



TESTIMONY OF

CONSUMERS UNION OF U.S. INC.

BEFORE THE

COMMITTEE ON CONSUMER AFFAIRS

NEW YORK CITY COUNCIL

ON REQUIRING NOTICES RELATING TO THE RIGHTS

OF MOBILE PHONE CONSUMERS

Presented by
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Consumers Union of U.S., Inc.

April 17, 2008

**Consumers
Union**

NONPROFIT
PUBLISHER OF
CONSUMER REPORTS

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Consumers Union is here today to express our strong support for increased disclosure and improved public oversight of rates and conditions of mobile phone service. We are very concerned about the harsh double whammy faced by consumers who receive steep additional fees ranging as high as \$400 when they purchase phones at authorized cell phone dealers. We strongly support the proposed required disclosures in Int. No 483 as an initial, essential way to warn consumers about this risk. However, we would urge the New York City Council to work with the Department of Consumer Affairs, the Office of the Public Advocate, and consumer and community organizations to consider additional steps to provide better public oversight of the terms, conditions and disclosures in cell phone agreements and sales practices in New York City.

Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* (with approximately 4.5 million paid circulation) regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

Growth of Cell Phone Use and Consumer Dissatisfaction

Over the last several years, cell phone usage by consumers and small businesses has grown dramatically. In New York, over half of all consumers now use cell phones, and in areas like New York City, nearly 70% of consumers use wireless phones. Yet consumers must navigate a very difficult and confusing marketplace, where wireless companies don't always tell the full story on price. Wireless bills are often incomprehensible, hard to read, and full of mystery add-on charges. Cell phone geographic coverage is often not all that it is promised to be. Finally, contracts can trap consumers with long terms of service and stiff cancellation penalties.

Currently, New York does not have a specific law or regulatory framework that requires comprehensive consumer protections and uniform disclosures to aid consumers, with the state ability to regulate wireless service specifically carved out by a 1997 state law. Consumers are paying a huge price for this relatively unique regulatory exemption. Phone service standards have suffered as the wireless giants have paid too little attention to delivering the basics, such as accurate bills and good customer service.

Consumers regularly report many complaints about cell phone service to state and local consumer protection authorities. At the national level, cell phone complaints headed the list of the Council of Better Business Bureaus in 2004 and 2005, beating out all other industries, including car dealers and credit card companies. Through our web site, Consumers Union has directly collected many consumer complaints about inadequate cell phone service and billing problems. In New York state, the New York Consumer Protection Board says that cell phones are the second most complained about industry in the state.

Consumers are not as satisfied as they should be with the wireless industry as a whole. In

an annual consumer satisfaction survey¹ of 20 industries conducted by our magazine, Consumer Reports, “cell-phone service” ranks near the bottom of the list (18 of 20), with only “computer makers’ tech support” and “digital cable TV service” receiving lower marks.

U.S. consumers pay more for wireless service than consumers in just about any other country in the world. The wireless industry tries to deny this fact with a lot of irrelevant talk about prices per minute. **But it’s the cost to the consumer that matters, and U.S. consumers pay more—an average of \$506 each year**, higher than the OECD² average of \$439, and way above countries such as Sweden (\$246), Spain (\$293), and Germany (\$371).

Early Termination Fees: Economic Boon or Bane?

- Early Termination Fees are ubiquitous in the wireless industry, with some carriers charging as much as \$200 if a customer wants to leave before their (generally two-year) contract is completed. While Verizon has adopted a policy of partially pro-rating these fees, the other carriers have only made announcements—we are still waiting on follow through—and one even seemed to be actively misleading consumers, telling would-be subscribers that they already pro-rate plans when they absolutely do not yet do so.

Question: Why does a customer of the wireless companies who gets no subsidy on a phone still get stuck with a \$175 early termination penalty?

We’ll call this the “iPhone problem.” Wireless carriers say consumers are getting huge subsidies, and as a result they’re forced to charge consumers early termination penalties. But we see consumers who get no subsidies still being charged the full penalty, such as iPhone purchasers

¹ Consumer Reports, “*Upfront: News, Trends, Advice*,” p. 8 (October 2007).

² Organization for Economic Co-operation and Development, “OECD Communications Outlook 2007.”

purchasers or customers who bring their own phones—and we don't see any accounting whatsoever about the real benefits consumers get. We're concerned that those benefits are lower than companies claim.

We say, "show us the money." If consumers are getting great subsidies, terrific, account for them, tell us what they are, and charge us fees that reasonably relate to those so-called subsidies.

In landline phone service, if a consumer moves to another state, he or she just cancels service and picks up a new provider in the new state. No lock-in to long term contracts, no early termination penalties when I move. Why all the anti-competitive lock in with wireless phone service?

Unconstrained early termination penalties are at direct odds with federal policy on number portability. Congress decided that number portability was good public policy, and it was right when it made that judgment. Consumers *should* be able to keep their numbers so that competition and innovation thrive.

For years, the wireless industry argued that consumers should not be able to keep their phone numbers, because nobody really *wanted* to keep their phone number anyway. After four or five delays, Congress and the FCC finally followed through, and number portability turned out to be a boon to competition and a benefit to innovation. We believe that eliminating or reducing early termination penalties to reflect actual costs will be similarly salutary.

Another problematic practice is when carriers extend contracts for any change in service plan—whether the change benefits the wireless carrier or not. In other words, if a wireless customer decides to increase his or her bucket of minutes, the carrier may automatically extend the contract for another year or two, and saddle the customer with another Early

Termination Fee if he or she decides to leave before the contract is up.

Mobile phone “locking” is another area of concern for consumers. In Europe, phones work seamlessly between networks and carriers do not exercise control over which phones subscribers can use. This has created a robust, independent market for mobile phones where users have far greater choice than U.S. subscribers. In the U.S., analysts estimate that 90 to 95% of handsets are sold by the wireless carriers, whereas in some Asian markets approximately 80% are sold independently from the carrier.³

There are two basic kinds of mobile phone locking:⁴ software locks (which actually disable the phone when the user leaves), and “approved phones only” policies (which do not allow users to activate phones they purchase through the network operator, even when independent phones are technologically compatible with the network).

Imagine that a consumer purchased an expensive new television set and decided to switch cable or satellite providers, but the provider said “I’m sorry, your new TV will not work on our cable system, you’ll have to purchase a new one—from us.” Policymakers would not tolerate this behavior for long, yet this practice has been pervasive in the wireless industry for several years now. We would like to see the House draft mirror the provisions in the Senate bill that the FCC study this issue of mobile phone locking.

Application and functionality blocking is another practice that costs consumers money, and denies our economy the dynamic benefits of innovation. As a Wall Street Journal

³ Marguerite Reardon, “Will ‘unlocked cell phones’ free consumers?” [CNET News.com](http://news.com.com/Will+unlocked+cell+phones+free+consumers/2100-1039_3-6152735.html?tag=st.prev), January 24, 2007, available at: http://news.com.com/Will+unlocked+cell+phones+free+consumers/2100-1039_3-6152735.html?tag=st.prev.

⁴ For more information on mobile phone locking, see Professor Wu’s paper, “Wireless Net Neutrality: Cellular Carterfone and Consumer Choice in Mobile Broadband.” New America Foundation Working Paper #17, Wireless Future Program (February 17, 2007).

Journal article⁵ noted, handset manufacturers have been trying to offer consumers services for free on new handsets, but network operators have said “no” to those free services because they compete with services that the wireless carriers want to charge for.

According to the article, RIM (manufacturer of the Blackberry) wanted to offer a free mapping service to customers who buy the Blackberry, but AT&T refused, because they had a service that they wanted to charge users \$10 a month for.

Yet another instance of troubling conduct is the slow rollout of mobile phones that do Wi-Fi—these phones allow consumers to use the Internet when they are near a Wi-Fi Internet “Hotspot.” Most U.S. carriers are not making these phones available to consumers, although T-Mobile is currently offering these handsets. But as the Chairman of the FCC noted in a USA Today article,⁶ “[i]nternationally, Wi-Fi handsets have been available for some time, . . . but they are just beginning to roll out here. . . . I am concerned that we are seeing some innovations being rolled out more slowly here than we are in other parts of the world.”

Indeed, in Europe and Asia, wireless consumers have better choices. We can buy cell phones in London, and simply swap out a small card (called a SIM card) in the back of the phone and it works across any other European network. This decoupling of networks and handsets has created a vibrant European handset market, where manufacturers innovate relentlessly to keep customers loyal. In stark contrast, the U.S. handset market lags European and Asian markets, precisely because wireless operators have the power to dictate which phones will interoperate with their networks, keeping out the competition.

We are pleased to see that some carriers with problematic practices are turning towards

⁵ Jessica Vascellaro, “Air War: A Fight Over What You Can Do on a Cell Phone – Handset Makers Push Free Features for Which the Carriers Want to Charge.” *Wall Street Journal* (June 14, 2007).

⁶ Cauley, Leslie. “New Rules Could Rock Wireless World: Consumers, not carriers, may get to choose devices.”

openness. We hope that those promises will see follow through, and we commit to working with the carriers to make it so.

In sum, we are concerned that the wireless industry has become a cozy cartel of a few dominant providers characterized by consumer lock-in and limited device offerings. Instead of engaging robust competition, these carriers are charging consumers unconscionable Early Termination Fees and thwarting real choices in the marketplace. Action from policymakers is sorely needed.

New York City Consumers Are Being Fleeced by Additional Fees

As documented by the August 2005 report, "Cell Phone Savvy, published by the New York City Public Advocate, consumers who purchase phones at authorized dealerships may be subject to steep additional termination fees, ranging from \$50 to \$400. We are very concerned about this practice and urge immediate action to alert consumers, and reduce or eliminate such additional fees through legislative or regulatory intervention. Such charges are particularly burdensome for low- and moderate-income consumers and working parents, who may need cell phones to keep in touch with family members but may have affording continuous service.

We would strongly agree that at a bare minimum, consumers are entitled to conspicuous, prominent disclosure of any store-specific fees, the availability of corporate discounts, and the right to change service providers and retain the same phone number. However, we would also urge New York City to investigate the economic hardships imposed by these unwarranted charges, and explore policy options to reduce or eliminate them. We believe that high termination fees and "mobile phone lock-in" are restricting consumer choice and competition in the cell phone market,

the cell phone market, and leading to higher charges than consumers should otherwise have to pay. As mentioned above, European consumers have much greater phone portability between carriers, and their companies do not impose steep termination fees on consumers.

The cell phone has become an essential purchase for many consumers and their families, but there is inadequate public oversight to ensure that consumers are not subject to harsh, unconscionable contract terms, and are not forced to overpay for the services they get. With about four national carriers dominating the New York market and cell phones carried for security and necessity, as well as convenience, it is time for New York City and New York state to step in and protect consumers.⁷

Because of its large internal market, and the knowledge and capacity of its government agencies and legislature, New York City is in an excellent position to work to improve public oversight. The market power of New York City cell phone consumers should not be trifled with or taken for granted by the cell phone industry. In particular, we urge New York City to collect information on harmful practices, develop policy recommendations, pass its own legislation, and prod the state and federal government to step up their oversight. If appropriate, policymakers may also wish to negotiate tougher protections and better disclosures with the industry, while ensuring transparency, regular reporting and followup, and corporate accountability.

Consumers Union also believes that New York state should play an expanded role in oversight of the wireless phone industry. Gov. David Paterson should use his executive powers to force the Public Service Commission to regulate the terms and conditions of cellphone contracts to protect consumers, and post information to help consumer shop for the cell phone plan that fits

⁷ National providers Verizon, Cingular, Sprint/Nextel and T-Mobile dominate the New York State cell phone market.

plan that fits their needs and budgets. New York State should re-initiate the process of regulating cell phone service to spur true competition and ensure that consumers have meaningful choices and core protections when they shop for a cell phone company. We also support the proposed wireless consumers bill of rights legislation in the Assembly and Senate (A. 2030 and S.3293) that would improve disclosure of terms and conditions for wireless telephone customers, ensure that bills for wireless service are clearly organized and written in plain language, provide a trial use period, and improve consumer protections and complaint processes.

Having said that, no state or federal solution to the problems identified by legislators, the Public Advocate and the Department of Consumer Affairs is on the immediate horizon. We therefore pledge our support and interest in working with you to strengthen consumer protections on terms and conditions of cell phone contracts and cell phone sales practices. We commend the Committee on Consumer Affairs for its strong interest in these issues, and we look forward to swift passage of this and related legislation.

**Statement of Marla Tepper
General Counsel
Department of Consumer Affairs
before the
City Council Committee on
Consumer Affairs
on
Intro 483**

April 17, 2008

Good afternoon, Chairman Comrie, and Committee members. I am Marla Tepper, General Counsel for the Department of Consumer Affairs. Commissioner Mintz asked me to thank you for the opportunity to appear before you at your hearing on Intro 483, a bill that would require wireless stores to conspicuously display designated information about whether the store was affiliated with cell phone service providers, as well as information about certain terms and conditions of the transactions. The bill would authorize the Department to enforce violations of these provisions and would impose a graduated penalty structure for any such violations.

We're glad that the Council is addressing concerns in this market and, while we see Intro 483 as a good start, must note that the bill does not address the Department's and other agencies' full range of concerns regarding the significant problems consumers face when purchasing cell phones and wireless service contracts from wireless stores.

The Department has a long history of monitoring the cell phone industry to protect consumers from deceptive cell phone advertising. In July 2005, for example, the Department pursued claims against AT&T Wireless, Cingular Wireless and Verizon Wireless for deceptive advertising. Those companies settled and agreed to fully comply with the CPL in their marketing efforts. The Department also filed suit against Nextel Communications, Inc., Sprint Spectrum L.P. and T-Mobile USA, Inc., for pitching cell phones and services in deceptive advertisements that misled consumers. We sought maximum fines and compliance with the City's Consumer Protection Law and ultimately recovered over \$550,000 in fines as part of a court-ordered settlement. The deceptive advertising at issue then included such claims that "all incoming calls are free", when in fact the fine print noted that significant charges could apply; or that "Nationwide long distance included. Every minute, every day," when in fact a tiny, multi line footnote revealed that there was "...an additional \$0.25 per minute for long distance"; or also that consumers could get "free long distance" and "free roaming," when the small print in a footnote noted that "call duration may be limited" and other restrictions.

Problems with cell phone companies are not limited to deceptive advertising -- there are also issues both of clarity of pricing and service.

At the time of our 2005 litigation, and continuing to the present, information culled from the Federal Trade Commission, the Federal Communications Commission and from numerous consumer surveys confirmed spiraling complaints from consumers about wireless phone service and reports of frustration and dissatisfaction with their wireless carrier. Consumers continue to report difficulty in comparing cell phone plans because information on terms, pricing and service is not present in a uniform manner. Carriers often fail to clearly disclose the true cost of their plans, adding on various surcharges to consumers' bills. Consumers also complain of a lack meaningful information about service coverage before choosing a plan.

Consumer complaints filed with the Department of Consumer Affairs in just the last fiscal year underscore the problem. Of the 510 complaints filed against all electronic stores in FY '07, 295, or 59%, were against wireless stores. Sixty percent of those (176) involved disputes about contract terms while the remaining 119 (40%) involved false advertising claims.

One example: A consumer complained this year that he purchased two phones that looked like Nokia 5300 along with a two-year T-Mobile contract extension with a promised rebate of \$50 per phone that would have reduced the cost of the phones \$118. The dealer, however, failed to deliver the promised Nokia phones, and the phones that were delivered lacked the functionality needed to get the full benefit of T-Mobile's "My Favest" plan. Nevertheless, T-Mobile insisted that the consumer remain locked into the contract payments unless subjecting himself to its hefty "early termination fee".

"Can You Hear Us Now? A Report on How the Cell Phone Industry Has Failed Consumers", issued in March 2005 by Wisconsin Public Interest Research Group (WISPIRG), summarizes the issues that bear most directly on the matters the bill before you ought to fully address. That report noted:

- First, that consumers who complain to carriers about promised features that are not included in the plan are told that "nothing can be done to rectify the situation and that they will be bound by the written terms of the contract, regardless of what they are told by the salesperson";
- Second, as per the Better Business Bureau, "complaints involving unfair marketing and misrepresentation about contract terms make up the third largest source of complaints received about cell phone carriers";
- And third, the California's Utility Consumer Action Network (UCAN) suggested "misrepresentations made at the point of sale may be more acute when consumers sign up for a plan through third-party retail outlets... [pointing out that] Sixty-five (65) of the 184 sales-related complaints made to UCAN about cell phone services involved third-party agents."

And it gets even more complicated. The problems consumers face when attempting to sort out and select the plans and phones that best suits their needs are

compounded by an industry which operates under a structure of third party retailers. This results in consumers often signing confusing and complex multiple agreements that may not even be complete at the time they enter into the plan. For example, one agreement we examined tells the consumer that the form he/she is signing is only a part of a larger agreement -- not available in the retail establishment despite the insistence on the signature -- that adds the provider company's terms and conditions and rate plan terms.

And for those consumers who do discover that the information provided about the costs of the plan turns out to be untrue, they find themselves locked into long-term contracts with prohibitively large early termination fees. Such fees are often hundreds of dollars, and the early termination option sometimes only lasts for a period of a couple weeks. Thus, the burden rests with the consumer to independently and quickly verify, by going on line or speaking with store personnel, whether or not the fees and charges under the carrier's rate plan matches the costs of the plan as represented in the sales pitch he or she has heard before signing.

The Department is concerned that Intro 483's required disclosures regarding contract terms are limited only to terms involving the wireless store directly. If the store is a third-party operator, even an authorized dealer, the disclosures required by the bill at hand would tell consumers nothing about the most critical features relating to the calling plan they are generally also required to sign. Thus, Intro 483's disclosures are a very small part of the whole story affecting the terms and conditions binding the consumer.

Of related concern to us, then, is that such artificially limited disclosures could easily convey the false impression and a false sense of security to consumers that they have been provided with all the important facts they need to make reasoned purchasing decisions.

Therefore, we encourage the Committee to consider forging a more comprehensive approach to effectively address the entire range of issues consumers confront when entering into contracts for cell phones and cell phone services and would look forward to working together on such an initiative, including:

- Drafting requirements that focus on the terms and conditions of the contracts consumers sign for the services they receive.
- Mandating full disclosures regarding phones, contracts and services to ensure that consumers' rights are fully protected.
- Crafting a "Bill of Rights for Cell Phone Customers" which all stores selling cell phones and services would be required to provide to consumers.

Thank you for this opportunity to comment on Intro 483. I would be pleased to answer your questions.

For the Record

**TESTIMONY OF LAWRENCE A. MANDELKER on behalf of
THE NEW YORK METROPOLITAN RETAIL ASSOCIATION (NYMRA) before the
COMMITTEE ON CONSUMER AFFAIRS**

Chair: Leroy Comrie

Thursday, April 17, 2008, 1:00 p.m.

250 Broadway, Floor 14

NYC COUNCIL PROPOSED INT. NO. 483
DISCLOSURE OF INFORMATION IN WIRELESS STORES

Chairman Comrie and members of the Committee: Good Afternoon. I am testifying today on behalf of NYMRA, the New York Metropolitan Retail Association. NYMRA is an organization consisting primarily of national chain retailers operating in the City of New York. Most of our members neither offer for sale, nor sell "products or services related to commercial mobile radio services, as such term is defined by 47 CFR §20.3." However, several of our members do sell such products and services, but not solely for a single wireless service provider.

Int. No. 483 would require a wireless store to disclose two types of information: a) information relating to the wireless service provider such as corporate discounts, taxes, fees or surcharges, and; b) store specific information such as restocking and cancellation fees that will be charged in addition to the fees and charges imposed by the wireless service provider. As a general matter, the bill appears benign and worthy of support. But the devil is in the details. When its provisions are applied to our members, the bill raises a number of problems.

Those members of NYMRA that sell products or services related to commercial mobile radio services differ from small dealers that only sell a single wireless product or service. Our members are national chains that attract customers by the good will associated with the name of the chain. Although customers can purchase the same products or services elsewhere, they shop at our stores based on long histories of outstanding customer service, variety, product quality, reliability and honesty. They buy products in our stores knowing that if anything goes wrong with a particular product, the chain will still be there to address it.

We understand that this bill arises from complaints that have been received from customers of some of the smaller wireless stores that sell a single provider's products and services. In that scenario, the fix offered by the bill might arguably be simple and inexpensive to implement – a well-placed sign, or two or three. But for a chain retailer offering wireless products or services of many providers for sale, the signage requirement becomes a potentially complex, confusing and expensive endeavor.

Let's take a step back. Government likes satisfied consumers. A satisfied consumer can become a satisfied voter. But retailers like satisfied consumers even more than government does. To us, a satisfied consumer becomes a repeat customer – except that the retailer wants their customer much more often than every four years. The disclosures mandated by the bill are already being made by our members.

Since large national chain retailers are not the problem, why shouldn't government let the chains do what they do best, create satisfied customers. By amending the definition of a "wireless store" to exclude stores with more than 5,000 square feet of selling space that also sell products or services *other than* products or services related to commercial mobile radio services, government would allow national chain retailers to decide whether it is better customer service to have an unattractive sign with lots of confusing mandated language about multiple wireless service providers, or attractive smaller consumer-tested point-of-sale displays or handouts that allow consumers to compare equipment, service features, disclose the policies of each of the wireless service providers concerning their respective fees, surcharges and discounts, as well as price.

Finally, it's not clear whether the term "wireless services" is meant to also include prepaid phones (where the user either calls or goes online with the wireless service provider to activate the phone) and wireless refill cards.

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**TESTIMONY OF
Gerard T. Keegan
Director, State Legislative Affairs
CTIA – THE WIRELESS ASSOCIATION®**

April 17, 2008

Before the New York City Council Consumer Affairs Committee

Chairman and members of the committee, I want to thank you for the opportunity to appear before you in opposition to Introduction Number 483. My name is Gerry Keegan, and I am Director of State Legislative Affairs at CTIA-The Wireless Association®. CTIA is the international association for the wireless telecommunications industry, representing wireless carriers, manufacturers, and Internet providers. My testimony today is supported by AT&T, Sprint Nextel, T-Mobile USA, and Verizon Wireless. The wireless industry respectfully opposes Intro 483 because it would be impractical to implement, ignores the clear consumer disclosures that carriers have already committed to and implemented, invites fraud and abuse, and could lead to a patchwork of differing local and state laws that could threaten the consumer benefits that have evolved in the competitive wireless market.

Wireless has experienced enormous growth over the past 15 years. This growth was ushered in by Congress's decision in 1993 to create a national wireless framework by deregulating wireless rates and tearing down barriers to entry. That decision spurred a wireless renaissance that has witnessed the number of subscribers grow to over 255 million nationally – 16 million in New York State alone. In the course of those 15 years, the wireless industry has delivered lower cost services, increased value proposition with increased disclosures and benefits, and technologically-advanced products to consumers. This framework has also allowed wireless carriers to offer innovative options like



national rate plans with domestic long distance and roaming included, which have significantly lowered the cost of wireless services and provided more consumers with the added convenience and security that comes with wireless devices.

Because of this national framework, wireless has also become truly ubiquitous. It allows family and friends to stay in constant contact with each other and employees to work outside the traditional office, providing flexibility and facilitating gains in productivity particularly among small business employees. It has also delivered wireless broadband services to consumers in both urban and rural America who could not afford or have access to broadband services in their communities before wireless was deployed.

The industry is also delivering enhanced customer service to wireless consumers. With the explosive growth of wireless, the industry recognized the need to quickly address consumer demands. In 2003, wireless carriers throughout the country adopted CTIA's Consumer Code for Wireless Service that has been an integral part in delivering superior service to consumers. The Code – which is followed in all 50 states – has helped consumers make informed decisions when selecting a wireless plan and has contributed to the continued competitiveness of the wireless industry. As part of the Code, wireless carriers (and their authorized agents) disclose rates and terms of service, including any applicable early termination fees and roaming or off-network charges. They also provide consumers with service maps, a minimum 14-day trial period, billing statements that separately identify carrier charges from taxes and fees, and ready access to customer service. Moreover, carriers pledge to promptly respond to consumer inquiries and complaints received from government agencies within 30 days of receiving written notification.

The Code provides the wireless industry with the flexibility to universally address customer service demands in an ever changing and dynamic technological marketplace. As technology evolves, the services that customers demand today might not be the services they want tomorrow. The Code gives the industry the flexibility to adapt to those changing demands while ensuring a national consumer protection regime.

The adoption of the Code has resulted in a declining wireless complaint rate at the Federal Communications Commission (FCC). In fact, the number of wireless complaints received by the FCC have actually decreased year-over-year since the Code's adoption. For example, the FCC received 29,478 complaints in 2004, in large part to the technical glitches involved with Local Number Portability. In 2005, the number of complaints decreased 12 percent to 25,942. Complaints further declined in 2006 by 33 percent as the FCC received 17,415 complaints. This represents a wireless complaint rate of 0.0020 percent or 20 ten thousandths of one percent for 2006.

While complaints continue to decline, the wireless industry's story of enhanced customer service and responsiveness continues. Recently, wireless carriers operating in New York adopted more consumer-friendly policies. AT&T, Sprint Nextel, T-Mobile, and Verizon Wireless have all announced that they will pro-rate early termination fees. Furthermore, these carriers have adopted open network policies allowing outside devices and applications on their networks. Carriers have also recently introduced greater contracting flexibility and unlimited use plans. Pre-paid and pay-as-you go options – as well as post-paid options that do not require a term contract – are growing in popularity and in carrier service offerings. These are just a few examples of wireless carriers

responding to consumer demands in a hypercompetitive marketplace and doing so without government mandates.

Specific to the legislation before you today, the disclosure requirements in Intro 483 are unnecessary and in many cases would be impractical to implement. For example, current signage inside and outside of stores clearly display whether a retail entity is an authorized agent. These signs are larger-in-scale than anything a carrier could possibly post in adherence to this legislation. Additionally, carriers already disclose many of the fees, including cancellation fees and government taxes, fees, and surcharges as outlined in CTIA's Consumer Code, that Intro 483 would require. Carriers require their authorized agents to clearly disclose any other equipment charges (and monitor these independent businesses for compliance). Carriers have also introduced easy-to-understand billing formats that layout taxes, fees, and surcharges, along with the cost of monthly service, and are provided to consumers before they leave the retail establishment.

Moreover, the corporate discount disclosure requirement would be wholly impractical to implement, invite fraud and abuse, and infringe on proprietary contractual relationships between carriers and their corporate customers. Each carrier may have hundreds of unique, separately-negotiated discount corporate relationships -- and given the large number of such contracts, there are amendments, extensions, or new contracts introduced on a nearly daily basis. Many times these discount agreements are between a carrier and a corporation, not the corporation's employees, and they may only be available to a select group of employees. Corporations consider these discount programs to be employee benefits and notify employees of such programs through employee

manuals, training, and announcements. Accordingly, employers are better suited than retailers to inform employees of discount programs and the amounts, terms, and processes associated with them. In those instances where the general employee population can take advantage of the relationship between a particular carrier and their employer – you can be sure that both the employer and the carrier make this opportunity known in a variety of ways.

Furthermore, the number portability disclosure provision is unnecessary as evidenced by the number of consumers who have actually ported their numbers since the law was implemented in 2004. As of June 2006, 28 million wireless consumers have ported their numbers from one carrier to another. In addition, approximately 30 million wireline consumers have ported numbers. In total, 58 million consumers ported their numbers in just two and a half years. This is evidence that consumers know about number portability and have successfully utilized the law. It also stands to reason that the sales representatives of a particular carrier will make sure a prospective customer coming from another carrier is aware of their ability to port.

The industry and its members also want to make the Council aware that in addition to the practical issues we have with the proposed legislation, Intro 483 raises questions about the city's proper authority to legislate in this area. That is, we question whether the proposed requirements comport with the paradigm of wireless regulation established by Congress in the Communications Act of 1934, as amended, which created distinct spheres of regulatory authority for federal, state, and local governments. In our view, this is a material risk and one that warrants further serious consideration by the Council.

In closing, Intro 483 is unnecessary. There are already consumer protection laws of general applicability on the books that the New York City Department of Consumer Affairs and the state attorney general can enforce against allegedly bad actors in the wireless market, including unfair and deceptive trade practice laws. Specifically targeting the industry with more regulatory requirements could only threaten and burden an already competitive market, which is bringing consumers lower prices, customer-friendly progress, and new and advanced services. Differing local and state laws would be in direct conflict with the national regulatory framework that is clearly working. Therefore, I respectfully urge the committee members to vote no on Intro 483.

I want to thank you again for allowing me to appear before you today and am happy to answer any questions.

CTIA

Consumer Code *for* Wireless Service

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

ONE

DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

For each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no early termination fee will apply.

TWO

MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

Wireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map

usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

THREE

PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE

When a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier will provide or confirm the material terms and conditions of service with the subscriber.

FOUR

ALLOW A TRIAL PERIOD FOR NEW SERVICE

When a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply.

FIVE

PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING

In advertising of prices for wireless service or devices, wireless carriers will disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows: (a) activation or initiation fees; (b) monthly access fees or base charges; (c) any required contract term; (d) early termination fees; (e) the terms and conditions related to receiving a product or service for "free;" (f) the times of any peak and off-peak calling periods; (g) whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas; (h) for any rate plan advertised as "nationwide," (or using similar terms), the carrier will have available substantiation for this claim; (i) whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term; (j) whether any additional taxes, fees or surcharges apply; and (k) the amount or range of any such fees or surcharges collected and retained by the carrier.

SIX

SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS

On customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal state or local governments. Carriers will not label cost recovery fees or charges as taxes.

SEVEN

**PROVIDE CUSTOMERS THE RIGHT TO TERMINATE SERVICE
FOR CHANGES TO CONTRACT TERMS**

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

EIGHT

PROVIDE READY ACCESS TO CUSTOMER SERVICE

Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

NINE

**PROMPTLY RESPOND TO CONSUMER INQUIRIES AND COMPLAINTS
RECEIVED FROM GOVERNMENT AGENCIES**

Wireless carriers will respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.

TEN

ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY

Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online.

Wireless Carriers Continue To Deliver Value

