

Testimony of Lowell C. McAdam
President and Chief Executive Officer, Verizon Wireless

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

Consumer Practices of the Wireless Industry

October 17, 2007

Good morning, Chairman Inouye, Co-Chairman Stevens and Members of the Committee. It is a privilege to be here this morning. Thank you for affording me this opportunity to share with you the views of Verizon Wireless on “Consumer Practices of the Wireless Industry.”

I want to make two overall points in my testimony today:

First, the wireless industry is one of the greatest success stories in the history of the American economy. We began in the mid-1980s, offering only car phones and then progressing to large, bulky bag and brick phones. Coverage was spotty, voice quality was poor, and prices were high. The industry mustered only a few hundred thousand customers during its early years.

Look how far we’ve come in the short 20 years of our existence. The wireless industry today serves over 230 million customers. The industry has invested tens of billions of dollars, creating millions of well-paying jobs and building multiple state-of-the-art networks covering nearly the entire population of the United States. Twenty years ago we offered one service – voice calling – over a small number of devices. Today we offer a multitude of futuristic devices and thousands of amazing applications, delivered at broadband speeds unimaginable even five years ago.

Wireless devices today are highly sophisticated consumer electronics computers, not mere telephones. Consumers now have a myriad of choices among cellphones, PDAs, aircards, and other devices. Yes, these devices can make and receive calls, but

they're also digital cameras and camcorders, Internet access devices, computer modems, video and television receivers, tape recorders, and calculators. Bluetooth technology has unleashed even more capabilities, allowing customers to work more easily while on the go. New and better devices, with faster processors, larger memory capacity, and better battery life are introduced weekly.

Today's wireless devices can receive live television broadcasts, send and receive e-mails and attachments, check local traffic reports, locate the cheapest gas station, send text and picture messages, download music both over-the-air and from our library of over 2 million songs, download videos, ring-tones, ring-back tones, and hundreds of additional applications developed by thousands of entrepreneurs, including navigation services, puzzles and games. Customers are gobbling up these 21st century applications at astonishing rates. Just last month, for example, our customers sent over *ten billion* text messages across our network. We are constantly offering new and innovative cellphones and applications to satisfy consumer demand for the latest and greatest products and services.

Perhaps the most amazing aspect of this story is that even as the industry has invested tens of billions of dollars, prices have dropped dramatically for consumers. More than anywhere else in the world, the American consumer has reaped the benefits of lower wireless prices for better wireless services. The cost per voice minute, which was about one dollar twenty years ago, has dropped to *7 cents* today.

And let us not forget the key role cellphones now play in protecting and enhancing public safety. During the terrible hurricane seasons of 2004 and 2005, the wildfires in Southern California, and other recent emergencies customers and first responders have relied increasingly on commercial wireless networks to communicate with each other. We and other wireless companies have deployed portable cell sites to disaster areas, handed out devices free of charge, donated millions of dollars in cash and volunteer labor, and have helped those in need in countless other ways. We at Verizon Wireless are also very proud of our Hopeline® program, which recycles phones and makes donations of equipment, cash and services to Domestic Violence prevention

programs and shelters throughout the nation. In addition, the GPS technology in our phones has also enabled us to help public safety officers rescue missing persons and accident victims, and to apprehend criminal suspects. We have received countless commendations from federal, state and local law enforcement officers for these efforts.

Why has this industry become such a model of success? I have a one-word answer -- COMPETITION. Back in 1993, when the industry was still young, Congress had the foresight to realize that the wireless industry is not a monopoly, and should not be regulated like a monopoly, either at the state or federal level. The 1993 legislation removed state regulation of wireless rates and market entry, and opened the floodgates to competition. New companies entered the market. The industry spent billions buying spectrum at auction. Billions more were invested in networks, infrastructure, retail stores, and customer care centers, creating tens of millions of new jobs and stimulating enormous productivity gains for our economy resulting from consumers' ability to work on the go, around the country and around the world. Competition among carriers caused prices to fall, demand to rise, consumer complaints to fall to lower and lower levels (only 11 out of every one million customers today, a rate of 0.00001%), and spurred still more innovation and investment, a highly beneficial cycle that has continued to this day. Indeed, just last week the Washington Post described our industry as "intensively competitive." The FCC has repeatedly reached the same conclusion.

Much has been made of the iPhone. We think the iPhone is *good* for the industry, even though one of our competitors is offering the device and we are not. The iPhone is far from perfect, as we all have seen. But it unquestionably has challenged the rest of the industry and the handset makers to go back to the drawing board and invent something even better. And now Verizon Wireless, less than four months after the iPhone hit the market, has announced that we will sell the Voyager, an amazing phone from LG Electronics that we think will give consumers something cooler, faster, and better. That's what COMPETITION is all about.

The state of America's wireless industry today is exactly what Congress and President Clinton hoped for when they decided in 1993 to treat our industry differently

from traditional landline telephony. No one can argue that their approach has worked far better than anyone envisioned at the time. The enormous economic growth we've spurred and the incredible yet affordable technology we have delivered to consumers should be celebrated. So why turn the clock back now and risk all that's been accomplished by re-regulating the industry?

The second point I want to make is that Congress should move forward to address two problems threatening the consumer benefits the wireless industry has generated: the threat of patchwork state utility-style, economic regulation, and the unfair and discriminatory state and local tax burden that has been inflicted on wireless customers.

State Utility-Style Regulation: The 1993 legislation recognized that states should not regulate wireless rates or entry, but it permitted states to regulate "other terms and conditions" of wireless service. As of today 30 states have chosen *not* to allow their public utility commissions to exercise this authority, in recognition that the competitive marketplace is working. Moreover, 12 of the remaining 20 states have chosen not to exercise any regulatory authority over wireless companies, even though the laws in those states allow such regulation. (I would note that the wireless industry is subject to the jurisdiction of the state Attorneys General in all 50 states, as evidenced by Attorney General Swanson's recent filing of a lawsuit against Sprint alleging violations of Minnesota's consumer protection statutes.)

The issue is not whether states should play a consumer protection role regarding the wireless industry. Of course they should. But they should exercise that role to the same extent they do for other competitive industries, no more and no less. And that means they should exercise that authority through their Attorneys General, by enforcing generally applicable consumer protection laws, *not* through the promulgation of wireless-specific economic regulations by their public utility commissions. Monopoly-style, state public utility regulation will not help consumers in a competitive, borderless, national industry like wireless. A patchwork of potentially conflicting, inconsistent state utility regulations would thwart the investment, innovation, and job creation that has brought so much benefit to wireless consumers since 1993.

The vast majority of states have not seen any need to use the “other terms and conditions” loophole to regulate the wireless industry. Those states have recognized that such authority is not necessary to protect their consumers. Last year, this Committee agreed with those states and acted to close the “other terms and conditions” loophole once and for all by a vote of 15-7. We would urge the Committee to do so again. Last year’s Bill called for one set of national rules for all consumers in all states rather than a patchwork of multiple, different and potentially inconsistent state rules. At the same time, the bill maintained state authority to protect consumers against unfair and deceptive practices in the wireless industry, just as states do for other competitive industries.

Discriminatory Taxation: Wireless customers have for years been burdened with unfair and discriminatory state and local taxation. On average, almost 15% of a typical consumer’s wireless bill goes to pay taxes, fees and surcharges to the federal and state/local governments, shouldering more than twice the taxes assessed on all other general business goods and services. Between January 2003 and July 2005 the effective tax rate for wireless services has increased nine times faster than the tax rate on other taxable goods and services

The wireless industry and its consumers should pay our fair share to support the government but we shouldn’t have to pay twice our share. Others at the State levels of government share our concerns – numerous times over the past seven years, the National Governors Association and National Conference of State Legislatures have urged states to reform their telecommunications tax laws.

Last year, this Committee acted to redress discriminatory wireless taxes by passing Senator McCain’s bill by an overwhelming 21-1 margin. That Bill would have prevented states and localities from enacting any new wireless-specific taxes. I urge the Committee to take action once again on Senator McCain’s bill, and to add a provision that would repeal all existing discriminatory taxes.

I. COMPETITION IS DELIVERING REAL BENEFITS TO WIRELESS CONSUMERS.

Competition is the greatest factor motivating businesses to please their customers. We strive every day in Verizon Wireless to make our existing customers happy, and to attract new customers from our competitors. Verizon Wireless has taken various actions in our continuing effort to offer the most customer-friendly experience in the industry. For example, our longstanding Worry-Free Guarantee provides the following significant consumer protections:

- It allows customers to change to any qualifying calling plan or airtime promotion at any time;
- It promises our customers that we will do our best to resolve any problems with our service or equipment the first time they call;
- It guarantees customer satisfaction for any equipment purchased from us;
- It allows customers to receive a free phone every two years with our New Every Two program; and
- Just this month, we expanded the Worry Free Guarantee. Our customers can now change their voice and data plans, selecting different minute allowances or text messaging and data use options, at any time during their contract without changing the end date of their contract or signing up for a new contract term.

In addition to the Worry Free Guarantee, we have taken additional pro-consumer steps in recent months. Two of the most significant are the following:

- In March 2007, we rolled out our “test drive” program which allows new subscribers to use our service for 30 days, and if they are not satisfied, to take their line to another wireless carrier during the first 30 days. We will then issue a credit for all the calls the customer made, along with the customer’s monthly access and activation fees. Verizon Wireless stands behind its claims of network reliability, even to the extent of refunding charges for any dissatisfied customer’s use of that network during the “test drive” period.

- In November 2006, we replaced the flat early termination fee we charged customers who cancel their service contract early, with a pro-rated fee that declines every month that the customer stays with us.

Verizon Wireless is not the only wireless company to take pro-consumer actions to gain a competitive advantage. Other companies have marketed programs such as roll-over minutes, the ability to make unlimited calls to a select group of friends or family regardless of network affiliation, and so forth. Why do I mention these actions? Because they provide real-world examples of how the wireless industry is constantly responding to the needs of their customers. Because they show how providers are constantly differentiating their offerings from each other as a way to compete in this hyper-competitive business. And because they show that companies must listen to and respond to their customers – or lose business. This is precisely how Congress intended this market to work.

In 1993, Congress had the forethought to establish a deregulatory framework for the wireless industry. This limited regulatory approach led to explosive growth in innovation, competition, and investment in wireless networks, providing huge benefits to the national economy. The 1993 amendments Congress made to the Communications Act placed the wireless industry on a path toward innovation, expanded service, and competition that has well served consumers and the American economy. The industry has gone from serving just 11 million customers at the beginning of 1993 to more than 233 million Americans at the end of 2006. An economic study conducted by Ovum, a research firm, indicates approximately 3.6 million U.S. jobs were directly or indirectly dependent on the U.S. wireless industry, and that an additional 2-3 million jobs will be created in the next 10 years. The same study shows the wireless industry generated \$118 billion in revenues in 2004 and contributed \$92 billion to the U.S. Gross Domestic Product. Ovum estimated that, over the next 10 years, the U.S. wireless industry will

generate gains of more than \$600 billion from the use of wireless data services, and will add another \$450 billion to the GDP.¹

Wireless companies compete against each other every day to win new -- and each other's -- customers. Wireless customers have benefited enormously from this competition. The FCC recently reported that 97% of the U.S. population live in counties with at least three service providers, up from 88% in 2000,² and an average of nearly four carriers provide service in rural U.S. counties.³ To secure and retain customers, carriers know they must invest in networks. Thus by the end of 2006, carriers had invested more than \$223 billion -- excluding the cost of spectrum -- in building networks to deliver an increasing array of wireless services to consumers.⁴

Let me spend a few moments discussing two key attributes of the competitive wireless market -- innovation and differentiation.

Innovation is obvious not only in the hundreds of new devices, features and applications that consumers can obtain every year, but also in the deployment of new technologies that allow them to send and receive data at faster speeds. Verizon Wireless, for example, has invested billions of dollars to make not one but two major network upgrades in the past three years. First, the company spent \$1 billion to implement EvDO Revision 0, which offered customers download speeds typically at 400-700 kilobits per second. This was in addition to significant network investment, which has averaged over \$5 billion each year since 2000. Just as the investment in Rev 0 was finished, we again began upgrading our network to EV-DO Revision A, which further increases download speeds and also provides our customers the ability to upload files eight to nine times faster than before. With "Rev A" broadband service, customers can expect average download speeds of 600 kilobits to 1.4 megabits per second and average upload speeds of

¹ Entner, Roger and David Lewin, "The Impact of the US Wireless Telecom Industry on the US Economy," *Ovum-Indepen*, September 2005, p. 3.

² FCC, "Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service: Eleventh Report," ¶ 2, FCC 06-142 (Sept. 29, 2006).

³ *Id.*, ¶ 86.

⁴ CTIA's *Wireless Industry Indices, Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2006 Results*, released May 2007, at pages 7, 156.

500-800 kilobits per second. Our network allows downloads at these speeds while consumers are in a cab, on a train, or walking down the street, completely free of a desk.

And our competitors are innovating as well, announcing services such as Wi-Fi and Wi-Max, and introducing a broad array of new and different devices.

Differentiation is also a hallmark of the industry. Consumers are constantly benefiting from carriers' drive to differentiate themselves and to win customers. What a carrier chooses to offer depends on its assessment of what its own customers want and what it sees as the best path to growth. Some companies may focus on low prices but invest less in high-speed services. Some may focus on "all you can eat" local service in competition with landline telephone service as opposed to nationwide service. Some may focus on customers who don't want or need a month-to-month contract and instead want to prepay for service. Each company is making these choices every day as it focuses on how to win and retain its customers.

In addition to our constant focus on network quality and reliability, Verizon Wireless has sought to differentiate ourselves through our strong consumer and privacy protection actions. For example:

- In 2003, Verizon Wireless was the first national carrier to support Local Number Portability, allowing wireless customers to switch carriers while keeping their phone number.
- In 2004, we announced that we would help protect customer privacy by refusing to participate in a national wireless phone directory, effectively halting this project.
- In 2005, in a first of its kind lawsuit, we began prosecuting pretexters who were trying to illegally obtain and sell confidential customer telephone records.
- Beginning in 2005, we have obtained injunctions against spammers who sent text message solicitations to our customers. We have sued several telemarketing companies and individuals who used pre-recorded messages

in Spanish as well as techniques and technology to mask the origin of the call, known as “spoofing.”

In part due to these efforts, consumer complaints to federal and state regulators are few. During each month in 2006, the rate for complaints from our customers to the FCC, state PUCs, or state Attorneys General was 11 out of every 1 million customers – a rate of 0.00001%.

Many other wireless providers have also taken similar pro-consumer actions, including adhering to CTIA’s Consumer Code, which sets forth detailed practices that carriers must follow in marketing their services and in billing customers.

As these examples illustrate, the marketplace, not government intervention, has addressed concerns about the wireless industry listening to its consumers and providing benefits and features that consumers want.

Despite wireless companies’ constant efforts to win and retain customers by meeting their needs, some states are renewing efforts to turn back the clock and regulate wireless service as a public utility. State utility-style regulation is both unnecessary and harmful – unnecessary because the competitive market is already driving the prices, value and services consumers want; harmful because it discourages innovation and competition. Regulation can never respond to customers’ demands in the flexible, constantly evolving way that the market does. In fact, it undercuts incentives to innovate and differentiate by establishing a “lowest common denominator” of required practices.

State-by-state wireless regulation is particularly harmful. Because it imposes fixed rules, but only on the carriers in one state, it forces those carriers to follow the same practices as they compete in that state, harming innovation and customer choice. But because state regulation is limited to one state, it imposes costs on carriers who seek to offer customers a unified experience wherever their customers live, work or travel. The FCC has repeatedly documented the many benefits that customers enjoy from the growth of national services and rate plans. But these services and plans succeed because

companies are able to offer them consistently to all their customers, wherever they are. Left unchecked, these re-regulatory efforts will force wireless providers to follow different rules in different states and undo the benefits of deregulation.

The wireless industry long ago shed any vestige of monopoly, on which PUC-imposed regulation was based. We are an intensely competitive, 21st Century consumer electronics business, far more like Apple and Dell and other high-tech businesses than we are like the telephone companies of 20 years ago. Yet state PUCs do not regulate companies like Apple and Dell. So why should they regulate us, as if we were a 20th Century wireline telephone monopoly? We are not asking for special treatment, only the same treatment accorded other competitive businesses. States can and do act against high-tech companies, retailers and other firms when they believe those businesses engage in unfair consumer practices, without the need for utility-type regulation. Wireless should be no different.

II. CONGRESS SHOULD CLOSE THE “OTHER TERMS AND CONDITIONS” LOOPHOLE AND ELIMINATE STATE UTILITY-STYLE ECONOMIC REGULATION OF THE COMPETITIVE WIRELESS INDUSTRY.

Verizon Wireless believes that state public utility regulation is not appropriate or needed for the wireless industry. We also believe that the FCC’s policy – first adopted during the Clinton Administration – of treating the wireless industry with a “light regulatory touch” is the appropriate model. The market is working and evolving in ways that no inherently rigid and static regulations can. We thus have serious concerns with S. 2033, which was introduced last month. The Bill contains highly prescriptive, detailed regulations that would deeply intrude into carriers’ operating practices and interfere with carriers’ ability to innovate and differentiate, essentially placing the FCC and state utility commissions in an operational role inside every wireless company. Moreover, the Bill would do nothing to control the potential for a patchwork of conflicting and inconsistent state regulation that could be imposed on top of the detailed federal rules; indeed, section 12 of the Bill makes clear that states can impose additional regulations. But even if

section 12 were eliminated, section 11(b)(1)(B) would still allow state public utility commissions to engage in their own independent interpretations of the federal rules, raising the specter of 52 different interpretations of the *same* set of rules (50 State Commissions, the District of Columbia Commission, and the FCC). This sort of model cannot possibly be viewed as beneficial to consumers in a competitive marketplace.

The Committee should reject S. 2033, and instead complete the national, deregulatory structure for the wireless industry it began in 1993, by closing the “other terms and conditions” loophole and adopting a national framework for wireless oversight. This is exactly what this Committee did in June 2006 in the legislation it adopted by a 15-7, bipartisan vote. Section 1006 of the Senate substitute for H.R. 5252 set forth a national framework of consumer protection, while not discouraging the innovation and carrier differentiation that have been the hallmarks of wireless service. That framework would allow for the adoption of a set of comprehensive, national consumer protection standards for the industry that would be sufficiently flexible not to frustrate carriers’ pro-competitive efforts to offer different products, services, contract terms and calling plans. State PUCs would no longer have authority to impose utility-style regulation on a competitive industry that is nothing like a utility. But the states would retain all of their power through their Attorneys General to protect against unfair and deceptive consumer practices if and when they determine such practices exist, under their generally applicable consumer protection statutes. Wireless companies would thus be subject to no less state oversight than other competitive businesses.

Only a national framework could serve the public interest because:

- It benefits all consumers in all states by setting uniform protection and service quality standards for wireless consumers. Individual state-by-state regulation cannot do that.
- It avoids disparate state requirements that raise operational costs and cause uncertainties for companies; create confusion and inconvenience for consumers;

delay new services or options that consumers would otherwise enjoy; and discourage investment in new wireless jobs and technology.

The states would not lose power to address unfair and deceptive practices. Under the national framework, states would continue to enforce their consumer protection statutes of general applicability, but would not be able impose state-specific wireless regulations. State Attorneys General would thereby lose none of their authority to go after practices that they believe are unfair or deceptive. Our previous CEO made this point in a letter last year to Senator Lautenberg, which is attached to my testimony. States may also adopt consumer education programs, refer complaints to carriers for resolution, bring formal complaints to the FCC against carriers they believe are acting unlawfully, investigate wireless practices, and of course participate in the FCC's national consumer protection rulemaking. This new framework will maximize protections to consumers while avoiding the harms of patchwork state-by-state regulation.

The national framework would not grant any wireless carrier something different from other businesses. Instead, it would harmonize regulation. And, it would otherwise rely on market forces – consumers deciding which providers deserve their business and which do not – to compel providers to excel more effectively than patchwork state PUC regulation, and to drive providers to be more innovative and accountable.

CONCLUSION

We are at a crucial juncture in the development of the nation's wireless industry. Over the past decade and a half, wireless consumers have come to expect – and rely on – their wireless phones, first as a safety device, then as a convenience, and increasingly an integral part of more than 230 million Americans' daily lives. It may seem like magic, but the work of thousands of dedicated men and women every day helps build, maintain and expand robust and secure wireless networks – and provide the customer service enabling two hundred and thirty million consumers to use our products and services every day. The innovation we see every day, from new products to new and more robust

services to consumer friendly initiatives such as the Worry Free guarantee, has brought more benefits to the American consumer than any government mandate could deliver. Verizon Wireless urges the committee to avoid the temptation to impose burdensome regulation on a competitive, innovative and robust industry. We call upon the Committee to vote once again to free our customers from the unfair burden of discriminatory state and local taxation. All we ask for ourselves, Mr. Chairman, is to LET US COMPETE.

Thank you for the opportunity to appear before you today and I look forward to answering any questions you may have.

Dennis F. Strigl
President &
Chief Executive Officer



June 27, 2006

Verizon Wireless
One Verizon Way
MC: VC44E024
Basking Ridge, NJ 07920
Phone 908 559-7666
Fax 908 559-7669

The Honorable Frank R. Lautenberg
United States Senate
Hart Senate Office Building
Suite 324
Washington, DC 20510

Re: Wireless Telecommunications Legislation

Dear Senator Lautenberg:

I am writing to follow up on our telephone conversation this morning concerning the wireless provisions (section 1005) in the Commerce Committee's telecom bill.

Verizon Wireless, one of New Jersey's largest employers, strongly supports section 1005, and we ask for your support. You expressed concerns about the Bill's impact on protecting New Jersey consumers. As you know, the Bill specifically preserves the role of the states in protecting consumers, by guaranteeing States the power to continue enforcing against wireless carriers the *same* consumer protection laws that are "generally applicable to businesses in the state." Attorney General Farber will have *exactly* the same powers under the Bill as she does today to enforce New Jersey's consumer protection laws against wireless carriers.

The only change the Bill makes is to *protect* consumers from backward-looking, monopoly style economic regulation. State utility regulators want to treat the wireless business as if it were a monopoly, controlling the font size in our advertising, the prices we charge, the services we offer, and the investments we make. The prospect of fifty different sets of such rules would *harm* consumers by driving costs up and investment down. But wireless companies are not monopolies, and they should not be regulated as such. As you know, the wireless business is a fiercely competitive, nationwide industry. Wireless companies fight each other every day to win each other's customers. And wireless customers have benefited enormously from this competition. Wireless prices have fallen over *eighty percent* in the last ten years. Employment and capital investment in New Jersey has skyrocketed. Innovation has delivered amazing new products and services to New Jersey consumers.

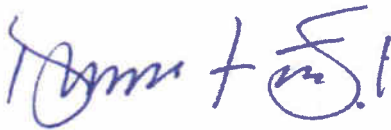
Verizon Wireless has competed successfully and become the leader in the wireless industry by focusing on consumer issues. We were the first carrier to support local number portability. We were the first carrier to announce we would not list our

customers' numbers in a wireless telephone directory. We were the first carrier to fight spam and pretexting. We didn't need utility regulators to tell us to do these things. We did them to beat the competition, win new customers and keep our current customers happy. And tomorrow we'll do more of the same -- in a major speech at the Yankee Group Conference in New York City, I will announce that Verizon Wireless will become the first carrier to pro-rate early termination fees nationwide, because that is something our customers want.

Senator, I ask for your support for this important legislation. We are at a crucial juncture in the development of the nation's wireless industry. The choice is stark and simple: do we want state utility regulators to stunt the progress of the wireless industry with 20th Century style economic regulation, or do we want to see this 21st Century engine of economic growth generate more jobs, more investment, more innovation, and lower prices for New Jersey's wireless consumers, all the while under the watchful eye of the New Jersey Attorney General?

We hope you opt for the latter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "James F. E." with a stylized flourish at the end.