2005 DRAFTING REQUEST

Bill

Received: **02/23/2005**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Tom Powell**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cell phone regulation

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	csundber 02/28/2005 csundber 03/11/2005	jdyer 02/28/2005 jdyer 03/14/2005	jfrantze 02/28/2005	_______ _______ _______ _______	lnorthro 02/28/2005		S&L Crime
/1			chaugen 03/15/2005	_______ _______	lnorthro 03/15/2005	mbarman 03/15/2005	S&L Crime

FE Sent For:

At intro.

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		/1 jld 3/14	CH 3-14	CH 3-14 3/16			

FE Sent For:

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	csundber	/P1 2/28 jld	[illegible] 3/6	[illegible] 3/28			

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **11/16/2004**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Tom Powell**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies: **MDK**

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cell phone regulation

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	csundber 12/14/2004 csundber 12/21/2004	chanaman 12/14/2004 jdyer 12/28/2004	rschluet 12/28/2004	_______ _______ _______ _______	lnorthro 12/28/2004		S&L Crime

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **11/16/2004** Received By: **csundber**

Wanted: **As time permits** Identical to LRB:

For: **Terese Berceau (608) 266-3784** By/Representing: **Tom Powell**

This file may be shown to any legislator: **NO** Drafter: **csundber**

May Contact: Addl. Drafters:

Subject: **Trade Regulation - other** Extra Copies: **MDK**

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cell phone regulation

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	csundber	P1 12/28 jld	12/28	pb			

FE Sent For:

4 <END>

Sundberg, Christopher

From: Powell, Thomas
Sent: Friday, November 12, 2004 9:38 AM
To: Sundberg, Christopher
Cc: Kite, Robin
Subject: RE: Redrafting AB980

Christopher and Robin,
Thank you both for being willing to meet next week.
I'm available anytime, so name a time and place that's best for the two of you and I will be there.
In short, Terese wants AB980 re-drafted with possible substantial additions. I have included a Word attachment with some things we are thinking about.
Thanks much,
Tom Powell

-----Original Message-----
From: Sundberg, Christopher
Sent: Friday, November 12, 2004 9:01 AM
To: Powell, Thomas
Cc: Kite, Robin
Subject: FW: Redrafting AB980

I'd be happy to meet with you and Robin to discuss a redraft, as soon as I've had a chance to familiarize myself with Robin's draft. When can we all get together? Just about any time next week will work for me at this point.

-----Original Message-----
From: Kite, Robin
Sent: Friday, November 12, 2004 8:25 AM
To: Powell, Thomas
Cc: Sundberg, Christopher
Subject: RE: Redrafting AB980

Tom:

Our newest attorney, Chris Sundberg, is now drafting in the area of trade regulation. Consequently, he will be the drafter for this request. I suggest that you contact him directly to set up a meeting. Of course, I would be happy to attend the meeting with you and Chris if you would like me to do so. And I will certainly review this draft with Chris to give him some background.

Thanks.

Robin

-----Original Message-----
From: Powell, Thomas
Sent: Wednesday, November 10, 2004 1:29 PM
To: Kite, Robin
Subject: Redrafting AB980

Possible Changes and Additions to AB980

1. Eliminate the $100 cancellation fee cap from AB980, but require all contract termination penalties, as a "term of service" to be pro-rated from the date of cancellation. (Otherwise we might run into pre-emption problems from federal law which pre-empts states from setting rates for cell phone service).
2. Prohibit the "double dipping" of cancellation fees. Consumers must not be twice penalized for early termination of a cell phone contract — once from the cell phone company, and once from the independent contractor (agent) who sold the service. (Possibly check with the AG about state contract law and how this can work)
3. Give authority to PSC to regulate complaints against cellular phone companies. (see Illinois bill below)
    a. Terms and conditions
    b. Service quality
    c. Billing
    d. Customer service
4. No automatic renewals of a client's contract without two conspicuous notices contained in the two billings preceding renewal that provide the client with appropriate information on how to decline renewal.

Two cell phone bills from other states that we would ~~like~~ to incorporate into our new bill:

affirmative? no

Minnesota bill

1. The company cannot change the customer's contract by increasing the cost or changing the service without specific consent from the customer.
2. The company must notify the customer in writing 60 days before any changes are to take effect.
3. The customer has to positively accept the change.
4. The company must keep proof of the customer's authorization. how long?
5. The company must provide a written copy of the contract to the customer within 15 days of the agreement.

Illinois bill

1. Disclosure Requirements
    a. The PSC shall require that providers of wireless telephone service provide to consumers before any service is offered and in any publication, including publication on the Internet, of a wireless telephone service provider the terms of a plan or contract for wireless telephone service. The plan or contract shall set forth, in a plain and conspicuous manner, all of the following information:
        1) Information on charges, including calling-from area, monthly base charge, per-minute charges for minutes not included in the plan, and the method of calculating minutes charged.
        2) Information on minutes included in plan, including weekday/daytime, nights/weekends, long-distance, roaming, incoming, and directory assistance. (peak/non-peak?)

    3) Information on plan or contract terms, including length of contract, early or other termination fees, trial periods, and start-up fees.
    4) Information on taxes to be collected by the carrier for, and paid to, a State, local, or other governmental agency.
    5) Information on surcharges imposed by the carrier for the costs of compliance with regulations or for other purposes.
    6) Any other information the Illinois Commerce Commission considers appropriate to ensure that consumers of wireless telephone service are fully informed of the terms of the plan or contract.
  b. Wireless telephone service providers shall meet the disclosure requirements in this Section in any advertising to the extent the medium allows. Any advertising is also subject to enforcement under the Wisconsin Consumer Act???. ?
  c. ~~Not later than 6~~ months after the effective date of this Act, the PSC shall adopt rules requiring that the information required in subsection a) be published by wireless telephone service providers in a tabular format, in a clear and uniform manner, and in at least 10-point font.
2. Contract extension, modification, or recission.
  a. An extension of a contract for wireless telephone service shall not be valid unless the contract is in writing or confirmed in writing within 7 days.
  b. A material modification to the terms of a contract shall be provided to the consumer in writing. The consumer shall have 30 days to cancel the contract without any penalty or other cost to the consumer, except the consumer shall be responsible for the cost of the service used during the time period the contract was in effect.
  c. A contract for wireless service may be canceled upon the request of the consumer for any reason during the first 30 days. There shall be no penalty or other costs to the consumer for any cancellation during these 30 days, except the consumer shall be responsible for the cost of the service used during the time period the contract was in effect.
3. Provision of information on wireless telephone service coverage and quality to consumers.
  a. Each wireless telephone service provider shall make available a map showing the wireless telephone service area of such provider. The map shall contain the maximum practicable level of granularity and shall be updated at least quarterly. A map of the service area of a wireless telephone service provider shall be provided to a consumer (i) upon the request of the consumer and (ii) whenever a plan or contract for the service is entered into.
     The service area map shall be available on the Internet web site of the provider concerned.
  b. The PSC shall monitor the quality of wireless telephone service provided in the State of Wisconsin by requiring semiannual service quality reports by wireless telephone service providers on the following:
     (A) Dropped calls.
     (B) Blocked calls.
     (C) Known coverage gaps (including average signal strength) or dead zones.
     (D) Predicted street level signal strength.
     (E) Any other matters the Commission considers appropriate.

The wireless service quality information shall be provided in the format and reported by geographic area as required by the Commission.

4. Enforcement
   a. The PSC shall have the power and authority to enforce the provisions of this Act as if these provisions were provisions of the Wisconsin Consumer Act???.
   b. The Attorney General may bring a civil action as well as obtain injunctive relief on behalf of the residents of the State in the Circuit Court of the county of appropriate jurisdiction to enforce the provisions of this Act.
   c. A person who violates any provision of this Act commits an unlawful practice within the meaning of the Wisconsin Consumer Act???.
   d. Any person that violates or fails to comply with any provisions of this Act shall be subject to a civil penalty of no more than $50,000 or 0.00825% of the carrier's gross intrastate annual wireless telecommunications revenue, whichever is greater, for each offense.
   e. Notwithstanding any other provision of law, the provisions of this Act are in addition to any other legal remedies available, including those under the Wisconsin Consumer Act???.

Bureau — redraft of 03 AB 980
Per Tom Powell:

① No $100 cap on cancellation fees, must be prorated ✓
(memo pt. 1)

② "Double dipping" prohib'd: only one cancellation fee
(memo pt. 2) ✓

③ Auto renewals: must give 2 notices prior to contract renewal
(memo pt. 4) ✓

④ Contract disclosures: see memo re IL bill pt. 1 (but not PSC-enforced; keep in DATCP)

* MDK to draft second version

Need by 12/29/04

5 6

2003 - 2004 LEGISLATURE

-0850/P1

LRB-~~2829/2~~

~~RNK:kjf:rs~~

CTS:jld:

In: 12/21/04

D-note

5

2003 ASSEMBLY BILL 980

March 11, 2004 – Introduced by Representatives BERCEAU, MILLER, SCHNEIDER, MUSSER, HINES and ALBERS. Referred to Committee on Rules.

LPS-PWF please

regen cat

AN ACT *to amend* 100.264 (2) (intro.); and *to create* 100.53 of the statutes; **relating to:** regulating mobile telephone service providers and providing a penalty.

INS-A

Analysis by the Legislative Reference Bureau

This bill regulates mobile telephone service providers. The bill defines a mobile telephone service provider as a person who is authorized by the Federal Communications Commission to provide commercial mobile service. Generally, commercial mobile service is wireless telephone service.

This bill requires every mobile telephone service provider to bill its customers in one second increments and to conspicuously disclose in its contracts whether the provider charges different rates for peak and nonpeak periods and, if so, to identify the periods designated as peak and nonpeak periods. The bill also prohibits mobile telephone service providers from engaging in certain conduct including charging a customer for service by rounding up to the nearest minute, charging a customer for a call that is placed but not completed, charging a customer additional fees or higher rates than those specified in the customer's contract for services, and selling a mobile telephone to a customer that prevents the customer from using the mobile telephone with a different mobile telephone service provider that offers services that are compatible with that mobile telephone.

This bill also specifies that a customer may terminate a contract for mobile telephone service at any time during the first 30 days of the contract if the customer notifies the provider during that period that the calling area range or the quality of the reception is inadequate. Under the bill, if the customer cancels the contract during that first 30 days for one of these reasons, the mobile telephone service provider may not charge the customer a cancellation fee.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 100.264 (2) (intro.) of the statutes is amended to read:

100.264 **(2)** SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183, 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.53, or a rule promulgated under one of those sections, the person shall be subject to a supplemental forfeiture not to exceed $10,000 for that violation if the conduct by the defendant, for which the violation was imposed, was perpetrated against an elderly person or disabled person and if the court finds that any of the following factors is present:

SECTION 2. 100.53 of the statutes is created to read:

100.53 Mobile telephone service providers. (1) In this section:

(a) "Commercial mobile service" has the meaning given in 47 USC 332 (d).

(b) "Mobile telephone service provider" means a person that is authorized by the federal communications commission to provide commercial mobile service.

(2) A mobile telephone service provider shall do all of the following:

(a) Bill its customers for commercial mobile service provided to the customer in one second increments.

(b) Conspicuously disclose in every contract for commercial mobile service whether the mobile telephone service provider charges different rates for peak and nonpeak periods and, if so, identify the periods designated as peak and nonpeak periods.

(3) A mobile telephone service provider may not do any of the following:

INS 3-5

(a) Charge a customer for providing commercial mobile service, nor determine peak or nonpeak usage of that service, by rounding up to the nearest minute.

(b) Charge a customer for providing commercial mobile service if the customer places a call for such service and the call is not completed.

(c) Charge a customer additional fees or higher rates than specified in the customer's contract for commercial mobile service.

~~(d) Charge a customer a fee of more than $100 to cancel a contract to provide commercial mobile service except as specified in sub. (4).~~

(d) ~~(e)~~ Charge a customer late fees unless charges for commercial mobile service provided to the customer are more that 60 days past due.

(e) ~~(f)~~ Sell, give, or provide to a customer, in connection with a contract for commercial mobile service, a mobile telephone that the customer is unable to use with a different mobile telephone service provider whose mobile telephone service is compatible with that mobile telephone.

(5) ~~(4)~~ A customer who has entered into a contract with a mobile telephone service provider to provide commercial mobile service may terminate that contract within the first 30 days of the contract if the customer notifies the mobile telephone service provider during that period that the calling area range for the commercial mobile service or the quality of the commercial mobile service reception is inadequate. A mobile telephone service provider may not charge a customer a fee to terminate a

INS 3-20

contract under this subsection. Within 14 days after the customer terminates a contract under this subsection, the mobile telephone service provider shall refund to the customer any amounts paid to the mobile telephone service provider by the customer during those first 30 days other than any amounts owed by the customer for calls placed or received during that period.

(5) Upon the request of a customer, a mobile telephone service provider shall provide an itemized bill to the customer at no cost to the customer.

(6) The effect of this section may not be varied by any contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

(7) A person who violates this section may be required to forfeit not less than $500 nor more than $5,000 or imprisoned in the county jail for not more than 6 months, or both, for each violation.

(END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0850/1dn stet
CTS:...
jld

Representative Berceau:

This is a redraft of 2003 AB 980 based on instructions from your aide, Thomas Powell. Like the original, this draft is enforced by DATCP. This draft adds the following provisions identified in a memo from Mr. Powell:

1. Eliminates the original draft's $100 cap on cancellation fees, but requires termination fees to be prorated.

2. Prohibits any person other than a mobile telephone service provider from charging a termination fee. This is intended to address the "double dipping" problem identified by Mr. Powell. The draft defines "mobile telephone service provider" as a person authorized by the Federal Communications Commission to provide commercial mobile service. Independent agents who are not themselves FCC–authorized but who enter into mobile telephone service contracts on behalf of FCC–authorized mobile telephone service providers are therefore prohibited under the bill from charging termination fees.

3. Prohibits automatic renewals or extensions of mobile telephone service contracts unless the service provider has notified the customer, in the two monthly bills that precede the renewal or extension, of the date when extension or renewal will occur and what the customer must do to opt out.

4. Requires that mobile telephone service contracts clearly and conspicuously disclose in a single document certain terms and conditions. The terms and conditions are those identified in Mr. Powell's memo as derived from Illinois legislation.

Please let me know if you have any questions regarding the draft or if you wish to make any changes.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266–9739
E–mail: christopher.sundberg@legis.state.wi.us

2005–2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0850/P1ins
CTS:...:...

Insert A:

This bill regulates mobile telephone service providers. The bill defines a mobile telephone service provider as a person who is authorized by the Federal Communications Commission to provide commercial mobile service. Generally, commercial mobile service is wireless telephone service.

This bill requires every mobile telephone service provider (provider) to bill its customers in one second increments. The bill also requires mobile telephone service providers to conspicuously disclose in commercial mobile service contracts all of the following in a single document: (1) the monthly charge, the duration of the contract, and the minutes of usage included; (2) charges for activation, for minutes of usage in excess of the minutes included in the contract, for directory assistance, or for cancellation of the contract; (3) conditions, limitations, or additional charges or usage time that relate to the location where the customer initiates or receives a call, the location of the recipient of the customer's call, or to the time of day of usage; (4) taxes and surcharges collected by the mobile telephone service provider; and (5) any other information the Department of Agriculture, Trade and Consumer Protection determines to be necessary to protect customers.

The bill prohibits providers from engaging in certain conduct including charging a customer for service by rounding up to the nearest minute, charging a customer for a call that is placed but not completed, charging a customer additional fees or higher rates than those specified in the customer's contract for services, and selling a mobile telephone to a customer that prevents the customer from using the mobile telephone with a different provider that offers services that are compatible with that mobile telephone. Under the bill, a provider may not extend or renew a contract unless it has previously notified the customer of the extension or renewal in two monthly bills.

This bill also specifies that a customer may terminate a contract for mobile telephone service at any time during the first 30 days of the contract if the customer notifies the provider during that period that the calling area range or the quality of the reception is inadequate. Under the bill, if the customer cancels the contract during that first 30 days for one of these reasons, the provider may not charge the customer a cancellation fee. The bill prohibits any person other than a provider from charging a fee to cancel a contract. Under the bill, a cancellation fee must be prorated according to the remaining term of the contract.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

(end ins A)

Insert 3–2:

all of the following in a single document:

1. The monthly charge to the customer, the duration of the contract, and the minutes of usage allowed without incurring charges in addition to the monthly charge.

2. Charges for activation, for minutes of usage in excess of the minutes specified in subd. 1., for directory assistance, or for cancellation of the contract.

3. Conditions, limitations, or additional charges that relate to the location where the customer initiates or receives a call, to the location of the recipient of the customer's call, or to the time of day of usage.

4. Taxes and surcharges collected from customers by the mobile telephone service provider.

5. Any other information that the department determines to be necessary to protect customers.

Insert 3–5:

(c) Upon the request of the customer, provide to the customer an itemized bill at no charge. (end ins 3-2)

Insert 3–20:

(f) Extend or renew a contract for commercial mobile service upon the expiration of the initial term of the contract, unless the commercial mobile telephone service provider has disclosed to the customer the date on which contract will be extended or renewed and the action that the customer may take to prevent extension or renewal. A disclosure under this paragraph shall be contained in monthly bills or statements, sent to the customer in the ordinary course of the term of the initial contract, in the two 22 months preceding the date of extension or renewal.

(4) No person may charge a customer a fee for cancelling a mobile telephone service contract, except a mobile telephone service provider may charge a customer a fee that is prorated according to the remaining term of the contract.

(end ins 3-20)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0850/P1dn
CTS:jld:rs

December 28, 2004

Representative Berceau:

This is a redraft of 2003 AB–980 based on instructions from your aide, Thomas Powell. Like the original, this draft is enforced by DATCP. This draft adds the following provisions identified in a memo from Mr. Powell:

1. Eliminates the original draft's $100 cap on cancellation fees, but requires termination fees to be prorated.

2. Prohibits any person other than a mobile telephone service provider from charging a termination fee. This is intended to address the "double dipping" problem identified by Mr. Powell. The draft defines "mobile telephone service provider" as a person authorized by the Federal Communications Commission to provide commercial mobile service. Independent agents who are not themselves FCC–authorized but who enter into mobile telephone service contracts on behalf of FCC–authorized mobile telephone service providers are therefore prohibited under the bill from charging termination fees.

3. Prohibits automatic renewals or extensions of mobile telephone service contracts unless the service provider has notified the customer, in the two monthly bills that precede the renewal or extension, of the date when extension or renewal will occur and what the customer must do to opt out.

4. Requires that mobile telephone service contracts clearly and conspicuously disclose in a single document certain terms and conditions. The terms and conditions are those identified in Mr. Powell's memo as derived from Illinois legislation.

Please let me know if you have any questions regarding the draft or if you wish to make any changes.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266–9739
E–mail: christopher.sundberg@legis.state.wi.us

Drafter's Note
from the
Legislative Reference Bureau

LRB–0915/1dn
MDK:jld:rs
CTS

February 1, 2005

Rep. Berceau:

This bill incorporates the provisions of LRB–0850/P1, but transfers regulatory authority to the PSC. In addition, this bill includes certain provisions of the Illinois bill that are not included in LRB–0850/P1.

Please note the following about this bill:

1. ***Wisconsin Consumer Act:*** The instructions make several reference to this act. However, that act generally deals with consumer credit transactions and debt collection. I didn't include any references to the act because I don't think that the act's requirements or remedies are relevant to the regulation of wireless telephone contracts. However, I might not fully understand your intent on this issue. Please contact me if you want to discuss this issue.

2. ***Contract extensions:*** The Illinois bill (described under item 2. b. of the instructions) provides that a contract may not be extended only if: 1) the extension is in writing, or 2) the extension is confirmed in writing within 7 days. This provision is inconsistent with a provision of LRB–0850/P1 that I have incorporated in proposed s. 196.202 (3) (b) 6. Is proposed s. 196.202 (3) (b) 6. okay, or do you prefer the approach under item 2. b. of the instructions?

3. ***Contract cancellations:*** The Illinois bill (described under item 2. c. of the instructions) allows cancellation of a contract *for any reason* within the first 30 days. This provision is inconsistent with a provision of LRB–0850/P1 that I have incorporated in proposed s. 196.202 (3) (c) 2., which allows cancellation within the first 30 days, but only for the reason that the calling range or service quality is inadequate. Is proposed s. 196.202 (3) (c) 2. okay, or do you prefer the approach under item 2. c.?

4. ***Service area maps:*** Proposed s. 196.202 (3) (d) corresponds to the provisions of the Illinois bill that are described under item 3. a. I required the PSC to promulgate rules on this issue because I think the Illinois requirements aren't clear on what constitutes a "service area". The PSC can resolve this issue in its rules. Is that okay?.

5. ***Service quality reports:*** Proposed s. 196.202 (3) (f) corresponds to the provisions of the Illinois bill that are described under item 3. b. of the instructions. Note that I made some changes to the language. For example, I did not use the terms "blocked

calls," "dead zones", or "coverage gaps" because I don't think their meaning is clear. Are my changes okay?

6. ***Enforcement:*** Current law gives DOJ enforcement power over telecommunications providers that violate ch. 196. See s. 196.44 (2), stats. Therefore, it's not necessary to mention the Attorney General in this bill. Also, I don't think the Illinois provision described under item 4. e. of the instructions is necessary. The Illinois provision states: "Notwithstanding any other provision of law, the provisions of this Act are in addition to any other legal remedies available...." The Illinois provision is not necessary because nothing in this bill states that it supercedes any other remedies. However, you might want to consider getting the input of the PSC and DATCP on this issue.

7. ***Penalty:*** I substituted the penalty in the Illinois bill for the penalty contained in LRB–0850/P1. Please review proposed s. 196.202 (3) (g) and let me know whether you want any changes.

8. ***Delayed effective date:*** I delayed the effective date by approximately one year. This delay will give the PSC time to prepare rules that are necessary for some of the bill's provisions. In addition, I allowed the PSC to promulgate emergency rules in the event that the permanent rules are not ready on the bill's effective date. Okay?

9. ***Impairment of contracts:*** The initial applicability provision is included to avoid an impairment of contracts issue. Is that okay?

10. ***Advertising:*** The Illinois bill requires disclosures to be made in advertisements, but only to the extent that the advertising medium allows. See item 1. b. of the instructions. This requirement seems rather vague to me. For example, what disclosures are required during radio or television ads? I required the PSC to resolve this issue by promulgating rules. Is that okay?

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266–0131
E–mail: mark.kunkel@legis.state.wi.us

State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–0915/P1
MDK:jld:rs

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 196.202 (5); ***to amend*** 196.202 (title) and 196.202 (2); and ***to create*** 196.202 (3) and 196.202 (6) of the statutes; **relating to:** regulating commercial mobile radio service providers, granting rule–making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill regulates certain trade practices of commercial mobile radio service providers (CMRSPs), which are defined under current law as entities authorized by the Federal Communications Commission to provide commercial mobile service. (Generally, a CMRSP is an entity that provides wireless telephone service.) Under current law, CMRSPs are generally exempt from regulation by the Public Service Commission (PSC), which has varying degrees of regulatory authority over other entities that provide other types of telecommunications service.

The bill requires every CMRSP to bill its customers in one–second increments. The bill also requires CMRSPs to conspicuously disclose in contracts all of the following in a single document: 1) the monthly charge, the duration of the contract, and the minutes of usage included; 2) charges for activation, for minutes of usage in excess of the minutes included in the contract, for directory assistance, or for cancellation of the contract; 3) the method used for calculating minutes of usage; 4) conditions, limitations, or additional charges or usage time that relate to the location where the customer initiates or receives a call, to the location of the recipient of the customer's call, or to the time of day of usage; 5) taxes and surcharges collected by the provider; and 6) any other information the PSC determines to be necessary to protect customers.

The PSC must promulgate rules specifying the form of the document required for making the disclosures described above. The rules must require the disclosures to be made in a tabular format in at least 10–point font. Also, the rules may impose other requirements that the PSC determines are necessary for making the disclosures in a clear and consistent manner. In addition, the rules must require CMRSPs to make the disclosures, to the maximum extent practicable, in all advertisements for commercial mobile service.

The bill prohibits CMRSPs from engaging in certain conduct including charging a customer for service by rounding up to the nearest minute, charging a customer additional fees or higher rates than those specified in the customer's contract for services, and selling a wireless telephone to a customer that prevents the customer from using the wireless telephone with a different CMRSP that offers services that are compatible with that wireless telephone. In addition, the bill maintains a provision under current law that prohibits CMRSPs from billing customers for incomplete calls.

Under the bill, a CMRSP may not extend or renew a contract unless it has previously notified the customer of the extension or renewal in two monthly bills. The bill prohibits a CMRSP from making material modifications to a contract without first giving the customer 30 days to cancel the contract with no cancellation charge. The bill also specifies that a customer may terminate a contract for commercial mobile service at any time during the first 30 days of the contract if the customer notifies the CMRSP during that period that the calling area range or the quality of the reception is inadequate. Under the bill, if the customer cancels the contract during that first 30 days for one of these reasons, the CMRSP may not charge the customer a cancellation fee. The bill prohibits any person other than a CMRSP from charging a fee to cancel a contract. Under the bill, a cancellation fee must be prorated according to the remaining term of the contract.

The bill also requires the PSC to promulgate rules requiring CMRSPs to prepare and, on a quarterly basis, update maps that show their service areas for commercial mobile service. Upon entering into contracts with customers, CMRSPs must provide copies of the map to their customers. In addition, CMRSPs must provide updated copies without charge to customers upon request and make the maps available to the public without charge on the Internet. The bill also requires the PSC to promulgate rules that require CMRSPs to make semiannual reports to the PSC on service quality. The reports must include information regarding dropped calls, improperly processed calls, areas within service areas in which customers experience difficulty in obtaining access to service, street–level signal strength, and any other information specified by the PSC.

In addition, the bill provides that a CMRSP who violates the bill's provisions is subject to a civil forfeiture of no more than the greater of $50,000 or 0.00825 percent of the CMRSP's gross annual revenue derived from providing commercial mobile service in this state. A person who is not a CMRSP and who violates the bill's provisions is subject to a civil forfeiture of no more than $50,000. For both CMRSPs and non–CMRSPs, a separate forfeiture may be imposed for each violation of the bill's requirements.

Finally, the bill provides that the PSC may require a CMRSP to reimburse the PSC for expenditures related to regulating the CMRSP under the bill. The PSC has similar authority with respect to other entities regulated by the PSC under current law.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 196.202 (title) of the statutes is amended to read:

196.202 (title) **~~Exemption of commercial~~ Commercial mobile radio service providers.**

SECTION 2. 196.202 (2) of the statutes is amended to read:

196.202 **(2)** SCOPE OF REGULATION. ~~A~~ Except as provided in this section and except for purposes of enforcing this section, a commercial mobile radio service provider is not subject to ch. 201 or this chapter~~, except as provided in sub. (5), and except that a~~.

(4) UNIVERSAL SERVICE FUND. A commercial mobile radio service provider is subject to s. 196.218 (3) if the commission promulgates rules that designate commercial mobile radio service providers as eligible to receive universal service funding under both the federal and state universal service fund programs. If the commission promulgates such rules, a commercial mobile radio service provider shall respond, subject to the protection of the commercial mobile radio service provider's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund.

SECTION 3. 196.202 (3) of the statutes is created to read:

196.202 **(3)** TRADE PRACTICES. (a) *Provider duties.* A commercial mobile radio service provider shall do all of the following:

1. Bill its customers for commercial mobile service provided to the customer in one–second increments.

2. Conspicuously disclose in every contract for commercial mobile service all of the following in a single document that complies with the rules promulgated under par. (e):

a. The monthly charge to the customer, the duration of the contract, the minutes of usage allowed without incurring charges in addition to the monthly charge, and the method used for calculating minutes of usage.

b. Charges for activation, for minutes of usage in excess of the minutes specified in subd. 2. a., for directory assistance, or for cancellation of the contract.

c. Conditions, limitations, or additional charges that relate to the location where the customer initiates or receives a call, to the location of the recipient of the customer's call, or to the time of day of usage.

d. Taxes and surcharges collected from customers by the commercial mobile radio service provider.

e. Any other information that the commission determines to be necessary to protect customers.

3. Upon the request of the customer, provide to the customer an itemized bill at no charge.

(b) *Provider prohibitions.* A commercial mobile radio service provider may not do any of the following:

1. Charge a customer for providing commercial mobile service, nor determine peak or nonpeak usage of that service, by rounding up to the nearest minute.

2. Charge a customer for providing commercial mobile service if the customer places a call for such service and the call is not completed.

3. Charge a customer additional fees or higher rates than specified in the customer's contract for commercial mobile service.

4. Charge a customer late fees unless charges for commercial mobile service provided to the customer are more than 60 days past due.

5. Sell, give, or provide to a customer, in connection with a contract for commercial mobile service, a wireless telephone that the customer is unable to use with a different commercial mobile radio service provider whose commercial mobile radio service is compatible with that wireless telephone.

6. Extend or renew a contract for commercial mobile service upon the expiration of the initial term of the contract, unless the commercial mobile radio service provider has disclosed to the customer the date on which contract will be extended or renewed and the action that the customer may take to prevent extension or renewal. A disclosure under this subdivision shall be contained in monthly bills or statements, sent to the customer in the ordinary course of the term of the initial contract, in the 2 months preceding the date of extension or renewal.

(c) *Contract cancellations; modifications.* 1. No person may charge a customer a fee for cancelling a commercial mobile service contract, except a commercial mobile radio service provider may charge a customer a fee that is prorated according to the remaining term of the contract.

2. A customer who has entered into a contract with a commercial mobile service provider to provide commercial mobile service may cancel that contract within the first 30 days of the contract if the customer notifies the commercial mobile radio service provider during that period that the calling area range for the commercial

mobile service or the quality of the commercial mobile service reception is inadequate. A commercial mobile radio service provider may not charge a customer a fee to cancel a contract under this subdivision. Within 14 days after the customer cancels a contract under this subdivision, the commercial mobile radio service provider shall refund to the customer any amounts paid to the commercial mobile radio service provider by the customer during those first 30 days other than any amounts owed by the customer for calls placed or received during that period.

3. A commercial mobile radio service provider may not make a material modification to a customer's contract for commercial mobile service unless the commercial mobile radio service provider has given prior written notice of the modification to the customer. No later than 30 days after the customer's receipt of such notice, the customer may cancel the contract upon providing written notice of the cancellation to the commercial mobile radio service provider. A commercial mobile radio service provider may not charge a fee for a cancellation under this subdivision.

(d) *Service area maps.* The commission shall promulgate rules requiring commercial mobile radio service providers to prepare and, on a quarterly basis, update maps that show, to the maximum degree of precision that is practicable, their service areas for commercial mobile service. The rules shall require commercial mobile radio service providers to provide copies of the map to customers upon entering into contracts with customers, to provide updated copies without charge to customers upon request, and to make the maps available without charge to the public on the Internet.

(e) *Disclosure rules.* The commission shall promulgate rules for specifying the form of the document for making the disclosures required under par. (a) 2. The rules shall require commercial mobile radio service providers to make the disclosures in at least 10–point font in a tabular format and to comply with any other requirements that the commission determines are necessary for commercial mobile radio service providers to make the disclosures to customers in a clear and uniform manner. The commission shall also promulgate rules that require commercial mobile radio service providers to make the disclosures, to the extent practicable, in all advertisements for commercial mobile service.

(f) *Service quality reports.* 1. The commission shall promulgate rules that require a commercial mobile radio service provider to submit semiannual reports to the commission describing all of the following information:

a. The number of dropped calls experienced by customers of the commercial mobile radio service provider.

b. The number of properly dialed calls that are not processed properly by the commercial mobile radio service provider.

c. Areas within the commercial mobile radio service provider's service area in which customers experience difficulty in obtaining access to the provider's commercial mobile radio service.

d. Street–level signal strength of commercial mobile service provided by the commercial mobile radio service provider.

e. Any other information determined by the commission that relates to the quality of commercial mobile radio service.

2. The rules under subd. 1. may require commercial mobile radio service providers to report information on the basis of geographic areas specified in the rules.

(g) *Penalties.* 1. Except as provided in subd. 2., a person who violates this subsection may be required to forfeit not more than $50,000 for each violation.

2. A commercial mobile radio service provider who violates this subsection may be required to forfeit no more than $50,000 or 0.00825 percent of the provider's gross annual revenue derived from providing commercial mobile service in this state, whichever is greater, for each violation.

(h) *Variation by contract.* The effect of this subsection may not be varied by any contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

SECTION 4. 196.202 (5) of the statutes is repealed.

SECTION 5. 196.202 (6) of the statutes is created to read:

196.202 **(6)** COMMISSION EXPENDITURES. A commercial mobile radio service provider shall be treated under s. 196.85 as a telecommunications utility.

SECTION 6. Nonstatutory provisions.

(1) EMERGENCY RULES. The public service commission shall, using the procedure under section 227.24 of the statutes, promulgate the rules under section 196.202 (3) (d), (e), and (f) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the commission is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(2) PROPOSED RULES. The public service commission shall submit in proposed form the rules required under section 196.202 (3) (d), (e), and (f) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the

statutes no later than the first day of the 13th month beginning after the effective date of this subsection.

SECTION 7. Initial applicability.

(1) The treatment of section 196.202 (3) of the statutes first applies to contracts entered into, modified, extended, or renewed on the effective date of this subsection.

SECTION 8. Effective dates. This act takes effect on the first day of the 13th month after publication, except as follows:

(1) SECTION 6 (1) and (2) of this act takes effect on the day after publication.

(END)

Sundberg, Christopher

From: Powell, Thomas
Sent: Monday, January 31, 2005 9:50 AM
To: Kunkel, Mark; Sundberg, Christopher
Subject: Rep. Berceau's Cell Phone Bill

Chris and Mark,
Each of you are working on different versions of this. I received Chris' version, and I know that Mark is still working on his.
But, I am writing to request four changes. As per the attached analysis from the legal folks at WisPirg (and also input from Steve Meili from the UW Law School Consumer Protection Clinic) I regretfully believe we should remove two parts of the bill that face likely pre-emption:
1) the prohibition against rounding-up to the nearest minute (the requirement to bill by second increments).
2) the prohibition against charging for calls placed but not completed.

A third change would be to alter the 30-day trial period, so that it extends to 30-days after receiving the first bill. (this is also covered in the attached analysis)
The last change would be to add a provision regarding cell phone privacy. (Suggested language is in the attached)

Any thoughts on these?
My apologies for these late add-ons and edits.
But, we are very appreciative for your very good work on the bill.

Tom Powell
Research Assistant to Rep. Terese Berceau

1. **Several of the proposed provisions of the bill appear to be preempted by federal law.**

Under the federal Telecommunications Act, states have the authority to regulate a range of wireless carriers' practices. The statute expressly reserves the right of states to regulate the "terms and conditions" of wireless service, but states are preempted from regulating the rates and market entry of wireless carriers.[1] I'm concerned that a several provisions of the proposed bill likely would be found to be impermissible rate regulation.

Specifically, proposed 100.53(2)(a) and 100.53(3)(a), which prohibits carriers from rounding up calls to the nearest minute, would be preempted. In the case *In re Southwestern Bell Mobile Sys., Inc.*, the FCC ruled that "states do not have authority to prohibit [wireless] providers from charging for incoming calls or charging in whole minute increments" because this would be impermissible rate regulation.[2] The FCC, however, did acknowledge that states have the right to require the disclosure of rates and billing practices. Since the proposed bill is not limited to disclosure of minute-rounding, but instead prohibits the practice, the bill would be preempted by the federal Telecommunications Act.

Similarly, I suspect that 100.53(3)(b), which prohibits carriers from charging for calls that are not completed, may also be preempted. While I am not aware of any case law that is specifically on point, I think it is likely that the FCC would contend that this provision would be preempted.

In fact, the FCC is currently challenging a Minnesota statute that is very similar to the proposed 100.53(3)(c), which prohibits carriers from making a unilateral contract change by raising rates or fees during a contract.[3] I think that their preemption argument in the Minnesota case is pretty thin, but we'll soon have a determination on that issue from the 8th Circuit Court of Appeals.

The proposed provisions 100.53(3)(d) and 100.53(4) regarding late fees and pro-rated early contract termination fees, however, may survive scrutiny. Several courts have ruled that the federal Telecommunications Act only preempts claims that directly regulate rates and does not necessarily preempt those that only indirectly affect rates.[4] On similar grounds, some courts have upheld consumers' rights to challenge carriers' early contract termination fees as invalid under state law.[5]

Given the current case law, I would recommend that 100.53(2)(a), 100.53(3)(a), and 100.53(b) be removed from the proposed bill. I would keep in proposed 100.53(3)(c), 100.53(3)(d) and 100.53(4), but suggest that the bill also include a severability clause in case those provisions are struck down in the future.

---

[1] Specifically, 47 U.S.C. § 332(c)(3)(A) reads: "[N]o state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulating the other terms and conditions of commercial radio services."

[2] 14 F.C.C.R. 19898, 19908 (F.C.C. November 18, 1999).

[3] *Amicus* Brief of the FCC, *Cellco Partnership v. Hatch,* No. 04-3198, before the Court of Appeals for the Eight Circuit.

[4] *See, Brown v. Washington/Baltimore Cellular, Inc.*, 109 F. Supp.2d 421, 423 (D. Md. 2000) and *Cellular Telecommunications Indus. Ass'n v. F.C.C.*, 168 F.3d 1332, 1336 (D.C.Cir.1999).

[5] *See, Esquivel v. Southwestern Bell Mobile Sys., Inc.*, 920 F. Supp. 713 (S.D. Tex. 1996); *Brown v. Washington/Baltimore Cellular, Inc.*, 109 F. Supp.2d 421 (D. Md. 2000); and *Phillips v. AT & T Wireless*, No. 4:04-CV- 40240, 2004 WL 1737385 (S.D.Iowa July 29, 2004).

2. Could we extend the trial period beyond the proposed 30 days?

The 30-day trial period in proposed 100.53(5) would allow consumers the opportunity to examine the quality of the carrier's coverage, which is great and a much needed reform. We have discovered, however, that consumers not only have problems with their coverage, but also with carriers' billing practices. In fact, consumer problems with cell phone carriers' billing practices are the largest source of cell phone complaints filed with federal and state regulators and consumer assistance organizations. In 2003, half of the complaints filed with the FCC concerned billing and rates. To address this problem, it would be great if the trial period were long enough for subscribers to see their first bill and verify that the rates are in line with any representations made to them at the time of sale—ideally 30-days after receiving the first bill.

3. Could we add a provision to the bill regarding cell phone number privacy?

Consumers may soon lose control over who has access to their cell phone number. Several cell phone companies are working together to create a Wireless 411 Service that would allow cell phone numbers to be available for a fee to individuals who use the existing 411 directory assistance system. The industry expects to launch the 411 directory by the spring of 2005.

While carriers do not have plans to make subscribers' cell phone numbers available in a public directory or database, the 411 directory would still leave consumers at risk of incurring charges for unwanted incoming phone calls and text messages. Because most cell phone subscribers pay for all the incoming calls to their phones, it is critical that they retain control over who has access to their number.

The wireless industry claims that only cell phone subscribers who choose to participate or "opt-in" to the system will have their numbers available to those who dial 411. But buried in the fine print of many cell phone contracts is a clause allowing the cell phone company to include the customer's cell phone number in the directory. Even Verizon Wireless, one of the few wireless companies to oppose the 411 directory, has this clause in its contract with subscribers.

Unlike these clauses, a meaningful "opt-in" program would involve carriers obtaining consumers' permission before putting them in the directory through a signed document that is separate from carriers' standard form contracts for service.

Last year, the U.S. Senate Commerce Committee passed legislation that would have required carriers to get subscribers' express, written permission before including their numbers in the directory. But neither the full Senate nor the House considered the bill. The State of California, however, did pass a similar bill into law.

If interested, I think adding the following language to the bill would be great:

(a) A mobile telephone service provider, or any direct or indirect affiliate or agent of a provider, providing the name and wireless telephone number information of a subscriber for inclusion in any directory of any form, or selling, leasing, licensing or sharing the contents of any directory database, or any portion or segment thereof, shall not include the wireless telephone number information of any subscriber without first obtaining the express consent of that subscriber. The provider's form for obtaining the subscriber's express consent shall meet all of the following requirements:

(1) It shall be a separate document that is not attached to any other document.

(2) It shall be signed and dated by the subscriber.

(3) It shall be unambiguous, legible, and conspicuously disclose that, by signing, the subscriber is consenting to have the subscriber's wireless telephone number information sold or licensed as part of a list of subscribers and the subscriber's wireless telephone number information may be included in a publicly available directory.

(4) If under the subscriber's calling plan the subscriber may be billed for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall be unambiguous, legible, and conspicuously disclose that, by consenting to have the subscriber's wireless telephone number information sold or licensed as part of a list of subscribers or be included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

(b) A subscriber who provides express prior consent pursuant to paragraph (a) may revoke that consent at any time. A mobile telephone service provider shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed 60 days.

(c) A subscriber shall not be charged for making the choice to not be listed in a directory.

(d) This section does not apply to the provision of wireless telephone number information to the following parties for the purposes indicated:

(1) To a collection agency, to the extent disclosures made by the provider are exclusively for the collection of the subscriber's unpaid debt to the provider.

(2) To any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.

(3) To a lawful process issued under state or federal law.

(4) To a telephone corporation providing service between service areas for the provision to the subscriber of telephone service between service areas, or to third parties for the limited purpose of providing billing services.

(5) To a telephone corporation to effectuate a subscriber's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services.

(6) To the [state agency] and the Federal Communications Commission pursuant to its jurisdiction and control over mobile telephone providers.

(e) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of subscriber information as authorized by this section.

Sundberg, Christopher

From:	Powell, Thomas
Sent:	Monday, February 14, 2005 3:38 PM
To:	Sundberg, Christopher
Subject:	last recommendations for the cell phone bill

Chris,

Attached is the memo with recommended changes from the WI Consumer Law Litigation Clinic regarding the cell phone bill.
Please look it over and we'll talk soon.
Thanks much,
Tom Powell
Research Assistant for Rep. Terese Berceau

cllc-cell-021305.doc

Date: February 13, 2005
To: Office of Representative Berceau
From: Patrick Mueller & Lissa Koop
RE: Consumer Law Litigation Clinic Recommendations for the Cell Phone Bill

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To Representative Berceau:

You have requested the Consumer Law Litigation Clinic (the "Clinic") to review and recommend changes to your draft bill concerning wireless telephone services. The Clinic feels that the bill will provide important protections for consumers in their increasing use of wireless phones and services. Most consumers enjoy the convenience provided by the wireless phone industry, but are also plagued by frustration with providers' overreaching practices.

The bill will help correct some of these problems, but it can be further honed to achieve its goals. We recommend several changes, mostly narrow modifications to existing provisions. All of the references are to LRB-850/P1 ("DATCP Version"), unless otherwise indicated. The other version of the bill is LRB-915/P1 ("PSC Version").

In summary, the recommendations are as follows:

already in?

Recommendation 1) The Clinic recommends that the disclosure provisions be amended to require the disclosure of the prices of *any* optional services that are available, such as text messaging and picture messaging.

Recommendation 2) The Clinic recommends that the more expansive provision of the PSC Version be used, which requires disclosure of the calculation of "peak" and "off-peak" minutes.

Recommendation 3) The Clinic recommends that disclosure of the automatic contract renewal or extension be improved by requiring a written notification, separate from the bill, to be sent to the consumer before the renewal or extension occurs.

Recommendation 4) The Clinic endorses WISPIRG's recommendation to allow a consumer to cancel a contract within thirty days *after* receiving the first bill.

Recommendation 5) The Clinic recommends that the cancellation provision be expanded to allow cancellation for *any* reason (e.g., higher per monthly bill total than expected) rather than only for insufficient service reception.

Recommendation 6) The Clinic recommends adoption of the PSC Version provision requiring providers to disclose contract modifications after which the consumer has thirty days to cancel the contract.

Recommendation 7) The Clinic recommends adoption of the PSC Version provision requiring high-resolution coverage area maps to be produced by providers and made available to consumers.

Recommendation 8) The Clinic recommends adoption of the PSC Version provision requiring service quality reports to be filed with the PSC. Additionally, we recommend that these reports be made available to consumers.

Recommendation 9) The Clinic recommends that DATCP be the enforcing agency, rather than PSC.

Recommendation 10) The Clinic recommends that a private right of action be added, providing a $500 per violation remedy. ?

(limitations per ?)

I. Disclosure

Since the billing provisions will be removed from the bill because of preemption issues, the majority of the remaining provisions regulate disclosure.

(2) (b) Conspicuously disclose in every contract for commercial mobile service all of the following in a single document:

> *2. Charges for activation, for minutes of usage in excess of the minutes specified in subd. 1., for directory assistance, or for cancellation of the contract.*
>
> **(Recommendation 1)** The Clinic recommends that the bill require that the contract disclose the prices of *any* optional services that are available, such as text messaging, picture messaging, Internet access, email, etc. A recent New York Times article detailed the unexpectedly large wireless phone bills that many face, especially young people, because they are initially unaware of the prices for text messaging.[1]

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[1] *See* Lisa W. Foderaro, *Young Cell Users Rack Up Debt, One Dime Message at a Time*, N. Y. Times, Jan. 9, 2005, at Section One, Column 5, Page One. The full text of the article is included in Appendix A: "Young Cell Users Rack Up Debt, One Dime Message at a Time"

(Recommendation 2) The Clinic recommends adopting the PSC Version of the (a)(2)(a) provision, which has additional language (indicated by the underlined font) as follows:

> *a. The monthly charge to the customer, the duration of the contract, the minutes of usage allowed without incurring charges in addition to the monthly charge, <u>and the method used for calculating minutes of usage</u>.*

By including this language, the provider must detail how "peak" and "non-peak" (or any other categorizations employed) are calculated in the billing for the service. Such calculations, while potentially confusing, are essential for a consumer to fully understand the billing structure.

II. Contract Provisions

The bill also proposes to regulate portions of the contract between the consumer and provider.

(3) A mobile telephone service provider may not do any of the following:

> *[...]*
>
> *(f) Extend or renew a contract for commercial mobile service upon the expiration of the initial term of the contract, unless the mobile telephone service provider has disclosed to the customer the date on which contract will be extended or renewed and the action that the customer may take to prevent extension or renewal. A disclosure under this paragraph shall be contained in monthly bills or statements, sent to the customer in the ordinary course of the term of the initial contract, in the 2 months preceding the date of extension or renewal.*
>
> **(Recommendation 3)** The Clinic recommends that when a contract extension or renewal is impending, the provider should be required to send a *separate* correspondence indicating the details of the extension or renewal. Many consumers will simply not notice a disclosure contained in their monthly bill, as provided for by the current version of the bill. If the provision is kept as is, we recommend that it include specific requirements for the notice – e.g., placement on the first page of the bill, plain English, and ten-point font – to increase effectiveness of the disclosure.

(5) A customer who has entered into a contract with a mobile telephone service provider to provide commercial mobile service may terminate that contract within the first 30 days of the contract if the customer notifies the mobile telephone service provider during that period that the calling area range for the commercial mobile service or the quality of the commercial mobile service reception is inadequate. A mobile telephone service provider may not charge a customer a fee to terminate a contract under this subsection. Within 14 days after the customer terminates a contract under this subsection, the mobile telephone service provider shall refund to the customer any amounts paid to the mobile telephone service provider by the customer during those first 30 days other than any amounts owed by the customer for calls placed or received during that period.

(Recommendation 4) The Clinic endorses WISPIRG's recommended modification to this provision requiring that the consumer be given thirty days *after* receiving the first bill to cancel the service. Doing so will allow the consumer to become aware of the total monthly price of the service before the cancellation period ends. Furthermore, the additional time will allow a consumer whose priorities are focused on service reception while traveling to actually test the reception in the all of the areas in which she will be traveling. Finally, DATCP has identified insufficient length of cancellation periods as one of the major area of consumer complaints.

(Recommendation 5) The Clinic recommends that the Illinois approach be used, in which the consumer can cancel the contract for *any reason* (e.g., higher per monthly bill total than expected) rather than only for insufficient service reception.[2]

The PSC Version includes an additional provision dealing with contract modifications, as follows:

> *(c)(3) A commercial mobile radio service provider may not make a material modification to a customer's contract for commercial mobile service unless the commercial mobile radio service provider has given prior written notice of the modification to the customer. No later than 30 days after the customer's receipt of such notice, the customer may cancel the contract upon providing written notice of the cancellation to the commercial mobile radio service provider. A commercial mobile radio service provider may not charge a fee for a cancellation under this subdivision.*

(Recommendation 6) The Clinic recommends that this provision be included in the bill. The provision provides some protection for consumers from their wireless provider unilaterally modifying the contract – a problem the Clinic has seen in other consumer contract contexts.

III. Coverage Area Maps and Service Quality Reports

The PSC Version provides additional powerful tools to consumers. Service coverage area maps, required to be made available by providers, would allow consumers to make informed purchase decisions:

> *(d) Service area maps. The commission shall promulgate rules requiring commercial mobile radio service providers to prepare and, on a quarterly basis, update maps that show, to the maximum degree of precision that is practicable, their service areas for commercial mobile service. The rules shall require commercial mobile radio service providers to provide copies of the map to customers upon entering into contracts with customers, to provide updated copies without charge to customers upon request, and to make the maps available without charge to the public on the Internet.*

[2] *See* "Possible Changes and Additions to AB980"; Drafter's Note from the LRB, "Contract cancellations," February 1, 2005 (from Mark D. Kunkel, Senior Legislative Attorney, LRB).

(Recommendation 7) The Clinic recommends that the coverage area maps provision be included in the bill.

Additionally, the PSC Version requires providers to file "service quality reports" with the PSC. The semiannual reports are to include statistics on dropped calls, street-level signal strength and indicate the areas in which customers have experienced difficulty obtaining service:

> *(f) Service quality reports. 1. The commission shall promulgate rules that require a commercial mobile radio service provider to submit semiannual reports to the commission describing all of the following information:*
>
> > *a. The number of dropped calls experienced by customers of the commercial mobile radio service provider.*
> > *b. The number of properly dialed calls that are not processed properly by the commercial mobile radio service provider.*
> > *c. Areas within the commercial mobile radio service provider's service area in which customers experience difficulty in obtaining access to the provider's commercial mobile radio service.*
> > *d. Street–level signal strength of commercial mobile service provided by the commercial mobile radio service provider.*
> > *e. Any other information determined by the commission that relates to the quality of commercial mobile radio service.*
>
> *2. The rules under subd. 1. may require commercial mobile radio service providers to report information on the basis of geographic areas specified in the rules.*

(Recommendation 8) The Clinic recommends that the service quality reports provision be included in the bill. Additionally, the Clinic recommends that the reports be made available to the public including on the Internet. If consumers can compare providers using information about the service they are purchasing rather than based on marketing brochures or promises from salespeople about coverage areas and service quality, they can make more informed decisions.

IV. Enforcement

(Recommendation 9) The Clinic recommends that DATCP, rather than PSC, be the agency charged with public enforcement. DATCP already has in place a consumer complaint procedure and is therefore equipped to handle complaints of provider behavior addressed by the bill. Additionally, DATCP is already responsible for enforcing contract and disclosure requirements under ATCP 123 ("Telecommunications and Cable Television Services"). Therefore, the additional requirements provided by the bill would be a logical extension of DATCP's existing responsibilities.

V. Remedies

(Recommendation 10) In order to provide sufficient force behind the substantive provisions of the bill, the Clinic recommends that the bill provide for a private right of action and attorneys fees. Without such provisions, and given the budget constraints on agencies like DATCP, consumers will effectively be unable to enforce their rights under the bill.

Wis. Stat. § 100.20(5), which already provides the remedies for many of the laws which DATCP enforces, includes such a private right of action, attorneys fees, and twice the pecuniary loss suffered by the consumer. Given that pecuniary loss would be minimal in most cases (because the consumer would have overpaid by a very small amount or would have caught the error prior to payment), there also needs to be an automatic per violation charge. Other consumer protection statutes also contain such penalties. For example, Wis. Stat. § 425.303, which provides remedy for many violations of the Wisconsin Consumer Act, awards $100 per violation, along with actual damages. The Clinic recommends a stronger penalty of $500 per violation to encourage compliance. Such a penalty can be found in the enforcement provision for the Telephone Consumer Protection Act, 47 U.S.C.S. sec.227(c)(5), a federal statute.

VI. Appendix A: "Young Cell Users Rack Up Debt, One Dime Message at a Time"

SECTION: Section 1; Column 5; National Desk; Pg. 1

LENGTH: 1609 words

HEADLINE: Young Cell Users Rack Up Debt, One Dime Message at a Time

BYLINE: By LISA W. FODERARO; Jennifer 8. Lee contributed reporting for this article.

BODY:

Chaz Albert, a freshman at Mercy College in Dobbs Ferry, N.Y., is a passionate "texter," someone who loves to send and receive pithy text messages via cellphone. He does it at home, at school and at work. He often prefers texting over talking on his cellphone.

Last month, though, Mr. Albert's habit caught up with him. Only $80 of his $400 cellphone charges were his father's, and most of his own, he said, were for text-messaging.

"I was shocked, but I couldn't do anything about it," he said. "I didn't realize that I got charged for reading text messages. My dad was just like: 'Hey, it's your problem. Pay it.'"

In the last two years, text messages -- which cell carriers generally limit to 160 characters -- have become a rage among teenagers, who embrace the technology as yet another way to escape a boring class or stay in touch with friends.

But text-messaging, or texting for short, has a downside. It can be expensive. Although phone companies offer relatively inexpensive packages -- like Verizon Wireless's $9.99 for 1,000 messages a month -- industry experts say that carriers sometimes fail to draw customers' attention to the cost-saving deals, and that customers themselves, especially young people, often exceed the number of messages allowed. In those cases, sending a text message usually costs 10 cents; the cost of receiving one ranges from 2 to 10 cents.

The sticker shock is reminiscent of the early days of cellphones, when users often were surprised by how much they were charged for going over their allotted minutes or for phoning someone outside their calling areas.

Many high school and college students accustomed to sending unlimited instant messages on their computers do not adapt easily to text messaging's pay-per-message format, and end up with unexpectedly high bills when they get involved in keypad conversations that involve hundreds, even thousands, of messages a month. The results are angry confrontations with parents, long-term payment plans and the loss of cellphone privileges.

"It's relatively addictive, and it's only when that first massive bill comes in that you realize that a dime a throw can run up a large bill," said Lee Rainie, director of the Pew Internet and American Life Project, a nonprofit group that studies the social impacts of the Internet.

Sometimes, the only way a cellphone customer can learn the cost of text messaging is to ask, according to industry experts. "They basically just hand you the phone and say, 'Here, have a good day,'" said Allen Nogee, the principal analyst for the wireless technology group at Instat, a market research firm in Scottsdale, Ariz.

Karina Gonzalez, a sophomore at Newtown High School in Queens and a regular sender of instant messages by computer, had her phone confiscated by her mother after her text messages resulted in a $150 phone bill, triple the usual amount. "I cried," she said. "I felt like I lost a piece of me. You can send a million instant messages a day, and it won't cost you anything. If you send one text message, it can cost you like a phone call."

Her friend Denise Lucero, 15, who has never owned a cellphone, surreptitiously used her father's phone for a while, she said, to text-message her friends. One month, those messages pushed his bill to $300.

Then her father started to hide his phone: on top of the refrigerator, under the sofa, behind the television set, in his pillow.

Both girls said their inability to text message made them feel left out of the action. "It's about feeling part of a little group with cellphones," Denise said. "You want to learn what is going on."

Text-messaging has flourished for years in Europe and Asia, where it is immensely popular among young people. In the United States, activity was limited until 2002, when a breakthrough in the wireless market allowed short text messages to be sent among customers of the major cellular carriers. Previously, customers could send messages only to those who used the same carrier.

The service, known as S.M.S. (for Short Message Service), has since taken off. According to a recent report from Forrester Research, a company in Cambridge, Mass., that specializes in technology, Americans sent 2.5 billion text messages a month in mid-2004, triple the number sent in mid-2002.

Teenagers are clearly driving the trend. "Younger people do text messaging a lot more than older folks," said Mr. Nogee of Instat. "They're more used to it from instant messaging on the computer, from growing up with it. Older people would rather call up and talk."

According to a recent survey by the Pew Internet and American Life Project, 38 percent of all teenagers who use the Internet have sent a text message using a cellphone. "Text messaging is a way to take instant messaging on the road," said Amanda Lenhart, a Pew research specialist. "It's definitely growing."

Verizon Wireless, with 42 million customers, reported a fivefold increase in the number of text messages sent and received monthly, to almost one billion in the fall from 200 million in early 2003. A Verizon spokesman, Howard Waterman, said that people aged 16 to 24 represented the "leading customer segment." (He said he could not break out exact figures, for "competitive reasons.")

Even some young sophisticates who scoffed at the text-messaging craze have caught the bug -- and been stung. "Before I started using it, it seemed like a really ridiculous way to communicate," said Emily Seife, a junior at Wesleyan University in Connecticut. "But then it became a way to send a funny one-liner to a friend."

Ms. Seife is on the family's cellular plan, and two months ago, her father did a double take when the bill arrived. The text-messaging feature had jacked it up -- Ms. Seife would not say how much -- and she was asked to contribute $100 and told to either curb her text-messaging enthusiasm or get a different plan. "I knew it was 10 cents a message," she said, "but I didn't really realize how much that would add up."

Some parents are sympathetic, saying young people are simply taking their cues from grown-ups. "It's hard to be critical, because of the way we use e-mail and BlackBerries and Palm Pilots," said Karen Engelemann, a freelance book designer and mother in Dobbs Ferry.

"I would have loved it when I was her age, so I have to put myself in that situation," Ms. Engelmann said, referring to the enthusiasm that her 12-year-old daughter, Lilly Ulfers, developed for text messaging.

But that did not stop Ms. Engelmann from reprimanding Lilly when a recent cellphone bill arrived with a $40 text-messaging charge.

High schools and colleges have struggled with cellphone use in general and text messaging in particular, with many insisting that phones be stowed away during class or banned altogether. But students manage to send text messages anyway, pressing buttons discreetly (or not so) behind books and under desks. "Everyone does it in class," said Meredith Negri, 18, a freshman at the University of Hartford.

School officials also know firsthand the widespread financial duress caused by cellphones. At Mission High School in San Francisco, where three-quarters of the 975 students qualify for free or reduced-price lunches, the principal, Kevin Truitt, says that many students were blindsided by costs associated with text-messaging and other features, like customized ring tones.

"It's causing family fights; the kids are broke, and a lot are graduating with debt because of cellphones," he said. "The carriers just seem to be adding new features that cost more and more and more. The students are not reading the fine print. No one understands the contract until they get the first bill and it's $800."

Clay Owen, a spokesman for Cingular Wireless, the nation's largest carrier with 46 million customers, said that "in an ideal world" the sales staff would explain the text-messaging feature and its cost. "They are trained to go through the packages with the customers," he said. "Does it happen every time? Obviously, with various salespeople and depending on the situation, there could be times it does not happen."

Mr. Waterman of Verizon Wireless advised young people to explore cost-effective packages and to track their messaging activity during the billing cycle by reviewing accounts online. The company also has a new service that allows customers to dial their cellphones for an up-to-date tally -- delivered by a free text message.

Cingular customers can monitor how many phone minutes they have used in the middle of a billing period, but cannot track their text messages, Mr. Owen said.

For some young people, the cellphone ordeals, though painful, have proved valuable. What is left, it seems, after the bills are paid and the family tensions subside is the emergence of a new maturity when it comes to money.

Brian Colas, a student at City as School in Brooklyn, said he reined in his habit after his mother stopped paying his bill. "When you start paying, then you don't have money to spend on other things," he said. Mr. Albert's stepbrother, Judan Lynk, a junior at Mercy College, decided to cancel his text-messaging service after receiving a $400 bill in August. (His monthly plan, before taxes and surcharges, was $50, and he had no text-messaging package.) He paid the bill in installments, working extra hours as a sales clerk at Restoration Hardware. "At the end of this month, I'll be cut off," he said with a swish of his hand.

But there was still time to check his phone for the latest text message. It was from a friend in Ohio, telling him to answer his cellphone.

URL: http://www.nytimes.com

GRAPHIC: Photos: Judan Lynk, a college junior, is text messaging for now, above, but he is canceling the service. (Photo by Susan Stava for The New York Times)(pg. 26)
Chaz Albert, 19, an avid text messager, has discovered the cost. (Photo by Susan Stava for The New York Times)(pg. 1)

LOAD-DATE: January 9, 2005

Sundberg, Christopher

From: Powell, Thomas
Sent: Tuesday, February 22, 2005 3:39 PM
To: Sundberg, Christopher
Subject: RE: last recommendations for the cell phone bill

I believe we like them all.

-----Original Message-----
From: Sundberg, Christopher
Sent: Tuesday, February 22, 2005 3:06 PM
To: Powell, Thomas
Subject: RE: last recommendations for the cell phone bill

I'm working on this draft now. Are there items in the Consumer Law Clinic's 2/13/05 recommendations that you do NOT wish to incorporate?

-----Original Message-----
From: Powell, Thomas
Sent: Monday, February 14, 2005 3:38 PM
To: Sundberg, Christopher
Subject: last recommendations for the cell phone bill

Chris,

Attached is the memo with recommended changes from the WI Consumer Law Litigation Clinic regarding the cell phone bill.
Please look it over and we'll talk soon.
Thanks much,
Tom Powell
Research Assistant for Rep. Terese Berceau
<< File: cllc-cell-021305.doc >>