

February 4, 2008

Honorable Russell S. Kokubun
Chair, Senate Committee on Commerce, Consumer Protection, and Affordable Housing
Hawaii State Capitol, Room 407
415 South Beretania Street
Honolulu, HI 96813

Dear Chairman Kokubun:

On behalf of CTIA-The Wireless Association®, I am writing in opposition to Hawaii Senate Bill 2324, which would require wireless carriers to prorate cancellation fees and mandate that carriers offer specific trial periods. CTIA is the international association for the wireless telecommunications industry, representing carriers, manufacturers, and wireless Internet providers. Senate Bill 2324 is unnecessary as all of the wireless carriers operating in Hawaii have announced that they will prorate customer termination fees and already offer competitive trial periods to their customers.

Just as wireless carriers compete on price and service quality, they also compete on customer service and the adoption of customer-friendly policies. Therefore, as one carrier announces a change in policy or offers a new customer service, the other carriers either follow suit or offer comparable alternatives to remain competitive. This was the case when one carrier introduced street-level coverage maps, when another introduced longer trial periods, when another announced it would prorate cancellation fees, and, yet again, when a different carrier introduced greater contracting flexibility. Wireless carriers understand that if they are unresponsive to customer demands or market forces, they will not remain competitive.

Wireless customers in Hawaii have the option of choosing between four national wireless carriers, including AT&T, Sprint Nextel, T-Mobile, and Verizon Wireless, as well as exclusively prepaid service providers. Since 2006, all four of these carriers have announced that they will prorate customer termination fees. These decisions were driven by the marketplace and the competitive forces within the industry. Additionally, Hawaii wireless customers can choose wireless service offerings that do not require contracts. These prepaid or month-to-month options allow customers to forego contracts. Customers who choose prepaid or month-to-month services will never be assessed cancellation fees should they choose to terminate service. By codifying what carriers are already doing, Senate Bill 2324 would unnecessarily constrain carriers when they need to respond to future customer demands.

Wireless carriers operating in Hawaii already offer customers competitive trial periods. All of the carriers operating in Hawaii are signatories to CTIA's Consumer Code for Wireless Service. As signatories to the Code, carriers agree to provide *at least a 14-day trial period* when customers contract for new wireless service. In response to changing market demands, most carriers now offer a 30-day trial period. Carriers that provide a trial period less than 30 days, compete on other customer service offerings. These types of competitive differentiators give customers greater choice when selecting from the various wireless service options. Additionally, some wireless carriers recently announced greater contracting flexibility, including no contract extension or renewal requirements, when customers choose to either change their plans or upgrade to new devices. All of these changes have been in response to customer demands and the competitive wireless marketplace.

Senate Bill 2324 acknowledges in its preamble the affordability of wireless service. That affordability is a direct result of the U.S. Congress's decision in 1993 to deregulate the wireless industry, which has spurred the proliferation of affordable wireless services. Congress's decision to deregulate the industry led to steep price declines and allowed for the deployment of advanced wireless technologies. Unburdened from state rate regulation, wireless carriers were able to deliver lower prices to consumers, providing more citizens of Hawaii with the added convenience that comes with wireless services. These price declines and the development of future advanced technologies are threatened by the type of state-specific regulation proposed in Senate Bill 2324. By imposing Hawaii-only requirements on national wireless carriers, Senate Bill 2324 threatens the very efficiencies, including national billing systems and national advertising campaigns, that helped deliver lower cost wireless services to the citizens of Hawaii.

Wireless carriers have already responded to the marketplace by announcing that they will prorate termination fees, by adopting longer trial periods, and by enhancing contracting flexibility. Accordingly, wireless carriers have embraced through the marketplace the general policies embodied in Senate Bill 2324. By codifying these into statute, lawmakers run the risk of

impeding carrier adoption of other policies in the future in response to ever-changing customer demands. On behalf of the wireless industry, I implore you to allow the competitive wireless marketplace to work before enacting regulatory provisions that will certainly have unintended consequences. For these reasons, I respectfully urge you to oppose Senate Bill 2324.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Dane Snowden". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

K. Dane Snowden
Vice President
External and State Affairs



Dan Youmans
Director
External Affairs

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LATE TESTIMONY

February 5, 2008

The Honorable Sen. Russell S. Kokubun
Chair, Committee on Commerce, Consumer Protection, and Affordable Housing
Hawaii State Senate

RE: AT&T Opposition to Senate Bill 2324

Dear Senator Kokubun and Members of the Committee:

AT&T respectfully opposes Senate Bill 2324. We strongly believe that this legislation is not necessary and, in fact, will have an adverse impact on the highly competitive market place that has greatly benefited wireless consumers.

Senate Bill 2324 would mandate a 30-day or 10 days after-the-first-bill return policy, and would mandate pro-rated early termination fees. Most wireless carriers, including AT&T, already provide 30-day return policies to our customers. The 10-days-after-the-first bill requirement would create an administrative nightmare for wireless carriers, especially if every state came up with their own number-of-days for this requirement. It is also not necessary since many customers are likely to receive their first bill within the first two weeks of signing up for service.

The return policy in Senate Bill 2324 is also not needed since carriers provide detailed information about the cost of the service at the time of sale. In fact, AT&T provides customers at point-of-sale a personalized Customer Service Summary, which is an easy-to-understand summary of customers' calling plan and its features, including an estimated first bill and an estimated ongoing bill. AT&T, like the other national carriers, also provides detailed mapping information about its coverage areas. Together, this allows the consumer to see what the cost of the service will be, and where coverage exists, well before using the actual service. The already-established 30-day-return policy then allows the customer to try the service to see if it will meet their individual needs.

Mandating the pro-rated early termination fee is also not necessary because the four national carriers have already begun this policy voluntarily, or have announced that they will this year. We respectfully ask that the State of Hawaii not tie our hands in how we implement this policy because it could have a dramatic impact on the cost of service to our customers, especially the price of wireless phones.

Right now, wireless carriers provide consumers the option to take advantage of heavily discounted phones in exchange for a two-year service commitment. Given the choice of an inexpensive or even free handset, in exchange for a two-year contract, most customers will choose this option. If customers don't want to make a two-year commitment, they also have the choice of purchasing prepaid or pay-as-you-go service.



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AT&T Testimony
Senate Bill 2324

We are asking the Hawaii State Legislature to allow carriers to determine how best to offer pro-rated early termination fees so we can continue to provide the best discounts possible on phones, and the lowest possible price on service. Placing unnecessary state mandates on the implementation of this policy could increase the cost to the consumer of both their phone and their service.

Finally, the State of Hawaii could be violating federal law by regulating early termination fees. We believe early termination fees are "rates charged" under Section 332(c)(3)(A) of the Communications Act (47 U.S.C.) and therefore cannot be lawfully regulated at the state or local level.

In general, the highly competitive and free-market nature of the wireless industry has greatly benefited consumers with lower prices and continuous technology innovation. Consumers have a multitude of choices in service providers, handsets and service plans.

In addition, wireless carriers have made customer service our top priority because we know consumers have many options available if their service provider doesn't treat them properly. The fact that most wireless carriers already offer 30-day return policies and have or will pro-rate early termination fees are two good examples of our responsiveness to consumers.

We urge the Committee not to take the unnecessary and potentially harmful step of regulating these policies. Thank you for this opportunity to address this critical issue.

Respectfully Submitted,

Dan Youmans
AT&T

LATE TESTIMONY

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair

Tuesday, February 5, 2008, 9:00 am
Conference Room 229

Bart Dame
710 West Hind Drive
Honolulu, HI 96821

SB2324 RELATING TO CONSUMER PROTECTION

TESTIMONY IN FAVOR

Good Morning Chair Kokubun, Vice-Chair Ige and members of the committee,

My name is Bart Dame and I am testifying in favor of SB 2324.

Cell phone companies are certainly entitled to a fair profit on the services and products and it is in the state's interest to encourage technological innovation and expanded service. These things require profits for the companies. But it is also in the state's interest to protect consumers from unfair or abusive practices. And to take steps to ensure competition between cell phone service providers.

At the national level, complaints about cell phone companies rank near the top of as a source of consumer complaints. The current industry practice of charging disproportionate and excessive early termination fees is a contributing factor to consumer dissatisfaction.

When a consumer purchases a cell phone from a service provider, they generally get a discounted price on the phone in exchange for a commitment to a two-year contract. A quick review of phone company websites shows that they provide a "list price" for the phone and the discounted price. For the average phone, the consumer receives a discounted of about \$150 in exchange for a two-year contract. The low price on the phone is intended to attract the customer into a contract, and carrier re-coups the handset discount over the period of the contract through profits from the phone plan and other fees.

Early termination fees vary with the carrier. Sprint charges \$150, Verizon and AT&T charge \$175, and T-Mobile charges \$200. Nationwide, these companies control about 80% of the cell phone business.

The ETF is justified as a means for protecting the company from a consumer who might buy a discounted phone and then terminate the contract before the company is able to recover the subsidy they provided in discounting the price. This is, of course, reasonable. But the company recovers more and more of their initial subsidy as the 24 month contract goes on.

A consumer canceling their service 2 months into their contract will have paid back only a small portion of the initial subsidy. A consumer canceling their contract halfway through their contract will have paid back half of the subsidy. And if a consumer cancels their contract 23 months into a 24 month contract the company will have already recovered all or nearly all of original handset subsidy. Yet all these consumers, under current practice, will be charged the full termination fee. This is disproportionate and an unfair business practice. A pro-rated termination fee would protect the legitimate needs of the phone company while protecting consumers from unreasonable charges.

If the consumer want to cancel their contract for superficial reasons, it is hard to be sympathetic. But cell phone users choose to cancel their services, or to buy a new phone, for a range of legitimate reasons. If a cell phone is damaged through a fall, or gets wet, part wat through a contract, the consumer faces the cancellation fee, or must purchase a replacement phone at full price, which amounts to the same thing. If a consumer moves to an area that is not well served by the carrier—sometimes out of state, sometimes to a different part of the island, sometimes just into a different building. Just changing your place of employment can result in getting unacceptable reception from a company. Some parts of this building is difficult for cell phones—but some technologies from some carriers work better than others.

Furthermore, it is very common for consumers to get into disputes with cell phone companies over their bills. I am not prepared to say that the consumers are always right, but the bargaining position of the consumer is unfairly handicapped if they find themselves facing a large early termination fee. Near the beginning of the contract? OK, they just have to pay up to get out. But near the end of the contract? They should be required to pay a fair portion of the fee—NOT the entire amount.

And please remember, these fees are PER LINE. So if the consumer has a familiy plan for multiple family members, each phone is charged the entire early termination fee even if the contract is nearing completion.

The excessive Early Termination Fee also serves as a restraint on healthy competition between telecom giants. Because they have this incredible advantage over the consumer, they have less reason to entice the consumer to remain with the carrier through courteous service or increased services. Anyone who has haggled with a phone company over a phone bill will recognize this problem.

Cell phone technology continues to evolve. It is difficult for many of us to imagine what technologies will be available to us a few years down the road. The recent introduction of the iPhone has allowed many of us to get a glimpse of what is possible. Except perhaps for the iPhone, the US cell phone industry is generally one or two years behind many countries. I am not competent to explain the reasons why consumers in Japan, Korea, Taiwan, Hong Kong, Singapore and Western Europe have more sophisticated cell phones than those in the US, but I suggest that the current US legal regime here does not foster innovation in this field and we are suffering. (In general, the iPhone is probably an exception to this statement, but even there, the power of the iPhone is fettered by slow internet connection that is behind what is available in the aforementioned countries.)

Because of the high level of consumer dissatisfaction with unfair early termination fees, the US Congress has held hearings. Because of the pressure generated, the major carriers announced months ago their intention to adopt pro-rated early termination fees as a means of avoiding federal consumer legislation. But few details have emerged. Verizon is willing to grant a \$5 per month discount from the ETF. Sprint, T-Mobile and AT&T have so far not lived up to their promises several months later and new pressure must be applied to them to do so.

A second feature of this bill would be to establish a minimum 30 day period for cancellation of a cell phone contract, exempt from the early termination fee. This would give consumers a fair period of time in which to evaluate the phone, explore its features, test the reception in a variety of locations and perhaps get a feel for the level of customer service provided by the company. This 30-day requirement is also contained in proposed Federal legislation.

In closing, I urge you to pass out this bill. It deals with an important and very contentious issue in the real world life of Hawaii consumers. The fact that Federal legislation is also moving forward along similar lines should not dissuade you from enacting state legislation, but should serve notice that this is a real problem and this approach is the way to go.

This bill will establish a more proportionate cost to the consumer while ensuring fair profits to the cell phone companies. It will prod cell phone companies to come up with positive incentives as a means of retaining customers and will encourage technological innovation as consumers can more readily choose the powerful new technology coming into the cell phone market.

Thank you for this opportunity to testify.

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LATE TESTIMONY

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING

THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

Tuesday, February 5, 2008
9:00 a.m.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR,
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS TO THE HONORABLE SENATOR KOKUBUN, CHAIR,
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 2324 – RELATING TO CONSUMER PROTECTION.

DESCRIPTION:

This measure protects consumers and encourages market competition by prohibiting wireless telecommunication service providers from charging unfair service agreement cancellation penalties.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) supports the intent of the bill, which requires wireless telecommunication carriers to provide a grace period of at least thirty days after executing a service agreement or ten days after receipt of the first bill for customers to cancel a service agreement and terminate service.

S.B. No. 2324

Senate Committee on Commerce, Consumer Protection, and Affordable Housing
Tuesday, February 5, 2008, 9:00 a.m.

COMMENTS:

Consumers of commercial mobile services should not be assessed unduly punitive fees for early cancellation of service agreements. Such protection for consumers, however, may be comprehensively managed by federal legislation that is occurring.

Congress appears to be addressing such early termination fees (See, e.g., U. S. Senate Bill No. 2033, the Cell Phone Consumer Empowerment Act of 2007), by requiring the Federal Communications Commission to promulgate rules addressing subscribers' rights to rescind service contracts, early termination fees, and cancellation of contracts after extension. The federal legislation may be instructive and, if passed, may ultimately preempt any state regulation enacted.

As an aside, the definition of wireless telecommunication service provided in the instant measure would likely be clearer if it referenced the definitions of "mobile service" and "commercial mobile service" included in the Telecommunications Act of 1996, codified at 47 U.S.C. § 153(27) and 47 U.S.C. § 332(d)(1).

Thank you for this opportunity to testify.

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION
AND AFFORDABLE HOUSING
FEBRUARY 5, 2008**

MEASURE: S.B. No. 2324

TITLE: Relating to Consumer Protection.

Chair Kokubun and Members of the Committee:

DESCRIPTION:

Generally, this bill proposes to amend chapter 269, part I, of the Hawaii Revised Statutes ("HRS"), by giving wireless telecommunications customers the right to cancel a wireless telecommunications service agreement and service if the customer finds that the service quality is unsatisfactory, within thirty (30) days after executing or renewing or modifying the service agreement or ten (10) days after receipt of the first bill, whichever is later.

POSITION:

The Commission supports the intent of this proposal to give customers a certain grace period to cancel wireless telecommunications service agreements and limit cancellation fees and penalties if wireless telecommunications services are unsatisfactory.

The Commission has, however, several concerns and comments regarding the proposed policy and implementation of this policy as drafted in this bill.

COMMENTS:

- **Consumers are essentially locked into service contracts, most of whom are very technical in form and substance, for extended periods, and is seen by many customers and regulators as unreasonable and inhibiting the movement from one carrier to another, and stifling competition in the industry.**
- **You should also be aware that the wireless industry itself through the Cellular Telecommunications Industry Association (or CTIA) has adopted a consumer code that provides a 14-day cancellation period for new services or from contract modifications, but we have not confirmed whether wireless companies are actually honoring these 14-day cancellation periods.**

- Although several states may be moving toward adopting consumer protections in the area of early contract termination and the relatively large penalties for doing so, you should also be aware that some argue that proposals like this may result in conflicting and inconsistent state statutes creating a regulatory nightmare for both the wireless telecommunications consumer and for the industry, thus actually increasing costs to consumers.

Thank you for the opportunity to testify.

**Testimony of Verizon Wireless
On S. B. No. 2324
Before the Senate Commerce, Consumer Protection and Housing Committee
February 5, 2008**

Chairman Kokubun and Members of the Committee:

My name is Celeste Nip and on behalf of Verizon Wireless, I would like to express strong opposition to S.B. No. 2324, Relating to Consumer Protection, which proposes to impose prescriptive requirements on the wireless industry for return policies.

This legislation is unnecessary. The competitive wireless industry offers a great deal of diverse options and choice for Hawaii consumers, including options in the market place for return policy. Carriers offer pre-paid products where no contract is required, and several carriers, including Verizon Wireless already offer a 30-day return policy for Hawaii consumers and nationwide. As part of its 30-day test drive for new customers, individuals can get out of their contracts at any time during this period and Verizon Wireless will assume all costs for call charges.

In addition, for customers who choose to sign up for a two-year contract, Verizon Wireless has a pro-rated early termination fee policy, which reduces the early termination fee over time. A major reason that carriers have early termination fees in the first place, is because the handsets provided are subsidized by the carriers, and a reduced cost handset is a benefit that comes with signing up for the contract. The company is pursuing other pro-consumer policies, such as "open access," which will allow consumers to bring compatible handsets to get on our network if they so choose. Verizon Wireless also invests heavily in its network, and has put more than \$115 million in Hawaii in recent years to ensure a high-quality reliable broadband-capable digital network.

The wireless industry is highly competitive, and a number of carriers offer various return policies and various consumer-friendly initiatives. Because of competition, consumers have seen prices for wireless services over the past ten years drop by over fifty percent, while minutes of use have gone up by over 80 percent. But these benefits come from competition on a national scale. Carriers have to be able to operate their sales channels, customer care operations, IT systems, billing systems, and other aspects of the business consistently in all fifty states. If wireless carriers have to do things fifty different ways in fifty different states, operations would be severely disrupted and costs would be increased greatly for both the business and consumers.

Even though a number of carriers already offer a 30-day early termination policy, S.B. No. 2324 actually imposes return policy potentially longer than 30 day. The bill states that "Each provider of wireless telecommunication service shall extend to new service customers, without cost or penalty, a grace period of at least thirty days after executing the agreement, or ten days after receipt of the first bill, whichever is later, for customers to cancel the service agreement and terminate service. . ."

The Hawaii legislature should not pass a bill like S.B. No. 2324 and seek to micro-manage the operations of a competitive industry that is pro-consumer and provides great benefits to consumers, and whose devices can save peoples lives in an emergency.

We strongly urge this Committee to hold S.B. No. 2324.

Sprint



Together with NEXTEL

LATE TESTIMONY

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THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008
COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND AFFORDABLE
HOUSING

Senator Russell S. Kokubum Chair – Senator David Y. Ige, Vice-Chair

Tuesday, February 5, 2008 – 9:00 AM
State Capitol - 415 South Beretania Street - Conference Room 229

Mr. Chairman, Mr. Vice-Chair, and Members of the Committee.

Thank you for this opportunity to present Sprint Nextel's position on Senate Bill No. 2324. After careful review, Sprint Nextel must oppose this legislation as unnecessary and asks for your No vote.

Sprint Nextel wholly endorses the findings in the bill which state: "The legislature finds that the advancement in wireless technology has increased the affordability and use of mobile wireless phone services." This fact is borne out in virtually all reports about the wireless industry and the benefits competition has brought to consumers.

But Sprint Nextel finds serious flaw in the bill's stated purpose, in which by imposing one-size fits all criteria, it will "promote a more competitive market." Simply stated, state regulation of a hotly-competitive market that has produced enhanced service offerings, lower costs, deep consumer penetration, and multiple providers will do no such thing. Instead, state regulation will dampen the competitive fires and diminish the benefits enjoyed by virtually all wireless users under a national framework of the most light-handed regulation.

SB 2324 chooses to act in an area frequently addressed and adjusted by the marketplace when it requires a 30-day grace period after executing the agreement OR a period of ten days after the first bill, in which the customer can cancel service without penalty. Although it adds to the ostensible 30 day grace period, this provision appears generally consistent with Sprint's 30

Day Risk Free Guarantee. But even then it may not be as easy a fit for all providers, whose policies may differ in some respects, or which offer other consumer inducements in exchange for a different return policy. And where are the facts to justify such an imposition? Why shoe-horn all provider return policies into the same vanilla envelope, deny consumer choice to weigh the merits of each company's plan, and lock into law something as basic, and subject to market changes, as return policies?

The legislation further requires a grace period of at least 30 days in which the customer can cancel service without penalty after executing an order for additional service, renewal of service, or modification of service. The terms of this provision are based on a customer's claim that the service quality is unsatisfactory, allowing any customer to freely create multiple 30 day grace periods at the customer's will, rendering the entire contracting process little more than a fiction.

Concern need also be expressed on how the legislation intrudes upon the provider/third-party vendor relationship. Can the lawfully restrict a third-party vendor from setting up additional contract terms?

Beyond these troubling and real concerns, SB 2324 fails to acknowledge that Sprint, like its competitors serving Hawaii, is constantly re-making itself and its policies, in response to and in anticipation of consumer demand. At the very time the industry is moving towards ever more flexible contract terms, SB 2324 will lock-in one size fits all contracts.

The fact of the matter is that SB 2324 is attempting to freeze the wireless industry into a moment of time. And this in spite of the fact a constantly changing wireless marketplace challenges carriers to respond to and anticipate consumer demand or be left by the side of the competitive road.

In closing, here is a brief snapshot of just some of what Sprint has done to meet, and I hope exceed, our customer's needs and wants. Did you know that Sprint became the first wireless carrier to give customers additional contract flexibility by extending its Right Plan Promise policy to six months? And as part of the company's pledge to enhance the overall customer experience, Sprint customers will have even more flexibility by being able to change their rate plans without having to renew their contracts.

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Tuesday, February 4, 2008
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This year will see even more changes with Sprint announcing plans to implement a new prorated early termination fee (ETF) policy. In addition to the new contract flexibility and prorated ETF, Sprint's programs include its 30 Day Risk-Free Guarantee -- Sprint gives customers 30 days to try Sprint service risk-free. If a customer is not completely satisfied with Sprint, his or her service, phone or network coverage, the customer can simply return the undamaged phone and de-activate service within the 30 days. Sprint returns the customer's activation fees and waives the early termination fees, and customers are only responsible for charges based on their actual usage.

Thank you for this opportunity to bring Sprint's concerns about SB 2324 to your attention. And thank you also for the opportunity to bring to your attention the latest in Sprint's customer-friendly policies which seek to build on Sprint's existing programs and commitment to a positive customer experience.

I hope that you will conclude that SB 2324 is wholly unnecessary and vote NO.

Thank you.

Paul S. Sieracki

Director-State Government Affairs (West Region)

**SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION AND
AFFORDABLE HOUSING****LATE**

February 5, 2008

Senate Bill 2324 Relating to Consumer Protection

Chair Kokubun and members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing, I am Rick Tsujimura, representing T-Mobile USA, Inc.

T-Mobile respectfully opposes SB 2324 Relating to Consumer Protection. However well intentioned, SB 2324 would hurt consumers by adding bureaucracy and costs to the industry in Hawaii at a time when wireless customers are receiving more for their dollar than ever before. SB 2324 takes the monopolistic regulatory approach to a hyper-competitive industry that is already regulated by the Federal Communications Commission and where multiple carriers compete in the marketplace to obtain and retain customers.

Competition has resulted in more choices, lower prices and better quality of service in the wireless marketplace. There are over 254 million wireless subscribers in the United States who have decided to purchase their service from a variety of service providers. The FCC has said ninety-eight percent of the total U.S. population lives in counties with access to three or more different operators offering mobile telephone service. In much of Hawaii, residents have a choice of as many as five wireless service providers and resellers. SB 2324 threatens to harm consumers by interfering with the competitive marketplace by mandating state-specific terms of return policies and early termination fees.

SB 2324 requires wireless companies to implement a return policy of 30 days or 10 days after receipt of the customer's first bill, whichever is greater. This mandate fails to recognize the available options already available to customers for making sure their purchase is the right one. T-Mobile is committed to making sure our customers know, before purchasing from us, where our services are available. We were the first wireless carrier to implement an online mapping application, "Personal Coverage Check," an important tool available at T-Mobile.com and T-Mobile stores, which empowers customers to check if T-Mobile is right for them before they sign up for service. However, we know that customers can't know exactly how the service will work until they use it. To serve this purpose, all carriers have return policies where new customers are given the opportunity to use their phone in the places where they are most likely to need quality service: where they live, work and spend their leisure time. We encourage our new customers to use their phones during this "grace period." If they are not satisfied with the service, they may return the phone and terminate service within that period of time with no penalty or obligation (except the minutes that they used during that time). Our customers are made well aware of our return policy (14 days from purchase in a store or 20 days from the order date on T-Mobile.com), and can choose to buy service from another service provider if this policy does not suit their needs. Again, competition works and has proven to successfully supply customers with the choices, rates and services they demand.

SB 2324 also requires wireless service providers to implement prorated "early termination fees" or "ETF". In fact, in the last year, all of the major, national wireless carriers have responded to consumers concerns regarding ETFs. Verizon Wireless has already implemented a program called the "New Declining Early Termination Fee" for its new customers. AT&T, Sprint Nextel and T-Mobile have all announced that they will implement declining ETF's as well. The new policies and specific details will be finalized and introduced by those companies in 2008. These steps were taken in response to consumer demand and the competitive marketplace, not to regulation.

Unfortunately, wireless contracts have wrongly been mischaracterized as something customers are "locked into" by way of the ETF. Wireless consumers can choose to have wireless service with NO TERM CONTRACT – and many do. Most nationwide carriers provide *prepaid* or *pay-as-you-go* options to consumers, which eliminate the need for annual term contracts or early termination fees. Further, T-Mobile offers "FlexPay" which provides customers access to all of its great rate plans and the latest phones all without having to commit to a long-term service agreement and without a deposit. In addition, all carriers offer consumers a trial period of *at least* 14 days, and as high as 30 days, to try out their service and return it if they are not completely satisfied – for whatever reason. These *return policies* are yet another way in which the consumer is afforded an opportunity to get the best fit for his or her wireless service with no ETF.

With the four national wireless service providers in Hawaii, the competition for customers is fierce. It is this very competition, not state regulation, which is of the greatest benefit to the consumer. The cost to the consumer continues to go down in the wireless industry, while the value proposition and quality of service continues to rise. Our customers continue to demand greater levels of service – that's what we compete on, providing service – and individual carriers must work to deliver because wireless customers can and do go elsewhere if they are not satisfied. The competitive marketplace is what drives carriers to provide the service that attracts and, more importantly, retains customers.

SB 2324 would impose costly mandates that would only serve to increase prices, limit choices, and ultimately harm customers in Hawaii. It is also important to recognize the new costs imposed on T-Mobile will divert resources away from network deployment (away from the work of further improving coverage and emergency communications connectivity). A thriving, competitive service industry, where consumers have multiple choices – and where they exercise that choice – ought not to be saddled with regulatory bureaucracy and costly mandates. We therefore ask the committee to oppose this legislation and let consumers continue to enjoy the benefits of vigorous competition.

Thank you for the opportunity to present this testimony.