new wireless directory. And Verizon, to its credit, has chosen not to participate in the directory because of its concerns that a directory threatens consumer privacy.

But, Mr. Chairman, every consumer, regardless of cellphone service provider, should have a right to privacy. Given that all consumers are free to control who has their phone numbers today, they should remain free to have that control. A wireless directory may work well for a minority of consumers without strong privacy protections, but it can only work well for everyone if we establish privacy protections in law.

I want to thank you again for holding this hearing and I look forward to hearing the testimony from our witnesses today.

Senator BOXER. And what I want to do say, the theory of waiting until there are problems—but I can tell you right now, chaos will reign when our constituents start getting calls on their cell phones, which they consider, in many ways, an adjunct to their land phone, which they consider, in many cases, a phone they carry for urgent business. If you want to wait until chaos breaks loose in your state, that's your right. But, Senator Specter and I have teamed up in a bi-partisan way where common sense dictates that we ought to move forward in a fair way. Now, there's a big difference between your landed phone, your grounded phone and your wireless phone, in this way. Senators, when our constituents get a call, an unwanted call on your cell phone, guess who pays for it? Our constituents. This is a total outrage. And if we start seeing our names published in directories where anyone can call us in the middle of the workday, can start bothering our children, many of whom have these phones, that they're told, Only use it in emergency, I'll tell you that in my opinion, the wrong side of the issue to be on. Now, I know these companies well. I've got a lot of them in my state. I love them, and I'm a good customer of theirs. But all the promises

to the contrary where, "We won't sell your name," and "We won't do this and that and the other," we already know what goes on in the business world, it's the bottom line. Our names represent a dollar sign. And all that is well and good if I decide to opt in. And that's what we're saying. If we want to have our name in a directory, whether it's a private directory so that when someone calls 411 they get my number, fine. Or a published directory, if I want to be in that, fine. And the wireless companies will be very good at persuading people, I think, that it's to their advantage to have their phone listed. And that still, that's their job. But I believe I'm here for a reason. And that is to protect people. And I would like to ask unanimous consent that a letter from the AARP endorsing the Specter-Boxer legislation be placed in the record at this time.
[The information referred to follows:]

AARP

Washington, DC, September 21, 2004

Hon. BARBARA BOXER,
Washington, DC.

Dear Senator Boxer:

AARP wishes to commend your leadership in introducing S.1963, the Wireless 411 Privacy Act, legislation on which the Senate Commerce, Science, and Transportation Committee will shortly hear testimony. S.1963 would ensure that 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. Congress should not leave this matter to industry discretion.

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 confirms that cell phone owners place a high value on the privacy of their cell phone numbers. According to the study, an overwhelming majority of cell phone owners view the current lack of a publicly available wireless directory as a positive and say they do not want to have their number included in such a directory if it is created. In fact, they believe that no wireless phone number should be added to a wireless directory unless the cell phone owner specifically requests it. A copy of the study is enclosed for your review.

We believe that AARP members and residential consumers in general deserve the right to maintain the maximum amount of control over the disclosure of their wireless phone number. We strongly support your effort 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 more timely.

If you have any questions or concerns, please do not hesitate to call.

Sincerely,

MICHAEL NAYLOR,
Director of Advocacy.

Enclosure

Senator BOXER. And also, a consumer union in support of our bill that comes from testimony that was given on September, actually, today's testimony. We ask that that be placed in the record.

What we have done, what I have done working with Senator McCain and others, is to hear some of the problems that certain Senators had with our original bill, two of them are here, and we have filed a managers' amendment that takes care of their problems. Basically, hopefully this will be marked up, I know we had bi-partisan support on this Committee, and this managers' amend-

ment, I want to take a minute to explain it, due to concerns that the language requiring that the directory not reveal telephone numbers if somebody has, in fact, opted in, we initially said, "Just connect them to the party." Senators Smith and Wyden had a problem with that, we wrote an amendment, we have fixed that, in the managers' amendment, so you will be able to get the number if the person asks for that number and they have received permission.

Second, we have language to establish a national standard of protection so the market has regulatory certainty. We have in the managers' amendment an across the board opt-in choice for all consumers, so we don't make the distinction between existing consumers and future consumers, everyone has a chance to opt-in to the system. So, what you'll hear from the industry today, and God bless them, we're discussing a solution in search of a problem. Well, I've lived my life awhile. I know what happens when people start getting calls they don't want. That's why we have a "no call" list, which passed this Senate and is the law of the land. And if you think that was an outcry from the people, imagine our families that have several cell phones, and what is going to be on us if we don't move on this. I think Senator Specter had the solution, I think he did a good job. Now I'm working on a managers' amendment to make it acceptable to a broader group of Senators. I urge you to support this and not wait for chaos to break out with these unwanted calls that invade someone's privacy. There's going to be a backlash, and then we'll have to deal with a mess. I think we can do this in a simple way, you want to be listed? Simply put your name on the line. You don't want to be listed? You don't have to be listed, pretty simple, pretty American to me. I think that privacy is an American value, we value our privacy. And again, I'll close with this: I have a little grandson who is about to get a cell phone for emergencies. And these kids don't know, somebody could get their phone number, could call them, could con them, to say "Meet me at the corner, I'm calling because your Mom said meet me at the corner." You're walking into a mess. And I would appeal with all my heart and soul to the industry instead of fighting this, to come with us, and craft this good bill with us, and do something that will make you feel proud, instead of just fighting for something that's going to wind up to be a giant mess. Thank you very much. I hope Senator Specter shows up, if he doesn't, I think I've spoken for him, in some ways. I think he could speak for himself probably better, but I think he feels as strongly as I do on this. Thank you.

Senator ALLEN. Thank you, Senator Boxer, now we'd like to hear from Senator Wyden.

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Chairman, thank you for holding this hearing. We hope our friend and colleague Senator Specter does come, but I think Senator Boxer has accounted well for this cause. I particularly want to commend Senator Boxer for her willingness to work with myself, Senator Smith, Chairman McCain, and others on the question of the managers' amendment, because I think we're moving now toward having a good bipartisan con-

sensus on this issue. I have long felt that a wireless directory assistance service would have to offer in a certain way, different from ordinary directory assistance would, in effect, be a recipe for consumer confusion. It sounds to me like it would be better to have a single, integrated directory assistance service where you could call and get both a person's regular number and cell phone number, if, and I want to emphasize if, he or she chose to have both listed. And so what Senator Boxer and Senator Specter have done, in my view, it seems to me they have empowered the consumer, they've said the guiding principle ought to be consumer choice. Nobody should have their cell phone number listed in a directory service unless they affirmatively want to. Nobody ought to have to pay to keep their cell phone number private. At the same time, the Boxer-Specter legislation acknowledges that folks use their cell phones in different ways. Some people use it infrequently, say a car breaks down, some use it as a private line to stay in close touch with a spouse or a child, some use it for business, some use it as their only phone, and I'm always stunned at how many people use their cell phone, in effect, as a full replacement for ordinary land line phones. So people have different views on whether and how they want the number to be available and it ought to be the policy of this Committee, the Committee that takes a lead on these issues, to ensure that consumers are fully empowered to make the choice. I think there are a number of issues from the standpoint of how we look today at this question that need to be examined. I've been told, for example, that some cell phone subscriber agreements have buried in them somewhere a provision saying that the carrier reserves the right to list the user's number in a directory. Now, of course, we're going to hear from some carriers who currently say that they won't do that any longer, but I'm not convinced, and remain concerned that not all subscriber agreements reflect the carriers' current statements on the subject. So I think that's one we ought to examine, and whether, if that's the case, they plan to change the language in the subscriber agreements. I'm also pleased as I know my friend and colleague Senator Smith is, that Pat Cox is here, he's had a long history in our state of being involved in the technology sector and giving us very valuable counsel. So, Mr. Chairman, I think we can get this worked out. You and I have teamed up often, Senator Boxer and Senator Smith, and I think with the managers' amendment in particular we're a long way to building a good bipartisan consensus, and moving ahead and I thank you for holding the hearing.

Senator ALLEN. Thank you, Senator Wyden. Senator Smith, would you like to make an opening statement since you've been referenced?

**STATEMENT OF HON. GORDON H. SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Well, Mr. Chairman, I think Senator Wyden gave an opening statement very similar to my own. So in the interest of time, let me associate my remarks with Senator Wyden, and welcome Mr. Pat Cox from Houston, we appreciate his coming here, and participating in a very important hearing, so, thank you.

Senator ALLEN. Thank you, Senator Smith. Panel, please come forward. Let me welcome our panel, it's a distinguished panel who will shed light on this issue. In reading some of the testimony, it seems like there's a great deal of agreement in the principles, it's a question of how to effectuate it. Let me introduce you, if you don't mind, we'll go in the order in which you all are seated here with first Mr. Strigl, let me first introduce who each of you are, and then hear from you first. Mr. Dennis F. Strigl, President and Chief Executive Officer of Verizon Wireless. Next is Mrs. Kathleen Pierz, who is the Managing Partner of the Pierz Group. Then we have Mr. Patrick M. Cox, who is CEO of Qsent of Portland, Oregon. Then we have former Congressman, Steve Largent who is President and Chief Executive Office of Cellular Telecommunications & Internet Association, and finally, last but not least, Mr. Mark Rotenberg, the Executive Director for Electronic Privacy Information Center, otherwise known as EPIC. Thank you, gentlemen, and lady, for being with us this afternoon, we'd first like to hear from you, Mr. Strigl.

**STATEMENT OF DENNIS F. STRIGL, PRESIDENT AND CEO,
VERIZON WIRELESS**

Mr. STRIGL. Mr. Chairman, thank you for the opportunity to testify today, members of the Committee, it's very nice to be before you today, and thank you for holding this hearing on this very important privacy issue. It is my understanding that the legislation we're here to discuss today assumes that a wireless directory is a given. With that, if the purpose of today's hearing is to determine if a wireless directory can protect a consumer's privacy, my answer is "No," it cannot.

And therefore, this project should not go forward.

The wireless industry over the last two decades has built an intensely competitive market, one that continues to bring extraordinary benefits and choice to consumers. But against that backdrop of competition and consumer choice, I think the wireless industry is missing the boat when it comes to creating a wireless telephone directory. It's a subject that's controversial, not only with our customers, but also within the industry itself. We at Verizon Wireless think that a wireless directory is a terrible idea. Not only the customers oppose it, but now you've asked us to appear here today to justify the idea, and I submit that it would be far better for the industry to abandon this needless project, and instead move ahead to devote our time and resources to better serve our customers. Any wireless customer today who wants a listing can already get one. And, they can get it without charge from Internet telephone directories such as *Verizon Super Pages.com* or *Switchboard.com*. The bottom line is this: Verizon Wireless will not participate in the plan you'll be hearing about today, we will not publish our customers' cell phone numbers, and here's why. Since the beginning, this industry has not published wireless phone numbers. We did this consciously for the sake of preserving customers' privacy, and control over their bills, and discouraging interruptions from unwanted calls. Those basic reasons have not changed. In fact, we see more reason today than ever to protect a consumer's privacy. The floodgates are open to spam, viruses, telemarketing, and other un-

wanted, unsolicited messages on land line phones, on computers, and in mailboxes. We think our customers view their cell phones as the one place where they do not face these intrusions. Where they have control over who calls them, and to whom they give the number. And if there's any doubt, our customers and many of your constituents are reiterating loudly and clearly that they don't want their wireless phone numbers published. I made a speech in June that was widely reported in the press in which I said that a directory for the wireless industry was a dumb idea. Since then, I've received countless letters on this subject from customers, typically they say, "Please keep my cell phone free from telemarketers and unsolicited callers." I have not received one single letter from any of our thirty million customers saying that they want their wireless number in a directory.

It is my belief that the people who want a wireless directory are the people who are looking to reach somebody, not the people who will be reached. The Pierz Group research itself reports that 89 percent of wireless customers do not want their number listed in directory assistance service. So why are we jeopardizing the privacy for something customers don't even want? Clearly, there is no grounds or customer demand for a directory that would justify putting privacy in jeopardy. To date, the wireless industry has a strong record of proactive steps to preserve customers' privacy in an intrusive world. We've surrounded our customers' information with a wall of privacy, aggressively investigating and prosecuting spammers, deploying and updating anti-spam filters, and fighting to make telemarketing solicitation calls illegal. Why would we want to tear down that wall after spending the last two decades building and fortifying it? Verizon Wireless does not view the proposed 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 numbers. 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. To date, the wireless industry has been a great American success story for consumers and for the economy, how fast and far the story continues in our third decade of operation depends upon the wireless industry remaining vigilant keepers of the privacy frame, while building more capacity, adding more advanced services in wireless products to our consumers, and also, I would encourage regulators, especially at the state and local level to allow the vibrant, strong, competitive marketplace to work. Thank you very much, Mr. Chairman, I look forward to the discussion today, and I'll be happy to answer questions.

[The prepared statement of Mr. Strigl follows:]

PREPARED STATEMENT OF DENNIS F. STRIGL, PRESIDENT AND CEO,
VERIZON WIRELESS

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-e-mail 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.

Senator ALLEN. Thank you, Mr. Strigl for your testimony, I'm sure there will be questions. Senator Ensign, did you want to make an opening statement?

**STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA**

Senator ENSIGN. I'll keep it very, very brief. Just to make a couple of points here. I don't know that there's any place or any industry in America that has stronger market forces at work than in the cellular telephone industry. And I would say that, I think there's pretty good evidence out there to back up that statement. Having made that statement, I don't know why we would want to put more government on more industry. It would seem to me that if people

are afraid that somebody's going to force somebody into a directory, that you have somebody like Verizon saying, "We're not going to do that." And, if there are people out there that say, "I don't want to be part of that, and I don't want to have anything to do with that," if you were a company that was going to require or start charging your customers for, say for instance, not being put on that list, then those customers would have a tendency to migrate toward a company like Verizon who is not. The market is going to take care of this problem if we just let it. This is legislation, we're legislating looking for a problem, instead of just letting the market take care of it. I just think it's kind of ridiculous that we are even thinking about putting legislation forward on this particular issue. The idea of you all doing what you want to do and letting the market forces determine that and let the customers determine where their dollars go would seem to make the most sense to me, so Mr. Chairman, I will vigorously oppose this piece of legislation, and I appreciate you chairing this hearing.

Senator ALLEN. Thank you, Senator Ensign. Senator Brownback did not want to make an opening statement, but make a statement for the record and, so ordered.

**STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS**

Senator BROWNBACK. Thank you for holding this hearing, it's a great hearing to be held, and I hope we can really look at this issue in some real depth, I've got an opening statement that outlines the position, because I think it's going to be a key one for us to wrestle with. Thank you.

[The prepared statement of Senator Brownback follows:]

PREPARED STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Thank you, Chairman McCain, for holding this hearing.

The Wireless companies' plan to offer a 411 Directory has been a heated topic in the past few months as speculation over its possible structure has appeared in news report and op-ed pieces throughout the country.

Understandably, there is a residual fear among consumers resulting from the ongoing battle against telemarketers in the landline world. Many ask, would a wireless directory expose the millions of cell phone users to an even worse type of unwanted commercial call—one that eats up their minutes?

I would like to thank Senator Barbara Boxer for introducing her legislation and with it raising the public debate over this pending directory. I would also like to welcome Senator Specter for coming hear this afternoon to share his concerns on the issue with this committee.

While I commend the good intentions of this bill's authors, as a Co-Chairman of the Senate Wireless Caucus, I would like to caution this committee. I think we should take a very careful approach to legislating in this area.

I am pleased that the wireless industry has responded to every criticism raised to date. They have committed to provide a 411-like service that will be completely "opt-in" with no charge for those customers who do not wish to be listed. This is different from the wireline industry, where you have to pay to keep your name out of the phone book. They have also established that the wireless directory will not be published and that the names and numbers will not be sold to a third parties.

Wireless companies have an excellent track record on privacy and have every incentive to keep their commitments. As you know, wireless is an extremely competitive marketplace. Moreover, the newly implemented wireless number portability makes changing carriers these days even easier. If a carrier were to break their promise and compromise their customers, loss in business would be swift and certain.

Our goal should be to ensure that we do not unintentionally make the legal burden too onerous for the wireless companies so that we create disincentives to establishing a 411 directory. As more and more Americans “cut the cord” and rely exclusively on wireless, consumers are demanding this service. It would be wrong for government to step in hastily and unnecessarily, when there is not yet a problem to fix.

Of particular concern to me is Section 3(C) of the bill that requires a very specific call forwarding protocol. There is concern that this protocol is proprietary to a particular company. As written, this might be picking winners and losers, which government should not do. I urge a careful review of this section.

Thank you again Chairman McCain for holding this hearing. I look forward to hearing from our distinguished Panel this afternoon. I offer a special welcome to CTIA’s new President, former Congressman Steve Largent. It is good to see you back on the Hill.

Senator ALLEN. Thank you, Senator Brownback. Ms. Pierz, thank you and all other witnesses for your forbearance. If you would please proceed.

**STATEMENT OF KATHLEEN A. PIERZ, MANAGING PARTNER,
THE PIERZ GROUP, LLC**

Ms. PIERZ. Thank you, Mr. Chairman, distinguished Members of this Committee.

I was invited here today to present some key findings from a consumer survey that the Pierz Group just completed. We surveyed 1,500 of three cell phone providers regarding their willingness to list their cell phone number, and their opinion of various privacy protections that could be put in place.

The message that I have for the Committee today is simple. Better communications and privacy are not mutually exclusive. I believe that consumers should have both, and they want both. Half of all the telephones in the United States today are now mobile phones. Those are largely unlisted, and in spite of all the technological innovation that we’ve seen in the telecommunications area, directory assistance today remains unchanged from the way it was in the 1950s, and there is really very little that has happened in that time. The ways that we have communicated with each other, and all the devices that we have today, have changed dramatically. It may come as a surprise to the Committee, and it would be rather a shock to a lot of consumers to learn that there really is no specific privacy protection for cell phone numbers today. In fact, almost all mobile subscribers have already signed a contract, as was mentioned, that gives the specific, express permission to be included in a directory, and consumers are not aware of this stipulation today. And with number portability in place, you now also face the possibility that you could divulge someone’s lifetime telephone number without their consent, unless we have specific privacy protections in place.

So, what do consumers want? We learned that a majority of consumers want wireless directory assistance, however, nearly all consumers want privacy protections in place to protect their cell phone number. The stronger the privacy protections, and specifically the protections that are mentioned in this bill, the more likely consumers are to opt-in to a wireless directory. We found that with these types of privacy protections, as many as 62 percent of consumers will be willing to list their number in directory assistance. Consumers rely on their mobile phones.

Today, almost 10 percent, which means 16 million mobile subscribers told us that they do not have a home phone anymore, just a mobile phone. And if you look at adults who are 18 to 24, that number increases to almost 22 percent, they only have a mobile phone today. We asked consumers why they would like to have their numbers listed. Seventy-six percent said, "I can find people when I need them, or in an emergency." And we know from past research that almost everyone can think immediately of a situation where they needed to reach someone, or needed to be reached on their mobile phone and couldn't do so. This is a top of mind communications issue for consumers. When we asked consumers what concerned them most about being listed, 28 percent said their overall privacy, and an additional 28 percent said that they were concerned about calls that they didn't want, or calls from people that they didn't know.

In the survey we tested some specific options for privacy protections. Under the proposed CTIA plan, consumers will list, however with specific additional privacy protections where the number is never given out, or printed on a phone bill, and where consumers can actually know who's calling them, so they can take that call, or not, based on their choice. You can get over 60 percent of people to list in a data base. This is an important number, because 60 percent represents critical mass in the database in terms of being a value to consumers, and to carriers. Consumers clearly want privacy protection. Especially because they believe that they have that protection today. I would argue that most wireless carriers would like to be able to give consumers more privacy protection, so what's stopping us? Why can't we get to that point? In a perfect world it would be easy, but much like the issue of local number portability, no one carrier can do this alone because a call is completed over different networks. There is no particular market incentive in place to protect a consumer's privacy, and that's where we've seen a breakdown in market forces. Wireless carriers, even as a group, as an industry, can't force other carriers to mask numbers or protect consumer privacy. And, there is no particular market incentive for them to do that. So, if wireless directory assistance can be done right, everyone wins. Consumers, small businesses, fixed line carriers, and wireless carriers. We can do better than just listed and not listed. It's not rocket science from a technology perspective, but it is complicated from an industry cooperation point of view. If the Committee can achieve this, and protect mobile numbers and allow consumers to control their own privacy, will ensure the greatest value is derived from this process for everyone. And it will be a pro-privacy and a pro-competitive move. Thank you.

[The prepared statement of Ms. Pierz follows:]

PREPARED STATEMENT OF KATHLEEN A. PIERZ, MANAGING PARTNER,
THE PIERZ GROUP, LLC

Chairman McCain, Ranking Member Hollings, and other distinguished members of this Committee, thank you for inviting me to address you this afternoon. I would like to request that my full written testimony be submitted for the record.

My name is Kathleen Pierz. I am the Managing Partner of The Pierz Group, an independent consulting firm serving the Information Services industry with a special focus on the very narrow niche of directory assistance. Our clients are fixed line and wireless carriers, directory assistance (DA) providers and technology companies

around the world. I have been involved in this industry for 17 years, having worked in information services at Ameritech (now SBC) and IBM. I now consult to the industry and have authored more than one hundred reports and articles on the subject of directory assistance and databases.

Half of all telephones in the U.S. are now mobile phones. The issue of adding cell phone numbers to directory assistance is an important one for consumers and for businesses. The message I have is simple: *Better communications and privacy are not mutually exclusive; consumers can have both.*

What the Committee is addressing today is the fact that there are no guarantees, no legal construct that give consumers the privacy protections they want (and think they have today). I was invited here today to present key findings from a recent independent national consumer survey of 1,503 cell phone subscribers conducted by The Pierz Group in July and August of this year. The purpose of this independent research was to establish consumers' willingness to list their wireless phone numbers in directory assistance and under what specific conditions. In addition, I have published three other major reports in the past 18 months about the opportunity to add mobile numbers to the DA database in countries where they are not included today.

As an analyst, I write regularly about the fact that U.S. information services, whether from 411, print phone books or online services have lagged well behind our communications infrastructure. DA in the U.S. today has changed little since the 1950s, but the ways in which we communicate have changed dramatically. DA databases contain a single fixed-line phone number and a billing address. Mobile phones as well as many other methods of communication now play a major role in our daily lives, yet there is no way today to reach a mobile subscriber without knowing the number, through DA or any type of directory. In addition, e-mail addresses, Instant Message (IM) addresses, SMS codes, fax numbers, pagers, website URLs etc, like mobile numbers, are all unavailable unless the owner gives them to you, and you have them when you need them.

Nearly 53 percent of all phones in the U.S. are now *unlisted*. That figure includes the roughly 20 percent of all fixed-line numbers that are unlisted (roughly 33 percent of residential numbers are unlisted) and the 97 percent of wireless numbers. (Some cell phone numbers are listed because incumbent wireline carriers permit them to appear in their white pages—for a special fee.) By contrast, in Scandinavian countries between 85 percent and 95 percent of all phone numbers (wireline plus wireless) are listed. In these countries, between 20 percent and 25 percent of DA calls request a mobile number. In the U.S., mobile phone numbers are not available through DA; in fact, wireless numbers are not even available to emergency workers in life-and-death situations.

Mobile numbers are not private

It may come as a surprise to the Committee—and to many consumers, I'm sure—that today there is no specific privacy protection in place for mobile numbers.

The only reason your cell phone number is not publicly available today is because that has been the industry practice for the past 20 years. One must also consider the fact that nearly all mobile subscribers, with the exception of Cingular Wireless customers, have already signed a contract that includes their express permission to have their mobile number listed in any type of directory the carrier may choose. Consumers are not aware of this stipulation in their contracts.

LNP: An additional factor

The need for consumer privacy protections becomes more significant in the wake of the new Local Number Portability plan. LNP means that cell phone users can keep their numbers when they change carriers—indeed, one number for the rest of their lives. Think of the difficulties consumers would face if these “lifetime number” were divulged without their consent. So, LNP makes it more important to protect consumers' expectations of the privacy of their cell phone numbers.

To translate these broad concepts into actual consumer experience, we surveyed more than 1,500 consumers in July and August. We asked them detailed questions about their privacy expectations on cellphones and what they want, and don't want, from a cellphone listing in directory assistance. I would like to summarize those findings for the Committee.

What consumers told us:

Many consumers want to be able to contact each other on their mobile phones. Nearly all consumers want to have some privacy protection built into that contact process. Because mobile phones are considered to be more personal, they are more likely to be answered any time or anywhere. For these reasons—and because they

have been unlisted in the past—consumers expect a higher level of privacy for their cell phone number.

- *With privacy protections, a majority of consumers will list their cell phone numbers. The stronger these privacy protections, the more willing consumers are to list:*
 - Eleven percent of consumers (about 18 million wireless subscribers) will list their cell phone numbers without any type of privacy protection at all. This number is up 500 percent over the number of consumers who said they would list (2 percent) under these circumstances in July of 2003.
 - Fifty-two percent of mobile subscribers (about 84 million wireless subscribers) will list their numbers if at least some type of privacy protection is provided.
 - With the most comprehensive privacy protections, up to 62 percent of consumers (over 100 million wireless subscribers) would be willing to list the cell phone numbers. Given the fact that roughly 67 percent of residential numbers are listed today, this is a very high number.
 - Creating a process to easily add cell phone numbers to the National Do Not Call Registry in conjunction with privacy protections would make 47 percent of consumers more willing to list their cell phone numbers. This, of course, is easily accomplished.
 - Our research shows that consumers could expect an average of three to five additional calls per year to their cell phones as a result of having their wireless number listed. This is of course an average. Many will get no calls from DA, some will get more.
 - If consumers had to pay for the incoming calls (and some carriers may not require that), an additional three to five calls per year would have little cost impact to consumers. These new calls would generate an additional average expense of \$0.45 per month, or 1/100th of a typical monthly wireless phone bill.
 - Consumers are not aware of the provisions in their current wireless contracts that gives express permission to list their numbers in a directory.
 - Caller ID functions do not necessarily identify a calling party. If a phone number is unrecognized by a consumer, there is no way to know who is calling. In addition, a significant percentage of calls to mobile phones today are shown as “incoming call” with no number or name available.
- *Why do consumers want to have cell phone numbers available through DA?*
 - These answers were very concentrated and consistent. Seventy-six percent said, “I can find people when I need them or in an emergency.”
 - Other popular answers were, “people can find me” and “it would help me do my job.”
 - 9.6 percent of all mobile subscribers (almost 16 million people) report having no home phone; *only* a mobile phone
 - More than twice as many (21.8 percent) people between 18 and 24 years old have *only* a mobile phone.
- *What worries consumers about listing their cell phone numbers?*
 - Twenty-eight percent said, “overall privacy.”
 - Twenty-eight percent said, “calls from people I don’t want to talk to.”
 - Twenty-five percent want to avoid telemarketing (which is already prohibited, although consumers are not aware of this). It should be noted that in a 2002 study conducted by privacy expert Dr. Allan Westin, 88 percent of consumers said the number one reason not to list their mobile number was fear of telemarketing calls. It is clear that consumers believe that the Do Not Call Registry works and could protect their mobile numbers as well.

What privacy protections do consumers want?

Our consumer research project tested five different privacy options, all of which could in theory be implemented today—I say in theory because some would require that all telephone services providers, both fixed and wireless, adopt appropriate technologies and standards and privacy protections to achieve this end. This would obviously generate costs for carriers, but more importantly it means that all carriers would need to agree to and implement these privacy protections. It is these difficult coordination problems that have stymied parties on all sides.

The CTIA Plan

The CTIA, which is working to assemble a national wireless database, holds some sway with its membership and can ask them to cooperate—but “ask” is the operative word here. The CTIA cannot obligate anyone—especially fixed line carriers. The CTIA plan includes what might be called a least common denominator for privacy protection; it covers those aspects the organization can ensure within the process. Under the CTIA plan, wireless numbers will be put into a DA database. This national database won’t be sold to anyone, won’t be published in a print directory and will not appear on the Internet. Some consumers will list under this plan. Our research shows that 26 percent would list right away and an additional 27 percent would list once they had an opportunity to see this plan in place and be convinced that it works. This provides for 53 percent of consumers to eventually list their wireless numbers. That is certainly a good start but is still somewhat short of critical mass (Over 60 percent listed) in order to create a robust and effective service.

As explained below, two of the five privacy protection plans (“Preannouncement” and “Listed for Messages Only”) did test better with consumers than the CTIA plan. Both involve more aggressive privacy plans and actually allow consumers to control, to a caller, who can reach them. Our research shows that these additional privacy protections increase the number of subscribers who would list their mobile numbers right away by 61 percent.

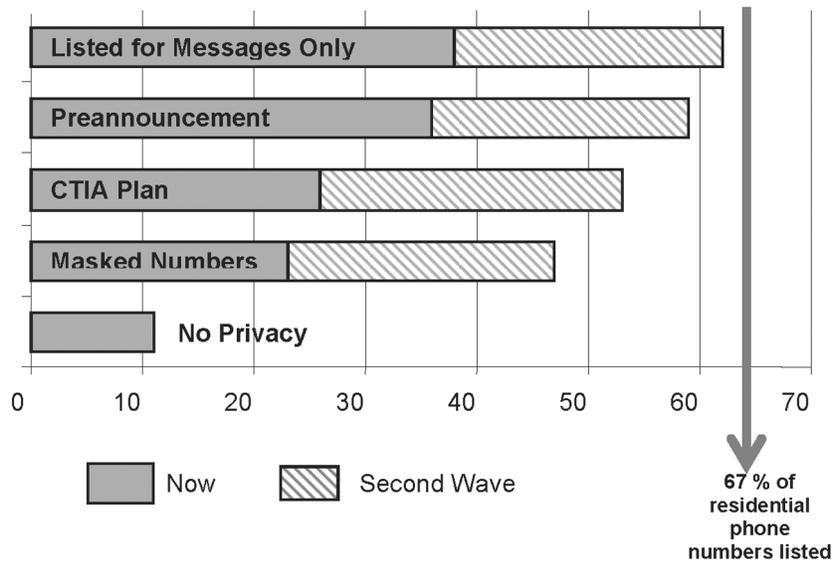
Preannouncement

This option refers to the practice of the call recipient hearing some sort of announcement that a call is coming in from a wireless DA user. Callers wishing to reach a mobile subscriber would record their names at the prompt and would be connected to the mobile subscriber. The cellular customer would hear the name and could say “accept,” “reject” or “voice mail” to manage a call from directory assistance. This option tested well because under this plan the phone number would not be given out and subscribers would have control over who could reach them on the mobile phone. Under this plan, 36 percent would list immediately and an additional 23 percent would list later. This option would allow almost 60 percent of cellular subscribers to list their numbers with confidence.

Listed/Not Listed/Listed for Messages Only

A listed/not listed/listed for messages only option also tested very well. This scenario gives wireless subscribers a third option. If they were listed for messages only, they would not get any calls from directory assistance, but would have a message sent to them with the name and number of the person trying to reach them. They could then return the call or not, as they chose. Like the preannouncement option, this privacy protection option gives consumers control over who can reach them. Thirty-eight percent would list now, with an additional 24 percent would be willing to list later, allowing 62 percent to eventually list their numbers. This is consistent with the roughly 67 percent of listed residential numbers today.

Do You Want Your Wireless Number Listed for DA?



Source: The Pierz Group, 2004

Consumers want to use DA to get mobile numbers and are, in large part, willing to list their wireless numbers—but only if they can control who can reach them. In the simplest terms, consumers want to receive the calls they want, and don't want to receive calls they don't want. They want and expect to be able to maintain some level of privacy. The wireless industry and fixed line DA providers stand to earn a projected \$2 to \$3 billion a year in additional revenues from incremental DA calls and additional minutes of wireless usage. Putting mobile numbers in the DA database is good for consumers and good for the industry, but only if done right. "Right" is what consumers say it is, the vast majority do not want their number given out (they want calls forwarded directly) and they want to maintain some control over who can reach them.

If everyone wins, what are the key obstacles?

- Consumers do not have key information:
 - Wireless subscribers do not know they have signed a contract allowing their number to be put in a directory.
 - There is no additional, specific legislation or regulation that dictates how mobile numbers can be used or listed.
 - Consumers do not know what types of privacy protections are planned or could be put in place.
 - Wireless subscribers do not know that they are already protected from unwanted commercial contact (telemarketing) on their cell phones (*see FCC Report & Order 47 CFR, section 64.1200, Subpart L*).
- Consumers use their mobile phones in different ways and have different expectations. Many will list, some will not. For some consumers the mobile phone is a safety device kept in the glove box; for others it is a vital communications tool and the only phone they have.
- It is extremely difficult for fierce competitors, particularly across wireless and fixed line industries, to agree to a plan to protect privacy of cell phone numbers without some requirement to do so. They have different incentives, business strategies and models, and they have different systems and technologies in place to manage their businesses.

- Carriers have a broad array of different and in many cases aging billing systems—these would have to be modified to avoid divulging mobile numbers and to provide accurate Caller ID information. This would require some additional investment and, again, a need for carriers to meet specific privacy requirements.
- If numbers are masked but not in a manner (such as with credit cards, *e.g.*, 202-123-XXXX) that gives consumers sufficient information, carriers are concerned that service costs could climb when consumers call to contest DA charges for numbers they can't see.

Why should Congress care about wireless DA?

Based on my research with consumers and my observation of the DA sector and the telecommunications industry more generally, I see two principle reasons why Congress should care about wireless DA:

1. Protecting consumers' privacy expectations

As my research plainly shows, consumers value the privacy of their cell phone numbers. Consumers think that they have protections today against unauthorized release of their cell phone numbers. Many consumers would be shocked to learn that there is no law or rule protecting release of their cell phone numbers. Most consumers—not all of course—are interested in getting calls through directory assistance if they can retain control over who can reach them on their wireless phones. Thus, the bill before the Committee protects twenty years of consumers' expectations.

2. Improving the value of the network for everyone

This Committee is certainly familiar with the economic principle that additional users of the telephone network create benefits for everyone—the marginal user as well as everyone already on the network. Indeed, this powerful theory underlies our universal service policies and has served our country very well. That same analysis, however, applies with equal force to wireless. Consumers using wireless telephone service create networks in which subscribers benefit from additional persons being accessible on the network. Policies that expand use of the network and the accessibility of additional persons yield positive and direct network effects for all consumers in the market, and in fact for carriers.

As noted above, however, the wireless area is more complex because one has to factor in the privacy issue—not everyone wants to be reached and most consumers do not want to have their cell phone numbers divulged. And that is where we see an issue. It is not at all clear that all the carriers involved in a wireless call (fixed phone to a mobile phone, or mobile phone to mobile phone) have the incentive to protect the privacy of the telephone number if a subscriber wants to keep it private. Consumers should have a choice that goes beyond simply having their cell phone numbers listed (everywhere) or not listed. Every consumer with an unlisted home number readily admits to missing calls they really want to receive, but they are willing to live with that problem to avoid calls they don't want to receive. Likewise, consumers can readily identify situations where they needed to reach someone or to be reached themselves on a mobile phone and it was not possible. There are of course people who do not want their mobile numbers in a DA database, even if the number was not divulged to callers. They should absolutely be able to rely on this protection, and know that their numbers can remain unlisted.

We can do better; this is not rocket science from a technological point of view, but it is complicated from an industry implementation point of view. We have seen this complication in the huge efforts by the CTIA to establish a wireless database that provides some level of privacy for consumers. Even so, the largest wireless carrier in the country is no longer willing to participate in this process based on what it sees as inadequate privacy protections. I do take issue with the comments of Verizon Wireless' president in the press that adding mobile numbers to DA is a "dumb idea." Done right, with the privacy protections and the choice consumers expect, it is a good idea and benefits consumers, carriers and many small businesses.

Ultimately, whether or not legislation is required to ensure consumer privacy becomes a question of political philosophy. Adding regulation to a successful and highly competitive industry is a difficult choice. It is one, however, that will promote privacy interests by ensuring that consumers have control over their cell phone number and that this privacy decision is respected by *all* carriers, whether wireless or fixed line. At the heart of this decision is the fact that this issue crosses two completely separate industries, fixed line carriers and wireless carriers, who to some degree compete with each other. The wireless industry could collectively agree to mask mobile numbers and not disclose them. However, if even one fixed line carrier does

not provide this same number-masking capability and prints mobile numbers on its billing statements, the numbers are not masked and not private. Similarly, one carrier could offer the more aggressive privacy options: listed for messages or preannouncement privacy protection, but that will not work unless all providers in the fixed and wireless industry agreed to provide the same privacy protection option(s). We have two industries and hundreds of carriers (fixed and wireless) that must coordinate privacy protection policy to achieve this end for the benefit of consumers. To date, these efforts have fallen short of what consumers expect.

If the Committee can accomplish those two objectives—protecting privacy and ensuring that the greatest value is derived from this process for everyone (consumers and carriers)—then it will accomplish much.

Senator ALLEN. Thank you, Ms. Pierz, I'm sure there will be more questions for you as well. Thank you for your testimony, we'd now like to hear from Mr. Cox.

STATEMENT OF PATRICK A. COX, CEO, QSENT, INC.

Mr. COX. Thank you, Mr. Chairman and Members of the Committee, I appreciate you having me here to testify today. I want to talk through how the proposed wireless 411 service would work, talk about the privacy protections in place for it, and maybe speak to the value of a directory, as well.

Qsent's commitment to privacy and consumerchoice has landed it in the position where six carriers, which is Alltel, Cingular, AT&T Wireless, Nextel, Sprint and T-Mobile are planning on launching a wireless 411 initiative with a company aggregating that content and putting it out into the marketplace. More specifically, to create one single service, where these numbers will be available through traditional existing 411 service infrastructure today. The way the service is going to be designed is to ensure that consumers have a choice, and that their privacy is protected. It will not be available in a printed directory, it won't be electronically distributed, it won't be on the Internet. This is actually what we call, dynamically protected privacy data base, which means that every time a call comes in for an operator services company, then and only then will the phone number be displayed, and it won't be stored, it won't be kept by the operator stationed, it will just be permission for the single call. If an individual chooses not to be included, their listing will not be made available in any form on this service. The current media misperception is that every subscriber would be included in the 411 data base, this is not a realistic option, and in fact is not what would be happening. For example, if we did that, there would be judges, law enforcement personnel, celebrities, children included in this data base, and that would create a trust problem, it creates a privacy problem, a lot of business risk for carriers to do that, that is not the plan, this truly is going to be an opt-in. The data base, day one, starts at zero. A carrier's greatest asset is its customer. And so, I think there's no better way to take care of that customer and create trust than giving them choice. On how they control and how they display their personally identifiable information. So Qsent and its participating carriers believe in the following principles, and we think this also creates a very successful service: the right to choose, the right to change that choice, the right to security, and the right to have all of that without cost. That's the agreement amongst all the participating carriers in this opportunity here. There's a clear need for this for the consumer. The value of

a directory. Eighty percent, which is a supermajority of consumers today, eighty percent choose to have their land line numbers included in voice-based 411 services. Hundred of thousands of consumers now currently pay their wireless carrier companies money to be listed in directory assistance, and to be listed in the phone book. There are varying value propositions, but in essence, personal reasons, business reasons, sometimes people want to stay in touch with their prospects, their customers, their family and their friends, and they want to choose to be part of this. For over eighty years, Federal and state governments have affirmed the belief that telephone directories are in the public interest. In fact, printed Yellow Pages generate billions of dollars in revenue from businesses which result in lower phone costs for consumers. According to the FCC, 50 percent of all telephone subscriptions this year are for mobile service. Even a growth in dependency of the wireless phone, the availability of a wireless 411 service will for the first time create parity between the wireless and land line service offering, creating more competition and creating better consumer benefit and lower prices. For business people, particularly small business owners, the benefit is clear. A specific problem we have with the bill and it sounds like it's being addressed by some of the comments earlier by Mrs. Boxer and Senators Wyden and Smith, but there's a section C, the call forwarding, this method won't work, legally or technically. There are a lot of regulatory issues around it, a lot of technical issues around it. There's no existing method today that will positively authenticate a caller's identity. Caller ID on the network doesn't exist, except for just telephone number, you don't get name transmitted. We don't support it, and not only that, there are certain state and PUC regulations that require printed disclosure of both parties' number on phone bills. So, in conclusion, the legislation before us today will stifle innovation, and investment, and limit consumer choices while not adding any additional privacy protection. We believe that the customer is always right. And I believe you should give the customer a chance to allow them to choose what's best for them. The greatest right a consumer can have is personal choice and control. The wireless 411 service will provide this. Thank you.

[The prepared statement of Mr. Cox follows:]

PREPARED STATEMENT OF PATRICK M. COX, CEO, 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 six 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 recog-

nize 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 carrier’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 percent 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 e-mail 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 percent 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.¹ 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 an 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.

¹The Pierz Group, "Adding Mobile Numbers to the U.S. Directory Assistance/Enquiry Database," Kathleen A. Pierz, July 30, 2004, pp. 13 -14.

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 SPAM 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.

Senator ALLEN. Thank you, Mr. Cox, we'd now like to hear from Congressman Largent.

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

Mr. LARGENT. I ask that my entire statement be submitted for the record.

Senator ALLEN. It is so ordered.

Mr. LARGENT. Thank you. Let me begin first of all with the building question in my chest, and that is, why does a competitive, vibrant industry have to come before Congress to ask permission to offer a new service to its own customers? Is there a presumption in Washington that the government cares more about wireless cus-

tomers than wireless carriers do? I would say the answer to that question, the second question, is no. Mr. Chairman, this is my first opportunity to testify before the Senate as the spokesperson for the wireless industry, and I can tell you that the world looks a little different on this side of desk, and I'm happy to be where I am, and I'm happy that you're where you're at.

I want to offer, if I can, just a few brief comments about the wireless directory assistance, but I want to begin by talking about the industry that I'm very proud to be associated with. The wireless industry has a tremendous story to tell, and I'm going to try to tell it in just a few brief minutes. Let's look at the picture of the wireless industry, just in the last 10 years, from 1993 to 2003. In 1993, the year that Congress passed some important legislation creating the competitive market that we know today, there were 16 million subscribers in the U.S. Ten years later, there are 168 million subscribers in the United States. In 1993, we had 13,000 cell towers in this country, today we have 163,000 cell towers providing better quality of service than ever before. Since the advent of the industry, this industry has invested \$148 billion in creating the infrastructure that we know today, \$20 billion in 2003 alone. Eight hundred and thirty billion minutes of use in air time over the wireless framework just last year, 830 billion minutes of use, and at the same time, as Senator Allen correctly said, from 1993 to 2003, better quality of service, more minutes of use, more services offered, the cost of wireless service has declined from \$60 per month to under \$50 per month in 2003. Why? Because of the competition. Competition was vibrant and robust. Eighty-seven percent of all Americans have a least five, sometimes more, providers to choose from when they choose their wireless service provider. Ninety-seven percent of all Americans have at least three choices when it comes to their wireless carrier. Competition continues to produce new, and better, and more innovative services. Text messaging, photo and video messaging, broadband Internet access, consumer short codes, free long distance, and now, 411 service, a new service that we are trying to provide to customers that we know desire it. Now, 168 million customers in the United States do not want to have their number listed, we know that. We think, we estimate the number to be more around 5-8 percent, but still, that represents over 10 million people in this country that would actually like to have their number listed, and we're responding to our customers because we are very customer-sensitive, and customer-centric. It is a very highly competitive industry. I'd like to make four really important points. CTIA has been tasked by six of the seven largest carriers in the country to act as a coordinator in the development of the 411 service, and I'd like to make these very briefly, these four points.

First of all, the 411 service would be a totally opt-in service. It goes beyond the legislation that's being considered.

Second, you won't be charged to opt-in and you won't be charged to opt-out.

Third, the data that would be held would be held by a secure third party in the form of Qsent and Pat Cox to my right, but it cannot be sold and it cannot be accessed by any other entity, for any other purpose. Finally, this is a service that has not even been

introduced. There has been no harm, and no foul, and it was in my opinion wholly premature and very proscriptive for Congress to even be considering this legislation.

In closing, there are, however, matters that Congress should be thinking about before the session comes to a close that would greatly benefit wireless customers.

Number one, send the Internet tax moratorium bill to the President for his signature, ASAP. Very important, as we consider the third generation broadband access over wireless devices. And second, the bill to provide needed spectrum for 3G advanced wireless services. These are things that are very important, and should be high on the priority list of this Congress before they leave for this election year. At this point, Mr. Chairman, I would conclude my remarks, thank you for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Largent follows:]

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

Chairman McCain, Ranking Member Hollings and members of the Committee, thank you for your invitation to testify this afternoon on S. 1963, the "Wireless 411 Privacy Act" introduced by Senators Specter and Boxer. This is my first opportunity to represent the wireless industry before a congressional committee since becoming CTIA's President and CEO last November, and I must admit the view is a little different on this side of the dais, but I do welcome the chance to provide CTIA's views on this legislation and the issue of the development of a wireless 411 service.

Let me preface my remarks by acknowledging that I have little doubt that the authors of S.1963 are well intentioned in their efforts with this piece of legislation; however, I sincerely believe that this bill is a solution in search of a problem and that S. 1963 is unnecessary. 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 38 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 becoming viewed more as some sort of monopoly utility rather than 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.

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 work-

day 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 percent of small businesses, and 25 percent 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 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 S. 1963 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 the House Energy and Commerce 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 so far is to fashion the service in a manner most protective of customer privacy. Moreover, as I keep making the point, the wireless industry is such a hyper-competitive business that if 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 voice-mail, caller ID, and 3-way calling are all competitive responses 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 a nearby 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 S. 1963 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.

Senator ALLEN. Thank you, thank you Mr. Largent, on behalf of Senator Wyden and myself, and Senator Ensign and all of the Senators here, we agree with you clearly on the Internet tax moratorium measure, thanks for that nice little plug, to try to get the House to pass that. Now, we'd like to hear from you Mr. Rotenberg.

**STATEMENT OF MARC ROTENBERG, EXECUTIVE DIRECTOR,
ELECTRONIC PRIVACY INFORMATION CENTER; ADJUNCT
PROFESSOR, GEORGETOWN UNIVERSITY LAW CENTER**

Mr. ROTENBERG. Thank you very much, Mr. Chairman and Members of the Committee, it's a real honor to be back before you today to talk about wireless privacy and the interests of consumers.

My statement is very similar to the views that were expressed by Consumer's Union and the AARP, and the Privacy Rights Clearinghouse. You have heard on this panel, I think, what is a commonly shared view, that privacy protection will be absolutely critical for consumer acceptance of the wireless directory, all we're really debating is how best to achieve that.

Also, I listened to the comments of Mr. Strigl from Verizon and I thought his position was admirable, not wanting to go forward if he thought there would be a privacy risk for his customers, I've looked at the principles proposed by CTIA and Qsent, and I think they're reasonable privacy principles that would certainly provide some protection for customers.

But in answer to your question, Mr. Chairman, why this is not sufficient, and why legislation is important, and why I hope you will move quickly on S. 1963, I'd like to remind you of a hearing that took place in this committee room 5 years ago about Internet advertising. And at that time, we were talking about a company called "Doubleclick." And the Doubleclick company proposed an Internet-based advertising model that answered all of the privacy concerns that the public had raised. They said, "We have a wonderful, fast-moving, competitive industry," they said that privacy protection was important, they said it was too soon for Congress to act, and they said they would do Internet-based advertising that did not require the correction of personal identifiable information. And the privacy groups, and the consumer groups and everybody else said, "This sounds great. We support you, we think it's innovative, we think it respects privacy, we think it demonstrates in some

areas, and in fact, Mr. Chairman, it's not necessary for Congress to regulate." And what happened? A few months later, the Doubleclick company learned about a database room called Claritas, the largest catalog marketer in the United States and said, "Well, we had the old business model that didn't require the correction of personal identifiable information, but you know, if we incorporate that data with Claritas, they make available to us, if we require it, we'll have a better, more efficient, more profitable business model," and they quietly began to revise their privacy policies.

And it became apparent over time, Mr. Chairman, that Doubleclick was not able to maintain their commitment to their high privacy ground, but in fact they were going to collect customer information and that was the point when the public objected, when this Committee held hearings, and when the FTC began to look more closely at the question of what is required to protect consumer privacy in these emerging services.

Now, we have had similar experiences, with many other companies, Amazon, Yahoo and others, that come forward with very strong privacy representations. And then, over time, business models change, and the privacy bar drops down. The one thing that does not change is that those consumers who provided their personal information in the first instance, under the representation that their personal data would be protected, that it would not be disclosed to others, now find themselves having to deal with telemarketers, spam, sale to data brokers, and worse.

The reason, Mr. Chairman, I think we need this legislation is to establish the baseline. Establish the floor. There is nothing, nothing that will prevent Verizon or CTIA from developing stronger safeguards, from using the free market, and advertising and outreach to say, "We will do a better job protecting privacy than our competitors," we welcome that, and we encourage that. But to propose that we go forward with the service that effectively flips the switch on privacy protection for mobile customers, that means that information that we used to assume was private, can now lead to us receiving calls from people who we don't know, who we didn't give our numbers to, and will, on top of it, we will have to pay the cost for those calls, I think will create the type of chaos, exactly what Senator Boxer mentioned at the opening.

And, Mr. Chairman, I've had one other experience with telecommunications privacy, relevant to this discussion, and that's with Telecom Consumer Protection Act. It was done in 1991, it was an excellent law, but the one piece that was not done when that law passed was the "do not call" list. It took twelve years to get that done. By the time it happened, sixty million Americans said, "Enough is enough."

I urge you not to wait on this legislation. You do not want to happen with the privacy of cell phone numbers what happened with telemarketing in this country. Thank you.

[The prepared statement of Mr. Rotenberg follows:]

PREPARED STATEMENT OF MARC ROTENBERG, EXECUTIVE DIRECTOR, ELECTRONIC
 PRIVACY INFORMATION CENTER; ADJUNCT PROFESSOR, GEORGETOWN UNIVERSITY
 LAW CENTER

I appreciate the opportunity to appear before the Committee today to discuss privacy issues raised by a proposed wireless directory for customers of wireless of telephone services. My name is Marc Rotenberg. I am the Executive Director of the Electronic Privacy Information Center in Washington, and I have taught the Law of Information Privacy at Georgetown since 1990. As both an advocate and academic, I have participated in many of the leading privacy debates in this country. With me this morning is Chris Jay Hoofnagle, Associate Director of EPIC.

Summary

As the wireless industry develops a directory of numbers for wireless devices, Congress should act to safeguard privacy and to create legally enforceable rights with respect to data in the wireless directory. We believe the industry shares our concerns that privacy protection will be important for this information, and also recognizes that many other new wireless services could be jeopardized if strong privacy standards are not established. However, we are not persuaded that wireless directories can be administered fairly without legal rights for the millions of individuals who will be enrolled in the system. These new directories raise the privacy risks of unwanted telemarketing, SMS spam, junk faxes, and contacts from undesirable callers, including stalkers.

It is clear that there are very high levels of public support for strong privacy safeguards for telephone services. More than 60 million American households signed up for the Do Not Call service so that they would not receive telemarketing calls at dinnertime. Millions of American households have unlisted and/or unpublished telephone numbers. According to one survey, 35 percent of households nationwide do list or publish telephone numbers. In¹ major metropolitan areas in California, nearly 70 percent of telephone numbers are unlisted.

The modern history of privacy protection is one where Congress acts in advance to safeguard privacy while allowing emerging technologies to develop. Enacting privacy protections for the wireless directories is both consistent with Congress' prior actions on privacy issues, and necessary in this case to ensure that consumers have substantive rights in their personal information. The "Wireless 411 Privacy Act," S. 1963, is a first step toward addressing privacy issues presented by wireless directories. However, we believe this Committee should strengthen the Wireless Privacy Act in several aspects before it is presented to the full Senate. In particular, we believe that the standard for enrollment should be a consumer friendly, opt-in system that ensures adequate notice and requires affirmative consent. In the third part of our testimony, we raise objections to a related telecommunications privacy issue, Junk Faxes. This Committee recently reported out the Junk Fax Prevention Act of 2004, S. 2603, without a hearing. We urge the members to take a closer look at this proposal. The Senate should not enact that bill, as currently drafted, as it will likely exacerbate the junk fax problem.

I. Congress Has Safeguarded Privacy as New Telecommunications Technologies Emerge

The recent history of privacy law in the United States is largely a story of efforts by Congress to pass laws to safeguard privacy as new technologies emerge. There are, for example, the privacy subscriber provisions of the Cable Act of 1984 (cable television), the Video Privacy Protection Act (video rental records), the Electronic Communications Privacy Act of 1986 (electronic mail), the Polygraph Protection Act of 1988 (lie detectors), and the Children's Online Privacy Protection of 1999 (Children's data obtained by companies operating on the Internet).

The Telephone Consumer Protection Act of 1991 is especially relevant to this debate, as that law shielded individuals from auto dialers, junk faxes, and telemarketing to wireless phones long before the devices were adopted on a widespread level. It is because of that 1991 law that individuals have a sanctuary from commercial interruption when it comes to their wireless phones. Because Congress acted early to shield wireless devices, they continue to be adopted by millions of Americans. If Congress had not acted to protect privacy, wireless services probably would not be as successful as they are.

These privacy laws have come about in response to challenges posed by new technologies. However, the aim is rarely to limit the technology or to stifle a new busi-

¹ Testimony of Beth Givens, UCAN, before the California Public Utilities Commission, November 25, 1998, available at http://www.ucan.org/law_policy/teledocs/bgpacbell.html/.

ness; it is instead to ensure that the data collection is fair, transparent, and subject to law. This approach builds consumer confidence, establishes a stable business environment, and allows for the benefits of new technology while safeguarding key interests.

It has been our experience that in a self-regulatory environment, even reputable companies are swayed by forces that result in watering down privacy protections. Without legal protections, privacy provisions in the wireless directory may be changed at will by the wireless industry.

In other contexts where businesses operate in a self-regulatory privacy atmosphere, there has been a race to the bottom, even among profitable companies. For instance, eBay changed users' preferences on receiving marketing and watered-down their privacy policy in 2001. The company changed the privacy choices of six million registered eBay members who had expressed that they did not want to receive spam or telemarketing. *Amazon.com*, a popular online bookseller, changed its privacy policy in December 2000. Amazon reneged on its promise to never reveal customers' transactional information. Yahoo, a popular Internet portal and free e-mail service, changed its policies so that the company could send more spam to customers. The change required Yahoo users to re-opt-out in order to avoid the new marketing messages. *Drkoop.com*, a popular medical website founded by former Surgeon General C. Everett Koop, sold its e-mail list as a bankrupt asset to *vitacost.com* in July 2002. *Drkoop.com* gave individuals one week to opt-out of the sale, despite making guarantees of opt-in protections for transfer of personal data.

Congressional action is warranted here because privacy is more likely to be invaded when creating a wireless directory than a wireline one. Consumers tend to treat their wireless phones as personal devices. Often, consumers take their wireless phones everywhere they go, making the devices an avenue for disruption in contexts where wireline phones cannot reach. Consumers are also charged for the calls and SMS messages received on their phones. An improperly implemented wireless directory could result in both more personal, but also more costly, disruption to consumers.

In the past, unfortunately, phone companies have sided against privacy and consumers when implementing protections for CPNI, Customer Proprietary Network Information. CPNI is the data collected by telecommunications corporations about a consumer's telephone calls. It includes the time, date, duration, and destination number of each call, the type of network a consumer subscribes to, and any other information that appears on the consumer's telephone bill. Although Congress in passing 47 U.S.C. § 222(c)(1) specified that phone companies should obtain the "approval of the customer" before using CPNI, the companies interpreted "approval" to mean opt-out, and used the data unless a consumer specifically objected.

Finally, establishing a right of privacy in law does not require extensive regulation. There are many privacy laws of only a few pages that are extraordinarily effective. The subscriber privacy provision in the Cable Act of 1984, for example, is one of the most effective privacy laws in the U.S. It provides a very good model for emerging privacy issues in the commercial world.

II. The Wireless 411 Privacy Act, S. 1963, Is a Good Start But Could Be Improved

We applaud the Members for introducing the Wireless 411 Privacy Act, S. 1963, and the Chairman and Ranking Member for holding a hearing on this important issue. The Wireless Privacy Act is a good starting point for addressing the privacy issues implicated by wireless directories. We have detailed the major provisions of the bill below while suggesting critical improvements.

Section 3 of S. 1963 amends the Communications Act of 1934, 47 U.S.C. § 332(c), to create an "express prior authorization" standard for enrollment in the wireless directory for current wireless subscribers. We strongly support this opt-in standard for enrollment in the wireless directory.

The Standard Should Be Opt-In for New Subscribers

Under Section 3 in a provision creating 47 U.S.C. § 332(c)(9)(B), new wireless subscribers would automatically be enrolled, but could opt-out through "convenient mechanisms" at the beginning of the wireless contract, in the billing of the service, and when receiving any connecting call from a wireless directory assistance service. Here, we believe that the Committee should eliminate this provision and require opt-in before enrollment for both new and current wireless subscribers.

An opt-in framework would better protect individuals' rights, and is consistent with most United States privacy laws. For instance, the Family Educational Rights and Privacy Act, Cable Communications Policy Act, Electronic Communications Privacy Act, Video Privacy Protection Act, Driver's Privacy Protection Act, and Chil-

dren's Online Privacy Protection Act all empower the individual by specifying that affirmative consent is needed before information is employed for secondary purposes.

Further, public opinion clearly supports an opt-in system for information collection and sharing. A study conducted by the American Society of Newspaper Editors (ASNE) and the First Amendment Center (FAC) in April 2001 illustrated strong support for privacy and specifically for opt-in systems. An August 2000 Pew Internet & American Life Project Poll showed that 86 percent of respondents supported opt-in privacy policies. Historically, polls show similar support for the right to affirmative opt-in consent. For instance, a 1991 Time-CNN Poll indicated that 93 percent of respondents believed that companies should gain permission from the individual before selling personal information.

Opt-in is more effective and more efficient than opt-out because it encourages companies to explain the benefits of information sharing. This allows consumers to exercise meaningful control over personal information. Experience with opt-out has shown that companies routinely make it difficult for consumers to safeguard personal information.

In other settings, phone companies have thwarted opt-out processes by demanding excessive authentication for opting out. For instance, the opt-out process for Customer Proprietary Network Information (CPNI) data sharing established by one major phone company is very confusing, and places the burden on individuals to navigate a five-step process in order to opt-out.

If an opt-out standard is maintained, the procedures should be clearer. New subscribers should have the opportunity to opt out when entering the contract, by calling customer service at any time, or by checking a box on the monthly payment coupon that is mailed back to the wireless company.

The Bill May Preempt State Law

Although S. 1963 is silent on preemption, its placement at 47 U.S.C. §332 may express a Congressional intent to supercede stronger state laws. Consumer protection is historically state-based responsibility. Federal laws in this area should establish a floor of protection rather than as a ceiling.

There are important reasons in our form of government to continue to allow the states to operate as "laboratories of democracy." Congress may fail to act or may act in such a way that reduces or limits the protections that a state might otherwise choose to provide for its citizens. States may also innovate and explore different approaches to common problems.

The California Legislature, for example, has passed legislation to protect wireless directory privacy. The California wireless privacy bill, AB 1733, received strong bipartisan majorities in the State's Senate and Assembly, and awaits signature by Governor Schwarzenegger.

The California bill requires carriers to obtain affirmative consent before selling lists of phone numbers or including them in wireless directories. The bill allows individuals to revoke consent at any time. Carriers must comply with the unlisting within 60 days. The bill also prohibits carriers from charging for enrollment/refusal to enroll.

There is also a right of recourse against violators of the law. Individuals can bring a civil suit against "deliberate violations." Congress should adopt provisions at least as strong as the California law, especially if Congress acts in such a way as to preempt further state legislation.

Greater Technical Safeguards Could Be Encouraged

Under Section 3 in a provision creating 47 U.S.C. § 332(c)(9)(C), the bill regulates calls forwarded through wireless directory assistance by requiring "cloaking." Calls could only be forwarded to those in the wireless directory. Before forwarding a call, a carrier would have to disclose the caller's identity to the recipient, the recipient must be able to decline the call, and the carrier could not disclose the recipient's number to the caller. This cloaking of the recipient's phone number would be an excellent service for callers and recipients, but it is unclear whether it is necessary for Congress to mandate this specific business model. For instance, individuals who decide not to enroll in wireless directory may choose instead to sign up for this forwarding service with cloaking. But the bill would prohibit carriers from offering that option.

Carriers may develop other pro-privacy technical protections to encourage greater participation in wireless directories. For instance, under an "announce" system, the recipient would hear the name of the caller before accepting the call, much like collect calling works today. Again, individuals may wish to stay out of the wireless directory, but accept calls through an announce system. Congress should not prohibit

carriers from creating and offering these options. We believe that Congress should instead encourage the FCC to develop privacy-protective technical options with the carriers. Accordingly, we recommend that this provision be stricken from the bill, and replaced with language that directs the FCC to develop options with carriers that respect individuals' privacy.

The Publication Prohibition Should Be Strengthened

Under Section 3 in a provision creating 47 U.S.C. § 332(c)(9)(C), the bill prohibits publication of the wireless directory in print or electronic form. We think that this is a well-intentioned provision, but that it falls short of ensuring protection for the wireless directory. While formal publication of the wireless directory would be privacy invasive, there is a strong risk of privacy invasion caused by the sale of the wireless directory to commercial data brokers or to others who traffic in personal information. The legislation should prohibit publication, but also bulk disclosure of the numbers to telemarketers, data brokers, or to other unaccountable sellers of personal information. We note that California AB 1733 would prohibit the sale of databases of phone numbers.

The Definition of "Wireless Telephone Number Information" Should Be Narrowed

Under Section 3 in a provision creating 47 U.S.C. § 332(c)(9)(F), S. 1963 has a broad definition of the information that can be stored in the wireless directory and disclosed to callers. "Wireless telephone number information" includes the telephone number, electronic address (e-mail address or new form of identifier, such as Electronic Numbering, or "ENUM"), physical address, and any other identifying information by which a calling party may reach a subscriber. We think that this definition should be narrowed to include only the name and wireless telephone number. Consumers should have the option, but should not be required, to include other information.

A Right of Recourse is Needed

S. 1963 does not specify a clear remedy for individuals who are wrongfully included in the wireless directory. The bill should be amended to create clear avenues for recourse against carriers that wrongfully list or otherwise fail to comply with Congress' direction.

Individuals Should Not Be Charged

Under Section 3 in a provision creating 47 U.S.C. § 332(c)(9)(E), the bill prohibits charging for enrollment or refusal to enroll. We believe that this is an appropriate protection for individuals, and that it should be extended to the wireline context.

Currently, wireline carriers charge individuals who wish to protect their privacy. Here in Washington, DC, Verizon charges residential consumers \$5.16 a year for an unlisted number and \$9.72 for an unpublished number. This bad wireline precedent should not be continued into the wireless realm.

III. The Junk Fax Prevention Act Will Promote Junk Faxes

We wish to comment here on a related telecommunications privacy issue, the problem of junk faxes, unsolicited commercial facsimile messages. S. 2603, the Junk Fax Prevention Act of 2004, a bill that was reported out of this Committee favorably without amendment, will exacerbate the junk fax problem. Section 2 of S. 2603 would amend one of the strongest consumer privacy laws, the Telephone Consumer Protection Act (TCPA), to create an "established business relationship" exemption for senders of junk faxes. The same section would also effectively eliminate recently created Federal Communications Commissions rules that require the written consent of the recipient before junk faxes are sent.

We recognize that obtaining written consent and managing time periods of established business relationships can create paperwork burdens on businesses. However, junk faxing is a serious consumer protection problem, and it places a greater paperwork burden on recipients of unwanted messages. We note that last year, the primary sender of junk faxes was fined more than \$5 million for violations of the TCPA. Many consumers with fax machines unplug the devices in order to avoid junk fax broadcasting. Others have lost sales because of fax machines clogged with junk fax transmissions while customers attempt to send orders. In Washington States, a hospital was deluged with junk faxes, putting patients at risk. In a lawsuit filed by law firm Covington & Burling, it was alleged that a single junk faxer sent 1,634 unsolicited advertisements in a single week. Small businesses too are caused significant costs of ink and paper as a result of junk faxes. S. 1603 will intensify these problems by creating an additional legal defense and justification for transmitting these unwanted messages. On the whole, the cost of this bill on the efficient

operation of business and government offices is far greater than the alleged benefits touted by proponents of S. 2603.

We strongly urge Members of the Committee to withdraw their support for S. 2603. The established business relationship exemption will open individuals to hundreds or even thousands of unwanted commercial fax solicitations. Technically, every time a consumer makes a purchase or even an inquiry about products or services, they create an existing business relationship with a company. Accordingly, the average consumer under S. 2603 will create the possibility of numerous junk faxes in their daily activities. Merely getting an estimate from a plumber, even where the consumer declines to employ the plumber's services, would establish an open-ended business relationship that enables the sending of junk faxes.

We also believe that the Federal Communications Commission's requirement for written consent from recipients is reasonable in certain circumstances. It has been our experience that junk faxers will claim that they have obtained the consent of the recipient. Without a writing, it is difficult for consumers to argue to a court that they, someone in their household, or even the previous owner of the phone number, did not consent to receiving junk faxes.

If the Committee does maintain support of S. 2603, we think the bill should be amended to allow the Federal Communications Commission to reinstate the written opt-in requirement and revoke the established business relationship exemption with respect to the most prolific junk faxers. That is, when the Federal Communications Commission determines that any sender routinely violates the TCPA, the agency should be able on a case by case basis to impose a written consent requirement and revoke the established business relationship defense. Furthermore, we support allowing the Federal Communications Commission to define the length of an established business relationship. The standard that could be created in S. 2603 of five to seven years, is entirely too long.

Conclusion

Privacy protection remains critical for consumer acceptance of new telecommunications services. The development of wireless directories poses special risks to privacy as it will impact many new services. For this reason, we believe it is particularly important to establish guidelines that are both sensible and effective. We appreciate the work of this Committee and the sponsors of S. 1963 for their leadership in ensuring that the wireless directory is implemented fairly and respects consumer privacy. Privacy protection is critical to the adoption of the wireless directory, and to respecting the wishes of those who do not wish to be listed.

Senator ALLEN. Thank you. I want to thank all our witnesses for your testimony, now we'll be posing some questions and have a discussion with you so we can best understand it from the varied perspectives we've heard here, and this is a very good and balanced, diverse panel.

Mr. Strigl, you've said as insofar as Verizon's concerned, you think a directory is a terrible idea, you won't have nothing to do with it, for a variety of reasons. But would you then support Congress passing a law prohibiting a directory from even being put into place?

Mr. STRIGL. Mr. Chairman, I don't think a law is required.

Senator ALLEN. Do you, then, not support this measure, which doesn't ban a directory, as such.

Mr. STRIGL. If this is what Congress would like to do, I would say those who support the directory in our industry have it coming to them. I want to be very clear, this is not a project that we should move ahead with as an industry. There are other ways of doing this.

Senator ALLEN. But, do you think the government ought to stop?

Mr. STRIGL. I am not for more regulation, never have been. This is an extremely competitive business, but I do think that this is a project that shouldn't proceed, I think that privacy is extremely important, it's a matter of principle with us.

Senator ALLEN. Let me say this, personally, I agree in the significant aspect of this compared to all the aggravations we get, the pop-ups and all the rest on the Internet. The thing on cell phones is if you get a call, an unwanted call, and you get plenty of unwanted calls, but I'm talking about a true pestering calls, you are having to pay for it. Unlike a land line or the Internet, which is a waste of time and effort, but it doesn't, you're not getting billed for it, as such.

Now, Mr. Largent stated in his testimony, the policy of those in the wireless industry, and not all want to do it, it may be good marketing for Verizon, but he stated, "It will be opt-in only, and participating carriers, indicate those participating, that there'll 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 numbers." Now, suppose the panelists, does anybody disagree with that policy? I understand, Mr. Strigl, you think it's a terrible idea, but do any of you all, in the event there's a directory, disagree with those principles?

Mr. ROTENBERG. I think the key question, Mr. Chairman, I think is, what would be the consequence if those principles are violated? I mean, as I said in my statement, I think it's a good set of principles, but if in fact one of the participants decides, and perhaps had a good business reason for doing so, to change, what would the consequence be?

Ms. PIERZ. Mr. Chairman, I'd like to provide a comment also. I do like the principles that have been put into place as the CTIA plans, but I do think we can do a little bit better, and specifically when we looked at the idea of knowing who's calling you, because consumers said they were worried about getting calls from people they didn't want to talk to. And not having the number divulged, so that there's actually a gatekeeper in place, if I call directory assistance the first time and get your cell phone number I've always got it, and it's very easy for me to, as you said, pester you with calls. But if each time you're calling directory assistance, it's forwarded and the person knows who's calling and can accept the call or not, you actually create a much more valuable service for consumers, but that's a very hard thing, no one carrier can put that in place without some sort of a baseline that asks everyone in the industry to meet that standard. And then, companies can build more advanced and protective services on top of that base, but it provides a common base across all fixed line and wireless carriers to protect consumers' actual phone numbers so it's not divulged, and to let them know who's calling.

Senator ALLEN. When you have a situation where, and no one disagrees with this, that 93 percent of all Americans live in markets provided with at least four choices, if not more, 93 percent. We don't have that in other industries. Obviously you can get cable or satellite, but there's not two cable, even for broadband, at this point. You're able to get a cable modem, those of us would like to see DSL available more, maybe broadband over power lines, satellites all the rest, wi-fi, and so forth. But the point is that watching the cell phone business with so many different companies offering, people are going to switch, you're going to lose market share,

you've gotta keep those customers for over a year, maybe even more to get them as a customer.

Mr. Largent, let me finish with you, then. What are the industry's incentives to protect the privacy that is aligned with the interests of a particular consumer or customer, is it, how does that affect their own economic interest, from your perspective, of those who want to get involved in this, or may want to have their number listed in the directory?

Mr. LARGENT. Let me share, and I'm glad you asked that question because it's exactly what I wanted to talk about, and that is that the wireless carriers, my friend on my left over here, talked about what happens if they go a different direction after they've said they're not going to list your number, or whatever. The fact is that the boilerplate contracts that have, that we've all signed when we signed up for cellular service, including that language that says, in signing, in giving us your consent to sign this contract, we can put your name in a directory assistance. And they signed the contract. That's kind of been the boilerplate-type language that's been in their contracts for a long time, language which, by the way, all the carriers have said they're going back to their current customers and asking them, "Do you want your number listed?" so they can either opt-in or opt-out, and by the way, there's no charge to opt-in, there's also no charge to opt-out, unlike the land line, but my point is that carriers have had permission, contractual permission to list numbers for a long time, and they've never done it because they have respected our customers' privacy right.

Now, when we want to do it, we're saying we're going to develop a 411 service or ask them, "Do you want to play or not?" and the real key question in this debate, really, is about what some people have sort of said offhandedly is, this is about privacy. The question that I think the Senate needs to ask in considering this legislation is: how is a customer's privacy potentially violated here? And I think you brought the guy to answer that question, right here on my right, and it's Pat Cox, who is the third party who has been chosen to protect that data that would be submitted by the participating carriers. How is a customer who either opts-in or opts-out, how is their privacy, their personal information going to be threatened as a result of this 411 service? And the answer that we believe we've gotten from Pat Cox and Qsent is, that it's not at all. It's not threatened at all. If you opt-in, you're saying, "I want my information published, or available," and if you opt-out, you're saying, "You can't contact me," and that rule will not be breached.

So, the bottom line, and the answer to your question is that it goes to what Senator Boxer said, you know, we know business, we know what it's about, it's about the bottom line. If carriers start offending customers by violating their privacy rights, guess what? They get to vote with their feet, and they get to move to a non-participating carrier, and they lose market share, and then they start hearing from the shareholders, and those people that make those decisions are gone, and that's the way the market should work.

Senator ALLEN. Thank you, thank you Mr. Largent. Senator Boxer?

Senator BOXER. Mr. Largent, how long have you been in your job?

Mr. LARGENT. November of 2003.

Senator BOXER. Well, I think you ought to leave the left/right partisanship behind you, because you've got to deal with Democrats/Republicans on this Committee, and I think turning to someone who represents consumers, and saying "left" is outrageous. Because we're all consumers. You may have noticed, or maybe you didn't, so let me tell you. When we passed the no-call directory, it was 95-0, and your friends on the right marched right down the middle aisle for consumers. We're people from every part of the political spectrum, so let's leave that behind, because we do tend to leave that behind in this Committee. We reach across to each other, and we tend to work together, so that's just . . .

Senator ALLEN. I do believe he was talking directionally on the panel. Mr. Largent: It was a total tongue-in-cheek comment, but I apologize, I didn't mean to offend anybody.

Senator BOXER. It was more than said directionally. I know political talk when I hear it. So, let me go on. I agree with you, Mr. Largent, that we need to pass the no Internet taxation. But we also have to do more than one thing at a time. We've gotta do that, and we've gotta do this. Because people are concerned already. They're stuck, some of them, with 2 year contracts, so your point about, they can vote with their feet, yes, if they pay a hundred and fifty bucks to get out of some contract that maybe isn't in their favor. Let me give you an example. I ask unanimous consent to place in the record this contract, AT&T, which was just changed for the new customers in June, I ask unanimous consent to place it in the record.

Senator ALLEN. So ordered.

[The information referred to follows:]

- (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. 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, including without limitation the provision of~~ ~~customer assistance and publication of directories. We may charge a fee for inclusion in directory listings or publications or to be~~ ~~unlisted or unpublished. To remove your consent to be listed or~~ ~~published, notify us in writing at the address provided in the~~ ~~Notices section below, providing your (1) name, (2) Service billing~~ ~~address, (3) Identifier (i.e., mobile phone number including area~~ ~~code), and (4) Service account number. You consent to our use of~~ ~~predictive or autodialing equipment, email, SMS or facsimile 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.~~ *

24. **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.

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.

Senator BOXER. Okay, "You consent to our use and disclosure of your name, address and identifier, *e.g.*, mobile cell number including area code for any lawful purpose, including without limitation, the provision of directory assistance, and publication of directories. We may charge a fee for inclusion in directory listings or publications, or to be unlisted or unpublished." Then there's this whole way that you could get out of it by going to the end of the contract, filling in your identifier of your phone, it makes it very tough to get out of this thing. So right now, people stuck with this contract have already agreed to this, unless they read the very fine print, which I doubt very much.

So now, after Senator Specter and I introduced the legislation, I'm very proud that he's here, because I think he'll speak very well on this point. We saw some changes coming down.

Now the new AT&T Wireless says, "As of June 2004, the language of 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 systems or published directories. If we do so in the future, you will be able to choose whether your number is listed." It says nothing about charging people for it, you know, and that's why our legislation is so key, so 1 day, you get this, where your number could be anywhere, then after Senator Specter and I introduce our legislation you get this, and what I'm saying is why not have a national policy that allows for a directory with certain rules attached to it? I think it makes great sense. And I want to ask a question to Ms., how do I say it?

Ms. PIERZ. Pierz.

Senator BOXER. First of all, thank you for telling us about the poll that you conducted. Because it disproves what was said that people really don't care about this, are not worried about it. People are worried about this. And thanks to the candor of the panel. I have to compliment those who now know there is a directory being prepared. I happen to agree with Mr. Strigl. I think it's bad business, but hey, you know, it's been a long time since I was in the private sector. But, we know, somebody could come along from a smaller company and not be able to resist selling the list or anything else. Just because it's in your guidelines now, doesn't mean it's in your guidelines tomorrow, to wit, here's one policy before we introduced the legislation, and here's another. And next week there could be another, and another.

So, this is important, and I want to get to the question of our children. I know all of us have kids, love kids, are grandparents, are aunts and uncles. A teenage girl, and they love to get phone calls, I had one, she now takes care of me, she's that old now. Having her number listed in this directory? Does that concern you, Ms. Pierz, that we'll have some youngsters out there, because a lot of us give our kids and grandkids cell phones for emergency use that some stalker or someone else could come forward—let me tell you why this matters to me. I wrote legislation that stopped states from giving out home addresses and phone numbers from a drivers' license. South Carolina sued, and the Supreme Court upheld it unanimously, including this current court. Privacy is an American value. I'm concerned about our kids. I don't want to wait to have

the first father up there saying, "Some stalker got a hold of it. That number. And met my daughter." Is this a concern that you found out that, that you would share?

Ms. PIERZ. Well, I can speak as the mother of a teenage daughter, and no, I would not want her number listed. We didn't ask consumers any specific question about children or people under 18 in this list. You do have to be over 18 to sign a contract, so, a parent's name would appear on the contract, rather than the child's number.

The way that the EU's handled this, is they passed legislation that numbers of any kind, and many more children in Europe have phones than do here, but numbers of any kind, telephone numbers or a home number, that would be a child's number cannot be published in any type of directory, anywhere. They're always masked or unlisted.

Senator BOXER. Well, thank you, that's very interesting. Well, Mr. Chairman, I want to thank the panel because I think they were very straightforward, all of them, with their opinions, and that's so helpful to us. You all just spoke right from the heart, and I think it really helps us. Again, I'm glad to see Senator Specter here.

Senator ALLEN. Thank you, Senator Boxer. Senator Specter, we went forward with the panel here, and we're in the midst of questioning. I would ask for the colleagues who are in line, could we hear from Senator Specter? You may get dragged into the questioning as well.

Senator WYDEN. I'm next in line, I think, but I'd be happy to let Senator Specter go before me.

Senator ALLEN. I thank my colleagues who have been here through the whole hearing, and Senator Specter, if you'd like to testify from that good seat, that's normally my seat on this Committee. And so we'll hear from you and then continue with the questioning. I thank Senator Smith and Ensign for their opening statements.

**STATEMENT OF HON. ARLEN SPECTER,
U.S. SENATOR FROM PENNSYLVANIA**

Senator SPECTER. Well, thank you very much, Mr. Chairman, and thank you, members of this distinguished Committee for permitting me to speak at this time. I would have been here at 2:30, but I had an amendment pending before the Government Affairs Committee, we're marking up a 9/11 Commission legislation, so this was the soonest I could get here, and I feel highly honored to be in Senator Allen's chair.

I don't know if my appearance is really necessary since my co-author, Senator Boxer is here to speak about this issue and I will be very brief, I know you have more questions for this panel and another panel.

This Privacy Act, Wireless 411 Privacy Act is really very fundamental. It seeks to allow people who have cell phones, 163 million now, not to have their numbers disclosed unless they permit it. And the intrusions on the telephone are; it's hard to be home for an evening under other circumstances without being interrupted by communications, people calling up for commercial purposes, not-

withstanding legislation which we've passed in the field, and many of us have had our names taken off, but it's very hard to have a quiet moment anywhere, under any circumstance. And to have somebody publish the cell phone numbers is an extraordinary intrusion, for whatever the poll was worth, 88 percent of the cell subscribers would not like to have their telephone numbers listed. Cell subscribers, under many circumstances have to pay for the number of minutes used, so they get an interruption, undesirable call, they are not only interrupted and bothered, but they have to pay for it as well.

There are plans to proceed with the publication of a White Pages sometime in the immediate future, so it's indispensable that Congress acts very, very promptly, so I'm delighted to see this hearing which is held today.

There are other provisions of the bill which would permit a cell phone owner to know what call was coming in to be able to control his own time, her own time, and I think it is just a very, very basic privacy matter, an expense matter that if you have a cell phone, you shouldn't have to have people know your number to bother you, it's just as simple as that.

I think in the words of Supreme Court Justice Douglas said, "Privacy is the right to be left alone." The right to be left alone, and that's pretty hard to come by in this day and age, you don't have to be a Senator to have that virtually non-existent.

That concludes my testimony, Mr. Chairman.

Senator ALLEN. Thank you, Senator Specter. I know you're one of the MVPs in the Senate and having to be in different places, and we thank you and Senator Boxer certainly carried your messages, the testimony, you would have enjoyed listening to the testimony here which I think actually addresses many of your concerns from even those who are talking about a directory, that no one who wishes not to have their number in any sort of directory actually, do have the option of doing so, then there are others, such as Verizon, who just think the whole idea's awful and don't want to have to do it at all.

At any rate, let us proceed.

Senator SPECTER. Mr. Chairman, I'd just like my prepared testimony introduced as part of the record.

[The prepared statement of Senator Specter follows:]

PREPARED STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM PENNSYLVANIA

Chairman McCain and distinguished members of the Committee, I appreciate the opportunity to testify before the Senate Committee on Commerce, Science, and Transportation about the importance of privacy protections for wireless telephone numbers. In November 2003, I introduced S. 1963, the Wireless 411 Privacy Act, along with Senator Boxer.

As every Senator is aware, consumers today rely on their wireless telephones as a vital and important means of communication. Wireless telephones enable families to stay connected, permit commerce to be conducted anywhere at any time, and provide a vital link in the event of an emergency. Some people have even abandoned traditional telephones and now use their wireless phones as their primary phone service. In fact, the Federal Communications Commission has begun requiring number portability for wireless phones so that consumers, if they wish, can make their wireless phone their only phone.

The wireless industry is on the verge of introducing a "wireless white pages" service, and though this step could have positive benefits, it raises concerns about how consumers' expectation of privacy will be protected. Consumers are not willing to

give up control of their cell phone numbers. According to a survey, 88 percent of cellular phone users said they would not want their wireless number disclosed. The legislation I have introduced, along with Senator Boxer, ensures that consumers' expectations will be preserved.

An important reason that Americans increasingly trust their cell phone service is that they have a great deal of privacy in their cell phone numbers. For more than 20 years of cellular service, consumers have become accustomed to not having their wireless phone numbers available to the public. The protection of wireless telephone numbers is important. For example, wireless customers are typically charged for incoming calls. Without protections for wireless numbers, subscribers could incur large bills, or use up their allotted minutes of use, simply by receiving calls they do not want—from telemarketers and others. Because consumers often take their cell phones with them everywhere, repeated unwanted calls are particularly disruptive.

It may surprise my colleagues that today, no law or regulation prohibits a carrier from divulging your wireless telephone number. And with the industry poised to introduce wireless directory assistance services, it is important for Congress to act now to preserve the expectation of privacy that consumers have in their wireless phone numbers. Because wireless directory assistance offers great benefits as well as posing significant privacy concerns, the legislation I have introduced strikes an important balance. S.1963, the Wireless 411 Privacy Act, enables those consumers who want to be reached to be accessible, while providing privacy protections that are important to consumers.

First, this legislation permits the Nation's 163 million wireless customers to choose not to be listed in wireless directory assistance databases. This feature gives consumers the ability to keep their numbers entirely private. Second, for those in the directory assistance database, the bill requires wireless providers to use systems that give users privacy protections and control over the use of their wireless numbers. These services must not divulge a subscriber's wireless number (unless the subscriber consents to disclosure), the service must provide identifying information to the wireless subscriber so that the subscriber knows who is calling through the forwarding service, and the service must give a subscriber the option of rejecting or accepting each incoming call. Finally, this legislation prohibits wireless carriers from charging any special fees to consumers who wish to receive the privacy protections provided by the bill. Customers should not have to pay extra for the privacy protections that they have come to expect. There should be no "privacy tax" for consumers to continue the privacy protection they have long enjoyed, and this bill ensures that will be the case.

I, once again, urge my colleagues in this Committee to adopt legislation that ensures consumers' privacy decisions are respected. Thank you.

Senator ALLEN. It is so ordered, make sure we get that, and I know you, probably, if you want to stay you may, in the event that you're being summoned somewhere else.

Senator SPECTER. Mr. Chairman, it's not really understood widely, how many places we have to be at the same time, and as we speak, Appropriations is marking up billions of dollars, and I'd like to be able to participate. Thank you.

Senator ALLEN. And we all hope you look kindly on us for our forbearance as you make those decisions on the Appropriations Committee.

[Laughter.]

Senator WYDEN. Mr. Chairman, I just want to say, that's the reason why I wanted the Senator from Pennsylvania to go before me and that he is so helpful on so many other things.

[Laughter.]

Senator ALLEN. All right, that's enough, enough. All right, the Committee will be back in order, no more of this problem before Senator Specter.

[Laughter.]

Senator ALLEN. All right, now, Senator Wyden, any questions you have?

Senator WYDEN. Yes, Mr. Cox, what's the potential for innovation in this space? You know, my sense, and focus on these issues is I think as wireless directory assistance evolves over time. We're going to have a chance to ensure that this is both more useful and more protective of privacy at the same time. Tell me what your sense is on the potential for innovation in this space?

Mr. COX. Senator Wyden, I've always found you very interested and knowledgeable about technology and I wouldn't expect a question any different than that from you, thank you for asking that.

For example, some of the points that Kathleen has brought up here about consumers wanting to be able to be notified who's calling them, I think those are the kinds of services consumers do want, and I think some carriers may try to figure out a way to offer that, others might not, I think we can see, this is a highly competitive industry, and I think there are companies looking to differentiate their service offerings.

Specifically, on that issue it's very, very hard, if not impossible, to do an information based authentication, I think we can all recall, we're of the age that we used to use the wire-line network, specifically collect calls as a way of notifying home, I would call home as Bob Smith, and my parents would know what I was doing that day, they wouldn't accept the charges, because phone network costs were so great.

The system can be gamed, there's not really any way of knowing who's calling today, but as technology advances and information based solutions advance, I think that would be a great service offering. There's probably fifteen or twenty different kinds of offerings, in talking with Senator Boxer's office, learned of her interest and how she'd like to be involved in the directory, or not, I think there are going to be a lot of offerings around emergency notifications, ways for operators to maybe connect calls staying on the line. There are state and Federal laws requiring that if a phone call occurs, a bill has to be generated that shows numbers that were called and who called you if you pay the fee, so it would be hard today to protect that privacy with current Federal and state regulation, but I think there will be solutions around that, for example, not completing the call, and so on, actually having an operator intermediate the conversation, and I think you'll find a lot of these offerings, maybe the fifteen or twenty different ways we can dream up today being delivered.

My main concern is a lot of legislation today kills that initiative, it kills the investment from the venture community, it kills the investment from businesses, to find new, interesting, valuable services who solve problems for people.

Senator WYDEN. Well, I share your view that it's very important that we seize innovation in this area. I know Senator Boxer has been working very closely with Senator Smith and I, and others to make sure we do this managers' amendment and that we get it right. We'll just continue to consult with all of you and proceed in that kind of fashion.

Question, Mr. Strigl from Verizon, so I can get a sense of a bit of your concern, first on the basic proposition, we've worked with you all on a lot of issues. We ought to be treading lightly in this area, and I have to go back to the days when I had a full head of

hair and rugged good looks to kind of look at how we tried on the Internet and others to be pretty cautious about the whole tax freedom bill and what we've tried to work on this area, but Senator Boxer comes now with a piece of legislation that essentially says, absolutely nothing can happen unless the consumer wants it. Unless the consumer says, "This is my choice. I'm making the judgment, I'm driving the vehicle, nothing happens." You all feel that this is going to be very bad and Western civilization is going to end and the like, but tell me a bit more if you would, why it is so bothersome if nothing can happen in this area unless the consumer makes the judgment that that's how he or she wants it.

Mr. STIGL. Well, Senator Wyden, thank you very much for your question, let me begin by saying, first of all, the last thing we need in this industry is more regulation, as competitive as we are. With six nationwide competitors and two or three competitors in every local market, the last thing we need is more regulation, more rules to follow.

My view on this is simple, that the consumer has the choice. The consumer, if they don't want to be listed, can come to Verizon Wireless. The consumer, if they don't want to be listed, may be able to not opt-in. I think there is plenty of consumer choice.

My issue with this directory is that there are other places consumers of wireless services can opt to join. There are Super Pages.com, Switchboard.com, Verizon directory listing, but my point here is that customers in this industry have plenty of choice, more rules is not what we need, nor do we need this directory.

Senator WYDEN. I think you heard me cite this question. There clearly seems to be some that are still out there that take away the consumer's choice right now, Senator Boxer has given you examples of one, I assume we'll get that cleaned up in a couple of years, but we could always slide back. I will tell you, I can understand why you all think that the cell phone directory isn't a good idea. I certainly will say I'm sympathetic to the proposition of treading lightly here, but it's hard to understand why you all care if other carriers make a different decision, and why it is such a bad thing to have something that, in effect, establishes a proposition that nothing can happen in this area unless the consumer wants it. We're going to try to fine tune with this managers' amendment, and I want you to note that I'm interested in working with you all to try to address as many of your concerns as we can, and if at the end of the day you all are just opposed to it, so be it, but I want us to tread carefully here, and I'm sympathetic to that message.

Thank you, Mr. Chairman.

Senator ALLEN. Thank you, Senator Wyden. I'm going to have to leave, but I tell you, I want to thank the panelists, the Committee will continue, the hearing will continue, I'm going to pass the gavel on to Senator Smith, who's next in line anyway. Thank you all.

Senator SMITH. Thank you, Mr. Chairman.

I'm going to ask the panel here to connect some dots for me, I think I've heard testimony that people want to be included in the directory, I've heard, I think Senator Specter just say they don't want to be included in a directory, like 80 percent, I think 86 percent was his number. What is it, do the people want it or not?

And I think the greater question I have is why isn't it offered? Because it's just bad business to offer it, people have some sensitivity to their privacy, and don't want another part of it invaded?

Ms. PIERZ. If I can offer a comment on that, just based on the research numbers that we have, and I don't want to fall into a quagmire of citing statistic after statistic, but essentially if you offer consumers no privacy protection whatsoever, and just say, "We put your number into a directory," 89 percent said "No, not under those conditions." And that's because people expect that this number is more private, as has been commented before.

But if you can offer people more privacy, they are more willing to list. Under the CTIA proposal, you do get over half of consumers, including Verizon customers, who are willing to list their number.

Senator SMITH. That's a difference in the numbers I've heard here, why the disparity?

Ms. PIERZ. Right. And if you include the fact that the number is not disclosed, and they can know who's calling, you get 54 percent of people to list their mobile number. And that's actually a very high number, because if you look at residential numbers only, not total listed, but residential, I had a hard time getting the numbers, I finally got a few regional averages, but about 67 percent of home phone numbers are listed today, 80 percent of all numbers, business and residential mixed, are listed, but residential numbers, about 67 percent, and if you can get 63 percent which, without any market experience, having never seen it, but just a short description, to list, knowing that their number will not be given out, and knowing they can have some control over who can reach them, that's a really good number.

Senator SMITH. Mr. Strigl, why does Verizon not do it and the other carriers want to do it?

Mr. STRIGL. We believe that this industry has spent the last two decades protecting customers' privacy. There are other ways to be listed, it's totally that simple. We have other things to do, rather than build a wireless directory, I would prefer to spend our time and attention building a high quality network, it's that simple, sir.

Senator SMITH. And Steve, I think philosophically I would very much agree with you that the marketplace is likely to be able to fix this, and as I understand, you're saying pretty soon that technologies will be available that the market can do this, and we won't need to worry about this endeavor.

Mr. LARGENT. Yes, it's true.

Senator SMITH. I have to say to anybody that's providing a service like this, I hate to get stuff unsolicited. And, I voted proudly for the earlier legislation that said, don't call me at dinnertime, and the no-call stuff, I want consumers to have a choice, and frankly I hope we, in Congress are alleviated from the obligations to have to do anything, though I've got a piece of fax, "don't fax" legislation, we've got to fine tune that a little bit too, because every night when I go home I've got to throw away about twenty pages of faxes from people. Not a lot of money to pay for the paper, but I don't want to pay for the paper they're sending me. So these are the kind of things that I hope you will keep in mind, because I think it would be better not to have to legislate these kinds of things. By the same token, I am very mindful, the kind of calls we

get from people, just upset with their privacy, their castle is being invaded by people they don't want to talk to, or they don't want to get their faxes, they don't want to hear their messages, so I'm caught between my own experience, my philosophical leanings which are to let the marketplace evolve this on the basis of what's good business, because I think that will ultimately be a better determinant as to where the lines ought to be drawn than Members of Congress can figure out how to draw them. But, Mr. Rotenberg, tell me where I'm wrong philosophically.

Mr. ROTENBERG. Well, I agree with you, Senator, and really I think this is the case where consumer organizations are not saying that they oppose innovation, in fact you will find in my testimony, I support a point that Mr. Cox made about a provision in the bill which I'm concerned will shut down some innovative solutions for the identification requirement, so we really do believe in supporting a dynamic industry, we really do support innovation, we think the benefit's there for consumers.

But we also believe that you need this privacy baseline, and I'll tell you what's going to be worse, if the directory goes forward, consumers aren't just going to be paying for the paper in their fax machine, they're going to be paying for those unwanted calls on their cell phones. And that's going to be something that people have not experienced in the past, I think, Mr. Strigl is right at Verizon, I think it's a mistake for the industry to do this, if they want to do it, it's their choice, some people sign up, that's their choice. But for the rest of us who choose not to sign up, I think we have the right to get some protection, and that's why we're here today.

Senator SMITH. I think it's fair to say in light of comments, that time is really of the essence here, because I mean, there are predators who use these technologies to invade the space of our home, and frankly, we don't want to hear from them. And we certainly don't want our kids being invaded by them.

So, I have no further questions, unless any of you would like to make a closing comment, we'll certainly make that available to you.

Mr. COX. First, not to over do the statistics here, but first, I don't think most carriers charge for incoming calls, but in addition to that, sixty some-odd percent of members are included, with forty percent that are numbers, but I will tell you over 80 percent of households are currently listed today, your fax number is not in the directory. So, the way your fax number was found was not in the directory at all. And so, I would say that if you look at the statistics, it's pretty clear, 80 percent of consumers today want to be in, 99.8 percent of businesses are in directories today.

And so that's just kind of a good take away to understand, food for thought for what Ms. Pierz was saying.

Senator SMITH. Thank you. Steve?

Mr. LARGENT. Senator, if I could just say one thing, I think that I have a record and a reputation for working in a bipartisan way, and the comment I made had nothing, was not political, and I look forward to working in a bi-partisan way in the future to help move this wireless industry further and faster ahead.

Senator SMITH. Thank you very much.

Ms. PIERZ. If I could add one last comment as well, just looking, again looking at the research and the numbers of people that are willing to list under different situations, one of the important success factors, both for consumers and for carriers is to make sure that as many people can opt-in to this process as comfortably as possible, because, if you only get, for example, as they did in Australia, and even in France, ten, twelve percent of numbers listed, it's nine out of ten times you make \$1.50 directory assistance call and are told the number is unlisted, thank you very much. It's frustrating for consumers, and it's not good for carriers, either, because you actually irritate people on that basis. And so, if you can create a baseline that lets as many people list as possible and protect the number, not have it appear in a phone bill, because that actually discloses it to the point that someone now has it, even if the operator doesn't tell them the number, if it shows up on a bill, people can continue to call you on your cell phone and you will replace it if you are being pressured or harassed, people would have to change their numbers. And so, creating a baseline that creates those protections for consumers, on all levels, allows more people to opt-in, and then a whole range of other services that would depend on these technologies being in place can be developed from there for competitive purposes.

Senator SMITH. Anything else? Thank you all, we're adjourned.
[Whereupon, at 4:05 p.m., the hearing was adjourned.]

