

SB 2748

Measure Title: RELATING TO PUBLIC UTILITIES.

Report Title: Telecommunications Carriers; Cramming

Description: Requires the bills of telecommunications carriers to contain only charges for products and services that are authorized by the consumer. Specifies prohibited "cramming" practices in phone bills. Requires public utilities commission to adopt additional rules to safeguard billings.

Companion:

Package: None

Current Referral: CPN

Introducer(s): ENGLISH, BAKER, CHUN OAKLAND, ESPERO, GABBARD, IHARA, KEITH-AGARAN, KIDANI, NISHIHARA, RUDERMAN, SHIMABUKURO, SOLOMON, Dela Cruz, Galuteria, Kahele, Slom, Taniguchi



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TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

THURSDAY, FEBRUARY 20, 2014
10:00 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 2748 - RELATING TO THE PUBLIC UTILITIES COMMISSION

DESCRIPTION:

This measure proposes to require the bills of telecommunications carriers to contain only charges for products and services that are authorized by the consumer; specifies prohibited "cramming" practices in phone bills; and requires the Public Utilities Commission (Commission) to adopt additional rules to safeguard billings.

POSITION:

The Division of Consumer Advocacy supports the intent of the measure and offers the following comments.

COMMENTS:

Deceptive practices, such as slamming (where a service is changed to another service provider without authorization) and cramming (where a user is charged for a service not authorized by the user), have affected wireline telecommunications services for some time. Now, with increasing use of wireless telecommunication services, these deceptive practices have been reported with greater frequency on the mainland.

The proposed measure, which seeks to mitigate the possibility of cramming, is a worthwhile consideration. The Consumer Advocate supports this effort to protect consumers from deceptive practices. The Consumer Advocate offers the following comments:

- The Federal Communications Commission (“FCC”) filed a Notice of Proposed Rulemaking that seeks to: empower consumers to prevent and detect billing for unauthorized charges (cramming); consumer information and disclosure; and truth-in-billing and billing format (see FCC CG Docket Nos. 11-116; 09-158, and 98-170). This effort is still ongoing with the most recent action being a FCC order filed on November 26, 2013, allowing an extension of time for interested stakeholders to file reply comments by December 16, 2013. Thus, the FCC has not yet filed its findings and conclusions of law. Establishing statutory language in Hawaii at this time is premature while the FCC is deliberating on this very matter. Depending on the standards developed and authorized by the FCC, Hawaii may need to revise its statutes if there are inconsistencies between the jurisdictions.
- In the proposed measure, there is language that allows the termination of local service for the non-payment of the following: local service charges; intraLATA (Local Access Transport Area) calls; interLATA calls; and international calls. It should be noted that the proposed language actually removes certain consumer protections that are currently in the Hawaii Public Utilities Commission’s (PUC) rules (HAR § 6-80). HAR § 6-80-106(e) indicates that basic service, or local telephone service, cannot be discontinued for nonpayment of: interisland, interstate, or international service; flexibly priced services; fully or partially competitive services; or any telecommunications service offered by a third party. The Consumer Advocate prefers the language of HAR § 6-80-106(e) as compared to the proposed HRS § 269-___(c). The proposed language reduces consumer protection language that is currently present in the PUC’s rules.
- In the PUC’s existing rules, there are certain provisions that would allow the Commission to take action, as deemed appropriate, for telecommunications services providers that engage in fraudulent or deceptive practices, such as HAR §§ 6-80-115 and 6-80-129, where 6-80-115(b)(2) sets forth that information

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Senate Committee on Commerce and Consumer Protection

Thursday, February 20, 2014, 10:00 a.m.

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should be made available to "protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services. . ." and 6-80-129 which prohibits a carrier from substituting "its service for a similar service provided by a carrier of the customer's choice or cause a telecommunications service to be provided to a customer by a telecommunications carrier other than the carrier of the customer's choice, without the customer's written consent."

- While cramming issues have been relatively prevalent and growing on the mainland (see e.g., Federal Trade Commission Project No. P134803), the number of overall telecommunications complaints in Hawaii has not mirrored the experience on the mainland. This can be seen in the PUC's most recent annual report for the fiscal year ending in 2013, where the number of telecommunications complaints remained unchanged from 2012 and represents a decrease from 2011 and 2010 experience.

Thus, the Consumer Advocate recommends that, before any legislative action is taken, the FCC action should be allowed to be completed to assess what might be prudent for Hawaii and its consumers instead of implementing requirements and rules that may need to be changed soon after once the FCC has completed its deliberations.

Thank you for this opportunity to testify.

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON
COMMERCE & CONSUMER PROTECTION

FEBRUARY 20, 2014
10:00 a.m.

MEASURE: S.B. No. 2748
TITLE: Relating to Public Utilities

Chair Baker and Members of the Committee:

DESCRIPTION:

S.B. No. 2748 is designed to establish a number of mandatory billing and service practices and consumer recourse options for the telecommunications industry with the aim of protecting customers against unfavorable billing activities. This measure would also require the Public Utilities Commission ("Commission") to adopt "additional rules it determines to be necessary to implement the billing safeguards for the inclusion of noncommunications-related products and services in telephone bills" by July 1, 2015.

POSITION:

Although the Commission strongly supports this bill's purpose, which is to ensure telecommunications consumers are protected against deceptive and fraudulent billing practices, we believe this measure is unnecessary. The Commission would also like to offer the following comments for the Committee's consideration.

COMMENTS:

At the state level, the Commission already has the regulatory authority through existing statutes and administrative rules to provide the telecommunications consumer with protection and recourse against the unfavorable billing practices identified in this measure.

The Commission's authority to regulate utilities, including telecommunications carriers, is covered in Chapter 269, Hawaii Revised Statutes ("HRS"), and the Commission's administrative rules currently have a number of sections providing recourse options to protect consumers from improper telecommunications practices.

For example:

- Hawaii Administrative Rules (“HAR”) § 6-80-129(17), prohibits any telecommunications carrier in the State from engaging in any “action, conduct, or behavior contrary or detrimental to the public interest.”
- In addition to the Commission’s general supervisory authority over all public utilities under HRS § 269-6(a), the Commission also the ability to assess civil penalties up to \$25,000 per day, per violation for operating in nonconformance with HRS Chapter 269 or “any lawful order” of the Commission under HRS § 269-28.
- In the context of telecommunications billing disputes under HAR § 6-80-102, consumers are not required to pay a disputed portion of their respective bills while the telecommunications provider investigates a billing dispute claim.
- Further, HAR § 6-80-102 requires a provider to advise consumers of their ability to file a complaint with the Commission when the dispute cannot first be resolved between the provider and the complaining consumer.

Ultimately, the Commission may suspend, amend, or revoke any utility’s authorizing certificate, including that of telecommunications carriers, if that entity is found in “wilful violation of” of Chapter 269 or “any lawful order or rule of the [C]ommission.”¹

Finally, the Commission has concerns about the proposed subsection (g) on page 7, line 5 to line 9, that would require the Commission to adopt additional rules on or before “[o]n or before July 1, 2015” deemed necessary to implement “billing safeguards for the inclusion of noncommunications-related products and services in telephone bills.” Should the Committee move this measure forward, the proposed subsection (g) could be read as a cutoff date which would prohibit the later adoption of additional rules determined to be necessary to modify and update initial billing safeguard rules.

Thank you for the opportunity to testify on this measure.

¹HRS § 269-7.5(d). The Commission has further authority under HRS § 269-8 to compel the furnishing of any public utility’s “books, records, contracts, maps, and *other documents*” (emphasis added) in order to investigate compliance of utilities with HRS Chapter 269.

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February 19, 2014

The Honorable Senator Rosalyn Baker
Chair, Senate Committee on Consumer Protection
Hawaii State Capitol, Room 230
Honolulu, HI

Re: Senate Bill 2748 - Oppose

Dear Chair Baker and Members of the Committee:

On behalf of Sprint, I am writing in opposition to Senate Bill 2748 which addresses deceptive third-party billing practices. Sprint appreciates the author's intent; however, SB 2748 is unnecessary given the safeguards that Sprint and the broader U.S. wireless industry have enacted to address unauthorized charges on a customer's bill.

Customer satisfaction is Sprint's number one priority, and Sprint has undertaken a range of proactive measures to protect its customers from unauthorized third-party charges on their wireless phone bills. During the past several years, Sprint has implemented numerous consumer protections in the third-party billing space, including the adoption of the Mobile Marketing Association's ("MMA") U.S. Consumer Best Practices for Messaging and the Sprint Audit Standards that mandate clear and conspicuous disclosures as well as a double opt-in authorization process for third-party purchases. Sprint has promptly suspended or terminated third-party programs that failed to comply with these rigid standards. Sprint also enables its customers to block all third-party purchases, and Sprint provides customers with information on how to block different third-party charge types both at the point-of-sale and on Sprint's website. Additionally, Sprint continues to respond to customer demands and concerns, and changes in the wireless marketplace. For example, Sprint announced in November 2013 that it would no longer support billing for premium short messaging services ("PSMS"), except for charitable and political giving and other event- or cause-related expenditures, on its billing platform.

Sprint believes this legislation is unnecessary because, in addition to the Sprint-specific safeguards described above, appropriate state and federal agencies are already taking action to protect consumers in the third-party billing space. The Federal Communications Commission's Truth-in-Billing rules, which mandate clear information regarding charges on a phone bill, is one example. Additionally, both the Federal Trade Commission ("FTC") and state attorneys general, applying existing consumer protection laws, continue to pursue and prosecute fraudsters in this space.

The Honorable Senator Rosalyn Baker
February 19, 2014
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SB 2748 would mandate a Hawaii-specific third-party billing regime for wireless carriers operating in the state. Yet, state-by-state regulation of wireless carrier billing is impractical and may negatively impact the business efficiencies built into Sprint's nationwide billing platform. Such regulation could also impede innovation by Sprint and stifle a competitive marketplace by unnecessarily restricting existing and emerging approaches to third-party billing that are highly attractive to consumers.

For these reasons, Sprint respectfully requests that you vote to defer Senate Bill 2748.

Sincerely,



Anne M. Perkins

Joyce Masamitsu
Director of Public Policy, West Area



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February 20, 2014

The Honorable Senator Rosalyn Baker
Chair, Senate Committee on Consumer Protection
Hawaii State Capitol, Room 230

Re: *S.B. 2748 - Cramming - Verizon Testimony - Opposed*

Dear Chair Baker and Members of the Committee:

Verizon appreciates the opportunity to provide testimony before the Senate Committee on Consumer Protection in Opposition to Senate Bill 2748, legislation addressing unauthorized charges on customer bills..

Verizon is proud of its service to customers in Hawaii, where we have invested significant resources in the State to build out our advanced 4G LTE network. While we agree that carriers should only bill customers authorized charges, S.B. 2748 is unnecessary in light of the substantial protections against cramming already available.

Competitive telecom service providers have taken significant actions through their internal business operations to protect their customers from unauthorized charges. Verizon has strong incentives as a business to avoid losing a customer as a result of third-party billing charges, and shares the goal that the sponsors of this bill have to prevent erroneous or fraudulent third party charges from appearing on customer bills.

Verizon, along with several other wireless carriers, recently made the decision to cease providing billing for commercial Premium SMS ("PSMS") services. The third-party services that remain available through carrier billing (such as purchases from Google Play and credits from Facebook) are highly valuable to consumers. The content providers who provide these services


generally allow customers to pay using various methods of payment, such as credit cards, prepaid cards and also by placing the charge on the customers' wireless invoice. By allowing customers to purchase content used with their wireless devices through direct carrier billing, Verizon provides a valuable service that our customers want and expect. Further, these services are subject to a series of strict measures to ensure that our customers are protected from unauthorized charges. For customers who do not want to participate in third-party billing programs, Verizon offers a free, simple mechanism to block third-party charges. For customers who do participate, Verizon follows industry standards and best practices and has numerous additional protections in place. For each purchase, the customer must complete a double opt-in or equivalent process which requires affirmative action by the customer. Verizon also maintains a stringent service provider on-boarding and monitoring program and takes action against service providers, as appropriate. In addition, Verizon continuously reviews its policies to ensure technological advances are incorporated and has taken a leading role in the industry in this regard.

Other carriers have adopted similar safeguards. S.B. 2748 attempts to address an issue that the wireless carriers have already addressed. In addition, the existing FCC Truth-in-Billing rules cover billing transparency with very specific requirements that are designed to ensure a customer is able to identify each charge on a bill and its origin.

What we want to emphasize to the Committee, is that we get it when it comes to protecting our customers from unauthorized third party charges. Our business has evolved and is managed with the customer's needs and interests at the forefront of all that we do, from sales to customer service, from our handset equipment to our network, with regard to our billing systems and our relationships with third party providers. Every step of the way, we work to protect our customers' interests, especially with regard to the charges for which they are billed.

Moreover, there is no empirical evidence presented to demonstrate a cramming problem in Hawaii that warrants the passage of a new law that will place demands on telecom providers. We emphasize that S.B. 2748 is unnecessary legislation that is aimed at addressing a concern that carriers like Verizon already adequately address at every level. Not only are additional regulations in this area unwarranted, it would be unwise to subject carriers to rigid rules in a rapidly changing environment that could have the unintended consequence of preventing customers' access to the services they desire.

We thank Chairwoman Baker and Members of the Committee for your consideration of our testimony and request to defer Senate Bill 2748.



Handwritten signature of Joyce Masamitsu in black ink, written in a cursive style.

Joyce Masamitsu



Dan Youmans
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February 20, 2014

The Honorable Senator Rosalyn Baker
Chair, Senate Committee on Commerce and Consumer Protection

Re: *Testimony **Opposing** Senate Bill SB 2748*
Hearing before the Senate Committee on Commerce and Consumer Protection
February 20, 10 a.m., Conference Room229

Dear Sen. Baker and Committee Members:

Thank you for providing AT&T with the opportunity to offer comments on SB 2748 ("Bill"). While the stated purpose of this legislation would be to require that bills of telecommunications carriers contain charges for only products and services which are authorized by the consumer, the actions taken by AT&T to protect wireless consumers has rendered SB 2748 unnecessary.

AT&T takes deceptive third-party billing practices such as "cramming" very seriously. We have worked diligently to identify and implement consumer protections whenever and wherever necessary and recently terminated billing relationships in an effort to further protect our customers from the threat of unauthorized third-party charges.

SB 2748 would unnecessarily frustrate wireless third-party billing, which connects consumers to a wealth of mobile services and content, and is a key enabler of the "application economy." Protections are already in place for consumers who wish to purchase third-party content. The wireless industry developed standards in the Mobile Marketing Association's ("MMA") U.S. Consumer Best Practices for Cross-Carrier Mobile Content Programs, which require express user authorization for any content purchase and establish guidelines for advertising and promotion of third-party content programs or campaigns (available at <http://www.mmaglobal.com/uploads//Consumer-Best-Practices.pdf>).

CTIA also developed the Mobile Commerce Compliance Handbook ("CTIA Handbook"), which contains the current industry standards for compliance (available at http://www.wmcglobal.com/images/CTIA_handbook.pdf). Individual carriers, like AT&T have continued to implement additional safeguards in an effort to protect wireless consumers from unauthorized third-party charges.

For example, AT&T provides Direct Purchase Notifications to customers who purchase mobile content. This feature sends SMS notifications of mobile purchases (including product description and price) directly to the mobile number of the device making the purchase. AT&T

sends Direct Purchase Notifications for one-time purchases, subscription purchases and subscription renewals. Each purchase notification also contains a URL that provides customers with the ability to manage their purchases (e.g., cancel subscriptions or dispute charges).

AT&T customers can also utilize features to block or limit mobile purchases. AT&T's Purchase Blocker is available at no cost and restricts the purchase of third-party content billed to AT&T customer bills. Smart Limits for Wireless is available for \$4.99/month per device and allows the primary account holder to set monthly dollar limits for premium purchases direct-billed to any devices on the account.

There are multiple ways for consumers to purchase content today using their smartphones, including applications that come preloaded on devices, platforms like Google Play¹, the iTunes Store, and premium SMS ("PSMS"). PSMS is a text message service sent to a consumer's mobile phone, billed at premium rates above standard text messaging rates. PSMS content may include ringtones, alert services, games, etc. that customers purchase through third-party content providers and aggregators who then place the approved charges on customers' wireless bills for the content that they purchase. Recently, AT&T discontinued billing PSMS content directly to customers' wireless accounts and no longer bills for PSMS content on behalf of third-party content providers and aggregators.

In years past, PSMS was the only means for wireless consumers to purchase content with their phones. Third-party content providers sold PSMS content in the open Internet and often had affiliate marketers that would advertise online to provide lead generation. Despite industry best practices and ongoing carrier-efforts to protect consumers, when allegations of cramming have occurred, it has generally been in the PSMS space. For those reasons, and out of an abundance of caution, AT&T made the decision to stop billing for PSMS content. Other wireless carriers have made similar announcements.

AT&T has implemented strict processes and procedures, including purchase notifications that protect against unauthorized charges and enhance the customer experience. In addition, AT&T has taken proactive measures to exit the PSMS business in an effort to protect consumers. Imposing additional requirements on wireless carriers or otherwise restricting consumer access to wireless third-party content could stifle a dynamic mobile ecosystem and limit consumer choice. For those reasons, SB 2748 – although well intended – is therefore unnecessary.

Respectfully Submitted,



Dan Youmans
AT&T

¹ Content available from third-party storefronts in which carrier billing is enabled, such as Google Play and RIM's BlackBerry App World, is sold from the respective company's application storefront and the company storefront is listed as the content provider on customer bills.

February 19, 2014

The Honorable Rosalyn Baker
Chair, Hawaii Senate Committee on Consumer Protection
Hawaii State Capitol, Room 230
Honolulu, HI 96813

Re: CTIA-The Wireless Association® Testimony in Opposition to Senate Bill 2748

Dear Chair Baker:

On behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I write in opposition to Hawaii Senate Bill 2748, which would place restrictions on wireless carriers' third party billing services. Although the wireless industry shares the sponsor's goal of assuring that unauthorized charges are not placed on wireless consumers' bills, this legislation is unnecessary as wireless carriers already have practices in place to address third party billing.

Wireless carriers strive to provide consumers the services they demand. Carriers not only compete on price, plans, devices, and networks, but they also compete on customer service. Wireless carriers must do everything possible to keep customers satisfied, including taking all necessary steps to prevent bad actors from misusing third party billing arrangements.

The wireless industry has undertaken a number of efforts to protect consumers from unauthorized third party charges appearing on customers' bills. For example, all major wireless carriers offer free third party blocking services. If a consumer determines that he or she has no interest in purchasing any content or application at any time, the consumer can request to block all third party charges. Additionally, carriers provide tools consumers can use to limit what can be added to their bills.

Although wireless subscribership has increased dramatically, no evidence or data has been presented that demonstrates there is a problem with mobile cramming in Hawaii. In fact, the number of wireless consumer complaints nationally about unauthorized third party billing is low. According to the most recent Federal Trade Commission (FTC) Consumer Sentinel Network Data Book report, there were 711 complaints for "unauthorized charges or debits" for mobile services nationally. The 711 complaints for 2012 would amount to 0.00022% based on 326,475,248 wireless subscriber connections. These complaints represent two complaints per million subscribers, or one complaint per 459,178 subscribers. Moreover, the four national wireless carriers have announced that they will no longer support billing for premium short messaging services (SMS), except for charitable and political giving. It was these services that were the subject of the few complaints that were raised about third party billing.

The wireless industry also believes this legislation is unnecessary as appropriate state and federal enforcement mechanisms are already in place to punish bad actors. The FTC has exercised its authority by investigating and prosecuting those businesses that have misused wireless third party billing. In addition, state attorneys general, using existing state consumer protection laws, have prosecuted fraudsters.

SB 2748 would mandate a Hawaii-specific third party billing regime for wireless carriers operating in the state. State-by-state regulation of wireless carrier billing is impractical and may negatively impact the

business efficiencies built into the wireless carriers' nationwide billing platforms. State regulation of wireless carrier billing platforms could also stifle innovation in the wireless ecosystem. Innovative new approaches to third party billing are still emerging that incorporate consumer safeguards such as "double-opt in" and "two factor authentication" that may offer consumers additional security and convenience compared to other payment systems.

The wireless industry is highly competitive and one that is constantly innovating and evolving. This competition incentivizes wireless carriers to adopt business practices that protect consumers from unauthorized charges. Accordingly, CTIA and its members believe SB 2748, although well intentioned, is unnecessary and would ask for your opposition to the legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard Keegan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerard Keegan
Senior Director
State Legislative Affairs

SB2748

Submitted on: 2/14/2014

Testimony for CPN on Feb 20, 2014 10:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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