

Statement of Dr. Larry F. Darby  
On Behalf of  
The American Consumer Institute for Citizen Research  
Before  
the Sub-Committee on Telecommunications and the Internet  
February 27, 2008

Good morning Mr. Chairman and members of the Committee. Thank you for inviting me to share the views of The American Consumer Institute for Citizen Research, which I serve as both a board member and a Fellow. The Institute is a 501-c-3 organization founded in 2005 for the purpose of promoting careful analysis of the impact of legislative and regulatory proposals on consumers' economic welfare.

The discussion draft of the Wireless Consumer Protection and Community Broadband Empowerment Act of 2008 has substantial, but sometimes inestimable, implications for consumers as users, taxpayers and citizen stakeholders. Time requires me to be selective in addressing its provisions; and, with consent of the Committee we would like the opportunity to provide more extensive comments subsequently for the record.

Meanwhile, I want to make five points.

*First, we urge you to subject all proposed regulations to a rigorous analysis of consumer costs and benefits.* The test is simple in principle, but often demanding to apply, and frequently ignored. Applying it requires comparison of completely assessed consumer costs and benefits associated with the proposal. Good intentions are important, but they do not substitute for benefits actually delivered and costs avoided.

We raise this because the draft opens the door to regulatory solutions that presumably address market imperfections. Our general sense, however, derived from a wide variety of public information, is that U.S. wireless markets and the current regulatory schemes are working very well as measured by reasonable standards. We note that:

- Based on FCC and OECD data, U.S. consumers, compared to those elsewhere in the world, enjoy more choices, more competition, the highest usage rate, and low rates. Costs per minute are declining, average use is increasing, and penetration is high and rising.
- Data from J.D. Powers, the FCC and Better Business Bureau indicate that wireless service quality is steadily improving. J.D. Powers reports that overall consumer satisfaction is at an all time high.

There is more, and international comparisons are not always dispositive, but by most measures and any reasonable assessment, the U.S. wireless sector, and its regulators,

have a remarkable success story to tell. Industry performance is not perfect, but the current partnership between government and industry is not broken.

*Second, consumer welfare is enhanced by full disclosure of terms and conditions associated with commitments made by them and the carriers in service contracts.* Rational consumer choice and welfare depend on complete and accurate information about their options. Inadequate information is a key cause of market failure and a widely accepted rationale for government remedial measures.

Our review of CTIA Consumer Code for Wireless Service, to which all the major carriers are signatories, appears quite responsive to consumer needs and in some respects exceeds requirements in the draft. The Committee might usefully compare its requirements with those in the CTIA Consumer Code. The purpose would be to identify ways in which implementation of the Code does not adequately serve consumers and could effectively be remedied by government action. The requirement that contract terms be spelled out in a “clear, plain and conspicuous manner” is on target and should leave little room for dispute.

Finally, we are happy to report the good news that the evolution of competition among rivals in wireless markets is now, and will continue to be, marked increasingly by quality of service improvements and service differentiation. Churn is a major cost and customer dissatisfaction is a major source of carrier switching. Thus, service rivalry among carriers will continue to increase and add value for consumers.

*Third, we compliment the authors of the draft for their efforts a) to clarify consumer protection requirements and b) to nationalize their definition and enforcement.* The national regulatory framework put in place in 1993 homogenized economic regulation of wireless carriers nationwide. By all indications, it has worked well and may be credited in substantial measure with performance gains in the sector. That jurisdictional framework should be replicated as needed to assure adequate consumer protection.

While there are legitimate state interests in protecting consumers, state regulation poses companion risks. The first is that well meaning consumer protection rules will morph into full scale rate and service regulation of the kind avoided since 1993. The second is that consumers will be burdened in the form of higher rates, less innovation and service differentiation, and less flexibility in adapting to the dynamic market environment as a result of regulatory delay and uncertainty. Third, it is unavoidable that the costs of individual state regulations will in part leak and burden users from other states. Since users are mobile and carriers are regional/national, state specific costs will in part be nationalized. The result will reduce carrier scale and scope economies in producing satisfactory national customer service.

Eventually consumers are burdened by all unintended and unanticipated costs of efforts to protect them. We have reviewed several economic studies of the costs and benefits of State versus Federal consumer protection and find no economic basis for

encouraging, or permitting, a mosaic of different state regulatory schemes. We also note that there is no basis for imposing more rigorous consumer protection standards and rules for wireless customers than for those in other economic sectors.

*Fourth, we are very concerned with any prospect that regulatory bodies at any level might engage in any kind of rate, service or consumer protection regulation based on cost of service.* The history of cost of service regulation in the wireline sector is filled with danger signs and few successes. Network costs are largely common and the varieties of methods for allocating them to individual customers border on the mystical and are costly in terms of time and resources. There is no credible evidence that regulatory costing in this sector would on balance create value for consumers.

*Finally, we are uneasy about Title II which deals with government owned network competition with privately funded carriers.* I have been for several years advising governments around the world on the benefits of privatizing government owned telecom networks and the dangers of taxpayer funded competition. Consumers are not served abroad, or here, by use of tax revenues to subsidize less efficient public networks.

I know well the arguments on both sides and hope the final version of the bill expresses a strong preference for private systems and contains language guarding against taxpayer subsidies to public networks that ultimately discourage investors from constructing the very capacity that is needed. In this regard recent reports of the difficulties faced by current local government-owned networks only magnify the importance for Congress to give the right signals to both governments and private investors.

Thank you again for inviting me and I look forward to your questions.