

**Testimony of Senator Amy Klobuchar
Federal Communications Commission
Open Hearing on Early Termination Fees, June 12,
2008**

---AS PREPARED FOR DELIVERY---

Mr. Chairman and members of the Commission, thank you for the opportunity to testify today on a matter of great concern to our country's consumers.

Twenty years ago, when cell phones first hit the market and the industry was in its infancy, cell phones were seen as the accessory of tycoons and moguls like Gordon Gecko in the movie "Wall Street." Two decades later, cell phones are not just on Wall Street, they're on Main Street, with more than 200 million subscribers nationwide. The wireless industry is now one of our nation's largest, with revenues topping \$100 billion per year.

Cell phones are no longer a luxury, but a necessary part of our lives. In fact, for an increasing number of Americans, a cell phone is their only phone.

Gordon Gecko is a relic of the 1980s – and so are the rules governing the wireless industry. Despite the explosion in the market, the wireless industry continues to operate under rules from around 20 years ago, when cell phones were a niche market and service was limited to urban areas – and phones were so large they could barely fit in a briefcase, let alone a pocket.

Under these outdated rules, consumers often feel like their wireless providers have the upper hand, and enter into restrictive contracts without full information. Once they've signed the contract, they often find the quality of their wireless provider's service is not what they need or expect, and face cancellation fees that can total in the hundreds of dollars if they try to find better service before the end of their multi-year contract.

A Washington Post article last year illustrated the anger that consumers feel toward their wireless providers. That article profiled a guy so upset with his cell phone service that he faked his own death in an effort to escape his service contract and cancellation fees.

Even that didn't work!

As a Member of the Senate Commerce Committee, which, among other things, has jurisdiction over the

telecommunications industry and the FCC, I care deeply about consumer wireless issues, especially the one before the Commission today: Early Termination Fees.

Last fall, with my colleague from West Virginia, Senator Rockefeller, I introduced The Cell Phone Consumer Empowerment Act – what I like to describe as a “bill of rights” for cell phone consumers.

This legislation includes a number of protections for cell phone consumers. But the overall goal is very simple: to enable consumers to have the freedom to make the best choice that fits their particular needs.

In order for consumers to make market-based decisions, they need two things: good information and choice in the marketplace. Our legislation will give them both.

One of the key provisions of our legislation places limits on Early Termination Fees, which have been a real sore spot for consumers and a source of abuse by cell phone companies.

Too often, consumers find out only AFTER committing to a multi-year contract that their wireless service doesn't meet their needs.

Maybe their wireless carrier's quality of service is not what they had expected, providing only weak signal strength in the locations they need it most.

Maybe they got sticker shock from a bill that, after fees are included, is higher than they budgeted.

Or maybe it's a life-changing circumstance, such as moving to an area where their existing cell service doesn't work well.

To address this problem, our legislation would, among other things, require that wireless providers pro-rate these fees so that, at a minimum, a consumer who exits a two-year contract after the end of the first year will have to pay only half of the Early Termination Fee.

In preparing to introduce this legislation, I held a forum in Minnesota last summer to hear from cell phone users about their concerns.

One person who showed up was an 82-year-old man from Plymouth, a nice middle-class suburb of the Twin Cities. (I happened to grow up there myself.)

This man came to the forum holding a folder filled with his cell phone bills as well as letters to and from his service provider.

Now, this is a man who did not make a lot of cell phone calls. He didn't need a lot of calling minutes. He didn't need some fancy service package. He mainly wanted the peace of mind that he could make a phone call in case of an emergency.

Shortly after signing up for his service, he realized that it was a much more extensive (and expensive) package than he had been led to believe. In fact, it was entirely unsuitable for his limited cell phone needs – and far beyond the cost he had expected.

So, like any good consumer, he called up the wireless provider and requested a more limited package. They gave it to him. But they gave him something else, too.

On his next bill, not only was he still charged for his original, more expensive package (because the provider did not immediately cancel it). The provider had also charged him an Early Termination Fee of \$175.

This man's repeated efforts to explain the situation to his wireless provider were fruitless. They obviously hoped he would just go away quietly and pay the bill, making him feel ashamed for not having understood what he was getting into in the first place.

Now, this resident of my state may have been 82 years old. But he was a retired chemical engineer and he clearly still had his wits about him.

Yet, he was never clearly notified or informed that ANY change to his service plan would be counted as a cancellation of the contract and, as a result, subject to the full Early Termination Fee – even though he had only been signed up for a few weeks.

Is this really a fair, responsible way to run a business?

I don't think so.

Now, I first want to say that I am pleased to see that the Federal Communications Commission is holding this public hearing, listening to consumers, and examining how cell phone companies – and other telecommunications providers – have used and abused Early Termination Fees.

But, I would urge this agency to proceed with caution before it cuts any deal with the wireless industry on early termination fees.

This is now a \$100 billion industry, and we need to make sure we get it right.

First, we need federal legislation that protects consumer rights.

But second, we must not undercut the states in their efforts to police the cell phone industry.

The states are simply closer to consumers and have a track record of being more vigilant and more responsive to consumer complaints than their federal counterparts. In other words, the states have proven to be better industry watchdogs and we shouldn't handcuff these "cops on the beat." .

The preemption of state regulations that is now being proposed by some in the wireless industry simply does not give me confidence that consumers will be protected.

In fact, the wireless industry's plan to pro-rate ETFs in exchange for preemption seems to me to be a proposal designed to protect America's big cell phone companies from costly litigation in state court – not protect the rights of consumers.

We shouldn't deny consumers who may have been abused by the wireless companies their day in court. A grant of preemption simply locks the courthouse door for these consumers.

You know: The cell phone industry is now very large, very successful and very powerful.

For years, cell phone companies have been free to game consumers out of millions of dollars through unfair practices and excessive early termination fees.

Notwithstanding these practices, I have been pleased that some of the wireless companies have started to – or will shortly start to – prorate their early termination fees.

But we shouldn't reward these companies with a grant of preemption for taking the practical and reasonable step of prorating their Early Termination Fees.

In fact, the wireless industry has posted double-digit growth in subscribership, revenues and usage virtually every year for the past 15 years, all despite the application of the state laws that the wireless industry are now hoping to preempt.

In closing, I would just say this: In the last decade cell phones have revolutionized the way Americans communicate with each other. They have made our lives more convenient, and often more safe.

But the rules that govern this industry have failed to keep up with the rapid changes in the industry, and today, too

many consumers feel that the cell phone companies have the upper hand in a confusing and unfair market.

Our responsibility in government is to make sure that average people don't get trampled at a time of rapid change - that the market works FOR consumers, not against them. That's an important responsibility for Congress, for the FCC, and for the states. American consumers are counting on us.

Thank you.