

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1323

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1323

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1323

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-1-05

Tape Number	Side A	Side B	Meter #
2		x	0-23.
3		x	3.0-8.0

Committee Clerk Signature



Minutes:

**Chairman Keiser:** Opened the hearing on HB 1323.

**Representative Skarpol:** Appeared in support of HB 1323. And also was a sponsor. This bill is a result of a lot of frustration out in western North Dakota with the quality of service in our telecommunications, in our region it is not about the number of towers, there seems to be a tendency to try to move us all to digital from analog, that may be for the more populated areas, but in our rural areas it is not very realistic because we do not have the number of towers available to make digital work as well as we need it to work.

**Susan Welfald, Commissioner, Public Service Commission:** Appeared in support of HB 1323 and provided a written statement (SEE ATTACHED TESTIMONY).

**Tom D. Kelsch, Western Wireless, North Dakota:** Appeared in opposition of

HB 1323. And provided a written statement (SEE ATTACHED TESTIMONY).

**Dan Youmans, Regional Director, Cingular Wireless, ND:** Provided a written statement presented by Tom D. Kelsch (SEE ATTACHED TESTIMONY).

**Todd D. Kranda, Attorney, Kelsch Law Firm, Mandan, ND:** Provided a written statement in opposition of HB 1332. (SEE ATTACHED TESTIMONY).

**Representative Kasper:** I move a **DO NOT PASS** on HB 1323.

**Representative Thorpe:** **SECOND** the **DO NOT PASS** motion on HB 1323.

Motion carried. **VOTE: 13-YES 0-NO 1-Absent (EKSTROM).**

**Representative Thorpe will carry the bill on the floor.**

Meeting adjourned.

Date: 2-1-05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1323

House **INDUSTRY, BUSINESS AND LABOR** Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken **Do Not Pass**

Motion Made By **Rep. Kasper** Seconded By **Rep. Thorpe**

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	A	A
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) **13** No **0**

Absent **Rep. (1) Ekstrom**

Floor Assignment **Rep. Thorpe**

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 2, 2005 6:48 a.m.

**Module No: HR-22-1625**  
**Carrier: Thorpe**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1323: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1323 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1323

**Testimony in Opposition to**

**HOUSE BILL NO. 1323**

**House Industry Business & Labor Committee**

**February 1, 2005**

Chairman Keiser, House Industry Business And Labor Committee members, my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of Verizon Wireless to express concern and opposition to HB 1323.

HB 1323 is not necessary and would create an inappropriate response to wireless telephone service problems by requiring court litigation for any disputed charge on a customer's billing statement. Verizon Wireless already has a procedure available to its customers for dropped calls or interrupted service and billing credit under the Customer Agreement. Most, if not all companies have a similar policy. Attached is a copy of the standard Verizon Wireless Customer Agreement form. The rights available to the customer are included at the bottom of page 3 for dropped calls or interrupted calls with a credit made available to the customer for air-time credit or credit for the period of interruption.

Accordingly, it is uncertain how HB 1323 is necessary to provide for credit with wireless telephone service problems of dropped calls or interrupted service when a mechanism and policy is already available to provide credit for the customer without making court litigation the exclusive remedy.

I urge a DO NOT PASS recommendation for HB 1323.





## Customer Agreement

Be sure to also review the [Customer Information Overview](#).

The following applies to our calling plans except Prepay plans, which are governed by our [Prepay Wireless Service Agreement](#).

### YOUR VERIZON WIRELESS CUSTOMER AGREEMENT

We're Verizon Wireless. Please carefully read this agreement, including the calling plan or plans you've chosen, before filing it in a safe place.

By accepting this agreement, you're bound by its conditions. It covers important topics such as how long it lasts, fees for early termination and late payments, our rights to change its conditions and your wireless service, limitations of liability, privacy, and settlement of disputes by arbitration instead of in court. If you accept this agreement, it will apply to all your wireless service from us, including all your existing calling plans and other lines in service.

### Your Calling Plans

**YOUR CALLING PLANS BECOME PART OF THIS AGREEMENT.** The prices you pay may depend in part on how long—the minimum term—you're agreeing in advance to do business with us. Calling plans describe these prices and your minimum term. To the extent any condition in your calling plan expressly conflicts with this agreement, the condition in your calling plan will govern. If at any time you change your service (by accepting a promotion, for example), you'll be subject to any requirements, such as a new minimum term, we set for that change.

### Your Rights To Refuse Or Cancel This Agreement

**THIS AGREEMENT STARTS WHEN YOU ACCEPT.** Paragraphs marked "¶" continue after it ends. You accept when you do any of the following things after an opportunity to review this agreement:

- Give us a written or electronic signature;
- Tell us orally or electronically that you accept;
- Activate your service through your wireless phone;
- Open a package that says you are accepting by opening it; or
- Use your service after making any change or addition when we've told you that the change or addition requires acceptance.

**IF YOU DON'T WANT TO ACCEPT, DON'T DO ANY OF THESE THINGS.** You can cancel (if you're a new customer) or go back to the conditions of your former customer agreement (if you're already a customer) without additional fees if you tell us (and return to us in good condition any wireless phone you got from us with your new service) **WITHIN 15 DAYS** of accepting. You'll still be responsible through that date for the new service and any charges associated with it.

### Your Rights To Change Or End Your Service; Termination Fees; Phone Number Portability

¶ Except as explicitly permitted by this agreement, you're agreeing to maintain service with us for your minimum term. (Periods of suspension of service don't count towards your minimum term.) After that, you'll become a month-to-month customer under this agreement. **YOU MUST PAY US UP TO \$175 PER WIRELESS PHONE NUMBER AS AN EARLY TERMINATION FEE IF YOU CHOOSE TO END YOUR SERVICE BEFORE BECOMING A MONTH-TO-**

**MONTH CUSTOMER, OR IF WE TERMINATE IT EARLY FOR GOOD CAUSE.**

(This fee applies only to the extent permitted by law. If you buy your wireless phone from an agent or third-party vendor, you should check to see if they charge a separate termination fee.) If you terminate your service as of the end of your minimum term, you won't be responsible for any remaining part of your monthly billing cycle. Otherwise, all terminations by you during a monthly billing cycle become effective on the last day of that billing cycle. You'll remain responsible for all fees and charges incurred until then and won't be entitled to any partial month credits or refunds. You may be able to take, or "port," your current wireless phone number to another service provider. If you request your new service provider to port a number from us, and we receive your request from that new service provider, we'll treat it as notice from you to terminate our service for that number upon successful completion of porting. After the porting is completed, you won't be able to use our service for that number. You'll remain responsible for any early termination fee, and for all fees and charges through the end of that billing cycle, just like any other termination. If you're porting a phone number to us from another company, we may not be able to provide you some services, such as 911 location services, immediately.

**Our Rights To Make Changes**

Your service is subject to our business policies, practices, and procedures, which we can change without notice. **UNLESS OTHERWISE PROHIBITED BY LAW, WE CAN ALSO CHANGE PRICES AND ANY OTHER CONDITIONS IN THIS AGREEMENT AT ANY TIME BY SENDING YOU WRITTEN NOTICE PRIOR TO THE BILLING PERIOD IN WHICH THE CHANGES WOULD GO INTO EFFECT. IF YOU CHOOSE TO USE YOUR SERVICE AFTER THAT POINT, YOU'RE ACCEPTING THE CHANGES. IF THE CHANGES HAVE A MATERIAL ADVERSE EFFECT ON YOU, HOWEVER, YOU CAN END THE AFFECTED SERVICE, WITHOUT ANY EARLY TERMINATION FEE, JUST BY CALLING US WITHIN 60 DAYS AFTER WE SEND NOTICE OF THE CHANGE.**

**Your Wireless Phone**

Your wireless phone is any device you use to receive our wireless voice or data service. It must comply with Federal Communications Commission regulations and be compatible with our network and your calling plan. Whether you buy your wireless phone from us or someone else is entirely your choice. At times we may change your wireless phone's software or programming remotely and without notice. This could affect data you've stored on, or the way you've programmed, your wireless phone. Your wireless phone may also contain software that prevents it from being used with any other company's wireless service, even if it's no longer used to receive our service.

**Your Wireless Phone Number And Caller ID**

You don't have any rights in any personal identification number, email address, or identifier we assign you. (We'll tell you if we decide to change or reassign them.) The same is true of your wireless phone number, except for any right you may have to port it. Your wireless phone number and name may show up when you call someone. You can block this "Caller ID" for most calls by dialing \*67 before each call, or by ordering per-line call blocking (dialing \*82 to unblock) where it's available. You can't block Caller ID to some numbers, such as toll-free numbers.

**How Service Works**

Wireless phones use radio transmissions, so we can't provide service when your wireless phone isn't in range of one of our transmission sites, or a transmission site of another company that's agreed to carry our customers' calls, or if there isn't sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your wireless phone, and other conditions we don't control may also cause dropped calls or other problems.

**Charges and Fees We Set**

• You agree to pay all access, usage, and other charges and fees we bill you or that the user of your wireless phone accepted, even if you weren't the user of your wireless phone and didn't authorize its use. These include Federal Universal Service Charges and Regulatory Charges, and may include other charges also related to our governmental costs. We set these charges. They aren't taxes, aren't required by law, are kept by us in whole or in part, and are subject to

change. You may have to pay fees to begin service or reconnect suspended service. Usage charges may vary depending on where, when, and how you call. You have a home rate area and a local calling area (which may be different). When you call from inside a local calling area to somewhere outside of it, or call from anywhere outside a local calling area, there may be toll, regional calling, or long distance charges in addition to airtime. (We provide or select the long distance service for calls on our network.) When you make a call inside your local calling area that uses a local phone company's lines (for example, a call to a typical home phone number), we may charge landline or connection fees. We charge airtime for most calls, including toll-free and operator-assisted calls. Additional features and services such as operator or directory assistance, call dialing, calling card use, call forwarding, data calls, automatic call delivery, voice mail, text messaging, and wireless internet access, may have additional charges. Features such as call waiting, call forwarding, or 3-way calling involve multiple calls and multiple charges.

#### **Taxes, Fees, And Surcharges We Don't Set**

• You agree to pay all taxes, fees, and surcharges set by the government. We may not always give advance notice of changes to these items. If you're tax-exempt you must give us your exemption certificates and pay for any filings we make.

#### **Roaming And Roaming Charges**

You're "roaming" whenever you make or receive a call using a transmission site outside your home rate area, or using another company's transmission site. Your wireless phone may sometimes connect to and roam on another company's network even when you're within your home rate area or local calling area. There may be extra charges (including charges for long distance, tolls, or calls that don't connect) and higher rates for roaming calls, depending on your calling plan.

#### **Your Bill**

• Your bill is our notice to you of your fees, charges and other important information. You should read everything in your bill. We bill usage charges after calls are made or received. We bill access fees and some other charges in advance. You can view your detailed bill online. We'll also send you a streamlined bill without call detail (or a detailed bill if you request one, subject to any applicable fee). We may charge a fee for bill reprints. If you choose Internet billing (where available), you waive any right to paper bills or notices.

#### **How We Calculate Your Bill**

Your bill reflects the fees and charges in effect under your calling plan at the time they're incurred. You can dispute your bill, but only within 180 days of receiving it. You must still pay any disputed charges until the dispute is resolved. Charges may vary depending on where your wireless phone is when a call starts. If a charge depends on an amount of time used, we'll round up any fraction of a minute to the next full minute. Time starts when you first press SEND or the call connects to a network on outgoing calls, and when the call connects to a network (which may be before it rings) on incoming calls. Time may end several seconds after you press END or the call otherwise disconnects. For calls made on our network, we only bill for calls that connect (which includes calls answered by machines). Most calls you make or receive during a billing cycle are included in your bill for that cycle. Billing for airtime (including roaming) and related charges may, however, sometimes be delayed. Delayed airtime may be applied in the month it appears on your bill against airtime included in your calling plan for that month, rather than against the included airtime for the month when you actually made or received the call. This may result in charges higher than you'd expect in the later month.

#### **Your Rights For Dropped Calls Or Interrupted Service**

If you get disconnected by our network from a call in your home rate area, redial. If the same number answers within 5 minutes, call us within 90 days and we'll give you a 1-minute airtime credit. If service is interrupted in your home rate area for more than 24 hours in a row due to our fault, call us within 180 days and we'll give you a credit for the period of interruption. These are your only rights for dropped calls or interrupted service.

#### **Payments, Deposits, Credit Cards, And Checks**

Payment is due in full as stated on your bill. IF WE DON'T RECEIVE PAYMENT IN FULL WHEN DUE, WE MAY, TO THE EXTENT PERMITTED BY THE LAW OF THE STATE OF THE BILLING ADDRESS WE HAVE ON FILE FOR YOU AT THE TIME, CHARGE YOU A LATE FEE OF UP TO 1.5 PERCENT A MONTH (18 PERCENT ANNUALLY), OR A FLAT \$5 A MONTH, WHICHEVER IS GREATER, ON UNPAID BALANCES. WE MAY ALSO CHARGE FOR ANY COLLECTION AGENCY FEES BILLED TO US FOR TRYING TO COLLECT FROM YOU. We may require an advance deposit (or an increased deposit) from you. We'll pay simple interest on any deposit at the rate the law requires. Please retain your evidence of deposit. You agree that we can apply deposits, payments, or prepayments in any order to any amounts you owe us on any account. You can't use a deposit to pay any bill unless we agree. We refund final credit balances of less than \$1 only upon request. We won't honor limiting notations you make on or with your checks. We may charge you up to \$25 for any returned check, depending on applicable law.

#### **If Someone Steals Your Wireless Phone**

If someone steals your wireless phone, notify us. If we haven't given you a courtesy suspension of service and monthly fees within the prior year, we'll give you one for 30 days, or until you replace or recover your wireless phone, whichever comes first. Until we grant any suspension, you're still responsible for all fees and charges. You'll need to provide us a sworn statement about the theft if we ask for one.

#### **Our Rights To Limit Or End Service Or This Agreement**

You agree not to resell our service to someone else without our prior written permission. You also agree your wireless phone won't be used for any other purpose that isn't allowed by this agreement or that's illegal. WE CAN, WITHOUT NOTICE, LIMIT, SUSPEND, OR END YOUR SERVICE OR ANY AGREEMENT WITH YOU FOR THIS OR ANY OTHER GOOD CAUSE, including, but not limited to: (a) paying late more than once in any 12-months; (b) incurring charges larger than a required deposit or billing limit (even if we haven't yet billed the charges); (c) harassing our employees or agents; (d) lying to us; (e) interfering with our operations; (f) becoming insolvent or going bankrupt; (g) breaching this agreement; (h) "spamming," or other abusive messaging or calling; (i) modifying your wireless phone from its manufacturer's specifications; (j) providing credit information we can't verify; (k) using your service in a way that adversely affects our network or other customers; or (l) allowing anyone to tamper with your wireless phone number. We can also temporarily limit your service for any operational or governmental reason.

#### **Directory Information**

We don't publish directories of our customers' phone numbers. We don't provide them to third parties for listing in directories, either.

#### **Your Privacy**

We have a duty under federal law to protect the confidentiality of information about the quantity, technical configuration, type, destination, and amount of your use of our service, together with similar information on your bills. (This doesn't include your name, address, and wireless phone number.) Except as provided in this agreement, we won't intentionally share personal information about you without your permission. We may use and share information about you: (a) so we can provide our goods or services; (b) so others can provide goods or services to us, or to you on our behalf; (c) so we or our affiliates can communicate with you about goods or services related to the ones you already receive (although you can call us any time if you don't want us to do this); (d) to protect ourselves; or (e) as required by law, legal process, or exigent circumstances. In addition, you've authorized us to investigate your credit history at any time and to share credit information about you with credit reporting agencies. If you ask, we'll tell you the name and address of any credit agency that gives us a credit report about you. It's illegal for unauthorized people to intercept your calls, but such interceptions can occur. For training or quality assurance, we may also monitor or record our calls with you.

#### **Disclaimer Of Warranties**

WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR

IMPLIED, INCLUDING, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICE OR YOUR WIRELESS PHONE. WE CAN'T PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE AND DON'T AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF. THIS DOESN'T DEPRIVE YOU OF ANY WARRANTY RIGHTS YOU MAY HAVE AGAINST ANYONE ELSE.

#### **Waivers And Limitations Of Liability**

• UNLESS THE LAW FORBIDS IT IN ANY PARTICULAR CASE, WE EACH AGREE TO LIMIT CLAIMS FOR DAMAGES OR OTHER MONETARY RELIEF AGAINST EACH OTHER TO DIRECT DAMAGES. THIS LIMITATION AND WAIVER WILL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER FRAUD, MISREPRESENTATION, BREACH OF CONTRACT, PERSONAL INJURY, PRODUCTS LIABILITY, OR ANY OTHER THEORY. THIS MEANS THAT NEITHER OF US WILL SEEK ANY INDIRECT, SPECIAL, CONSEQUENTIAL, TREBLE, OR PUNITIVE DAMAGES FROM THE OTHER. You agree we aren't liable for problems caused by you or a third party; by buildings, hills, network congestion, tunnels, weather, or other things we don't control; or by any act of God. You also agree we aren't liable for missed voice mails, or deletions of voice mails from your voice mailbox (if you have one), even if you've saved them. If another wireless carrier is involved in any problem (for example, while you roam), you also agree to any limitations of liability in its favor that it imposes.

#### **Dispute Resolution And Mandatory Arbitration**

• WE EACH AGREE TO SETTLE DISPUTES (EXCEPT CERTAIN SMALL CLAIMS) ONLY BY ARBITRATION. THERE'S NO JUDGE OR JURY IN ARBITRATION, AND REVIEW IS LIMITED, BUT AN ARBITRATOR CAN AWARD THE SAME DAMAGES AND RELIEF, AND MUST HONOR THE SAME LIMITATIONS IN THIS AGREEMENT, AS A COURT WOULD. IF AN APPLICABLE STATUTE PROVIDES FOR AN AWARD OF ATTORNEY'S FEES, AN ARBITRATOR CAN AWARD THEM, TOO. WE ALSO EACH AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, THAT:

(1) THE FEDERAL ARBITRATION ACT APPLIES TO THIS AGREEMENT. EXCEPT FOR QUALIFYING SMALL CLAIMS COURT CASES, ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY PRIOR AGREEMENT FOR WIRELESS SERVICE WITH US OR ANY OF OUR AFFILIATES OR PREDECESSORS IN INTEREST; OR ANY PRODUCT OR SERVICE PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT OR SUCH A PRIOR AGREEMENT, OR ANY ADVERTISING FOR SUCH PRODUCTS OR SERVICES, WILL BE SETTLED BY ONE OR MORE NEUTRAL ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR BETTER BUSINESS BUREAU ("BBB"). YOU CAN ALSO BRING ANY ISSUES YOU MAY HAVE TO THE ATTENTION OF FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCIES AND THEY CAN, IF THE LAW ALLOWS, SEEK RELIEF AGAINST US ON YOUR BEHALF.

(2) FOR CLAIMS OVER \$10,000, THE AAA'S WIRELESS INDUSTRY ARBITRATION ("WIA") RULES WILL APPLY. FOR CLAIMS OF \$10,000 OR LESS, THE COMPLAINING PARTY CAN CHOOSE EITHER THE AAA'S SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT, OR THE BBB'S RULES FOR BINDING ARBITRATION. EACH OF US MAY BE REQUIRED TO EXCHANGE RELEVANT EVIDENCE IN ADVANCE. IN LARGE/COMPLEX CASES UNDER THE WIA RULES, THE ARBITRATORS MUST APPLY THE FEDERAL RULES OF EVIDENCE AND THE LOSER MAY HAVE THE AWARD REVIEWED BY A PANEL OF 3 NEW ARBITRATORS.

(3) YOU CAN OBTAIN PROCEDURES, RULES, AND FEE INFORMATION FROM THE AAA ([WWW.ADR.ORG](http://WWW.ADR.ORG)), THE BBB ([WWW.BBB.ORG](http://WWW.BBB.ORG)), OR FROM US. THIS AGREEMENT DOESN'T

PERMIT CLASS ARBITRATIONS EVEN IF THOSE PROCEDURES OR RULES WOULD. IN EXCHANGE FOR YOUR AGREEMENT TO ARBITRATE ON AN INDIVIDUAL BASIS, WE'RE PROVIDING YOU A FREE INTERNAL MEDIATION PROGRAM. MEDIATION IS A PROCESS FOR MUTUALLY RESOLVING DISPUTES. A MEDIATOR CAN HELP PARTIES REACH AGREEMENT, BUT DOESN'T DECIDE THEIR ISSUES. IN OUR MEDIATION PROGRAM, WE'LL ASSIGN SOMEONE (WHO MAY BE FROM OUR COMPANY) NOT DIRECTLY INVOLVED IN THE DISPUTE TO MEDIATE. THAT PERSON WILL HAVE ALL THE RIGHTS AND PROTECTIONS OF A MEDIATOR. NOTHING SAID IN THE MEDIATION CAN BE USED IN A LATER ARBITRATION OR LAWSUIT. CONTACT US AT [WWW.VERIZONWIRELESS.COM](http://WWW.VERIZONWIRELESS.COM) OR THROUGH CUSTOMER SERVICE TO FIND OUT MORE.

(4) IF YOU REQUEST MEDIATION UNDER OUR PROGRAM, PARTICIPATE IN GOOD FAITH IN AT LEAST ONE TELEPHONIC MEDIATION SESSION, AND THE MEDIATION DOESN'T RESOLVE THE DISPUTES BETWEEN US, WE'LL PAY ANY FILING FEE LATER CHARGED YOU BY THE AAA OR BBB FOR ONE ARBITRATION OF THOSE DISPUTES. IF THAT ARBITRATION PROCEEDS, WE'LL ALSO PAY ANY FURTHER ADMINISTRATIVE AND ARBITRATOR FEES LATER CHARGED FOR IT AND (IF THE ARBITRATION AWARD IS APPEALABLE UNDER THIS AGREEMENT) ANY APPEAL TO A NEW 3 ARBITRATOR PANEL. WE MAY MAKE YOU A WRITTEN OFFER OF SETTLEMENT ANY TIME BEFORE ARBITRATION BEGINS. IF WE DO AND YOU DON'T RECOVER IN ARBITRATION MORE THAN 75% OF THE OFFERED AMOUNT, YOU AGREE TO REPAY US THE LESSER OF ANY FEES WE ADVANCED OR WHAT YOU WOULD HAVE PAID IN FEES AND COSTS IN COURT UNDER SIMILAR CIRCUMSTANCES.

(5) ANY ARBITRATION AWARD MADE AFTER COMPLETION OF AN ARBITRATION IS FINAL AND BINDING AND MAY BE CONFIRMED IN ANY COURT OF COMPETENT JURISDICTION. AN AWARD AND ANY JUDGMENT CONFIRMING IT ONLY APPLIES TO THE ARBITRATION IN WHICH IT WAS AWARDED AND CAN'T BE USED IN ANY OTHER CASE EXCEPT TO ENFORCE THE AWARD ITSELF.

(6) IF FOR SOME REASON THESE ARBITRATION REQUIREMENTS DON'T APPLY, OR A CLAIM PROCEEDS IN SMALL CLAIMS COURT, WE EACH WAIVE ANY TRIAL BY JURY.

#### About You

= You represent that you're at least 18 years old and have the legal capacity to accept this agreement. If you're ordering for a company, you're representing that you're authorized to bind it, and where the context requires, "you" means the company.

#### About This Agreement

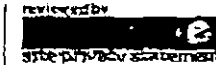
= A waiver of any part of this agreement in one instance isn't a waiver of any other part or any other instance. You can't assign this agreement or any of your rights or duties under it. We may assign all or part of this agreement or your debts to us without notice, and you agree to make all subsequent payments as instructed. NOTICES ARE CONSIDERED DELIVERED WHEN WE SEND THEM BY EMAIL OR FAX TO ANY EMAIL OR FAX NUMBER YOU'VE PROVIDED TO US, OR 3 DAYS AFTER MAILING TO THE MOST CURRENT BILLING ADDRESS WE HAVE ON FILE FOR YOU, IF BY US, OR TO THE CUSTOMER SERVICE ADDRESS ON YOUR MOST RECENT BILL, IF BY YOU. If any part of this agreement, including any part of its arbitration provisions, is held invalid, that part may be severed from this agreement. This agreement and the documents to which it refers form the entire agreement between us on their subjects. You can't rely on any other documents or statements on those subjects by any sales or service representatives, and you have no other rights with respect to service or this agreement, except as specifically provided by law. This agreement isn't for the benefit of any third party except our parents, affiliates, subsidiaries, agents, and predecessors and successors in interest. Except to the extent we've agreed otherwise in the provisions on late fees and arbitration, this

agreement and disputes covered by it are governed by the laws of the state encompassing the area code assigned to your wireless phone number when you accepted this agreement, without regard to the conflicts of laws rules of that state.

01/17/2005

[Privacy](#) | [Legal Notices](#) | [Website Use](#) | [Customer Agreement](#) | [Return Policy](#) | [Accessibility](#)

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Dan Youmans  
Regional Director  
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February 1, 2005

The Honorable Rep. George J. Keiser  
Chair, House Industry, Business & Labor Committee  
North Dakota State Capitol

*RE: Testimony Opposing House Bill 1323*

Dear Rep. Keiser and Members of the Industry, Business & Labor Committee:

On behalf of Cingular Wireless, I am writing to oppose House Bill 1323. This legislation is not necessary and would put an undue burden on wireless carriers serving the State of North Dakota. Moreover, this legislation would create an extremely unfriendly business climate in North Dakota for wireless carriers.

Certainly, we share the sponsors' concerns over the quality of wireless service for North Dakota citizens. In fact, we view wireless coverage and call-quality as two of the most important factors in customer choice of a wireless provider. In our hyper-competitive industry, we strive to provide the best quality of service possible. As an industry since 1993 wireless carriers have invested more than \$156 billion nationwide to expand and improve our networks, according to the Cellular Telecommunications & Internet Association.

At the same time, we recognize that there are instances when calls drop and the quality of the call is not ideal. This is primarily due to the fact that calls connected over wireless phones use radio waves, which are affected by terrain, foliage, weather, buildings, and many other factors. In the information we provide to our customers, we notify them that these factors play an important role in call quality. We also inform our customers that some areas, especially remote locations, may not be served by our network.

In addition, we already have recourse for our customers when calls drop. Our Customer Service department can issue air-time credits for dropped calls. Also, most rate plans come with large numbers of "included" minutes so that occasional dropped calls do not have a significant impact



on customer bills. If a customer does have a concern, we welcome their calls to Customer Service so we can make adjustments as needed.

For these reasons, we do not believe that House Bill 1323 is necessary. We also fear that this proposed law could be abused by some people, since the remedy for wireless carriers to contest a complaint would be cost prohibitive. A person could simply request a refund for any call and our only recourse would be an expensive and time-consuming legal challenge in court. Such a requirement is not reasonable and sends a very negative message about the business environment in the State of North Dakota.

Thank you for considering this testimony on House Bill 1323. As mentioned previously, the wireless industry is very competitive. We work extremely hard to attract and retain our customers. They expect high-quality service from us, or they can simply switch to another carrier. For this reason more than any, we strive to create the best network possible with the highest call quality possible. Please retain this free-market approach to wireless service in North Dakota by opposing House Bill 1323.

Respectfully Submitted,

Dan Youmans  
Regional Director – External Affairs  
Cingular Wireless

## Testimony in Opposition to House Bill 1323

Thomas D. Kelsch – Western Wireless

Chairman Kaiser, Members of the House Industry, Business and Labor Committee, my name is Tom D. Kelsch, and I am here to speak in opposition of HB 1323 on behalf of Western Wireless, doing business in North Dakota as Cellular One.

HB 1323 is not needed. The cellular telephone industry is a very competitive industry. If the customer has a problem with their service and does not feel they are getting it resolved satisfactorily they can switch to a competing carrier.

In a rural state there will be issues of coverage and dropped calls. Wireless companies recognize this and have voluntarily joined and committed to the Consumer Code for Wireless Service. I have attached a copy of the Consumer Code and a Question and Answer sheet to my testimony.

I am sure you have heard the saying that the customer is always right. While in business that may be good practice, creating a law that requires it in all cases does not set a good precedence. Under HB 1323, if a customer complains about a bill, they don't have to pay, and the only remedy for the company would be to sue its customer. While that may be good for attorneys it is a bad message for North Dakota to be sending to businesses. It is not even good for the consumers who could be sued and forced to have to hire attorneys to defend themselves.

Wireless providers have to answer to their customers who can vote with their wallet by switching companies or dropping wireless and just using land line if they feel they are not getting proper value for the money paid for the wireless service provided.

As the FCC has recognized, competition and expanded coverage will do more to minimize customer complaints, and provide better service than any government regulation. If because of government regulations, such as HB 1323, it costs a company more to do business in our state, companies will pass those costs on to the consumers or decide not to do business in our state. Neither would be a good result for North Dakota.

Please give HB 1323 a **“DO NOT PASS”** recommendation.

# CTIA

## Consumer Code *for* Wireless Service

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

### THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

#### ONE

#### DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

**F**or each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no early termination fee will apply.

#### TWO

#### MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

**W**ireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map

usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

### THREE

#### **PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE**

**W**hen a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier will provide or confirm the material terms and conditions of service with the subscriber.

### FOUR

#### **ALLOW A TRIAL PERIOD FOR NEW SERVICE**

**W**hen a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply.

### FIVE

#### **PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING**

**I**n advertising of prices for wireless service or devices, wireless carriers will disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows: (a) activation or initiation fees; (b) monthly access fees or base charges; (c) any required contract term; (d) early termination fees; (e) the terms and conditions related to receiving a product or service for "free;" (f) the times of any peak and off-peak calling periods; (g) whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas; (h) for any rate plan advertised as "nationwide," (or using similar terms), the carrier will have available substantiation for this claim; (i) whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term; (j) whether any additional taxes, fees or surcharges apply; and (k) the amount or range of any such fees or surcharges collected and retained by the carrier.

### SIX

#### **SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS**

**O**n customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal state or local governments. Carriers will not label cost recovery fees or charges as taxes.

SEVEN

**PROVIDE CUSTOMERS THE RIGHT TO TERMINATE SERVICE  
FOR CHANGES TO CONTRACT TERMS**

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

EIGHT

**PROVIDE READY ACCESS TO CUSTOMER SERVICE**

Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

NINE

**PROMPTLY RESPOND TO CONSUMER INQUIRIES AND COMPLAINTS  
RECEIVED FROM GOVERNMENT AGENCIES**

Wireless carriers will respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.

TEN

**ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY**

Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online.

# **CONSUMER CODE: Questions and Answers**

## **WHAT CONSUMER ISSUES ARE COVERED IN THE CONSUMER CODE?**

The Consumer Code directly focuses on those issues of greatest concern to consumers. For example, companies will address how rates and terms of service are disclosed, include clear service area maps, and address termination rights and privacy concerns.

## **WHICH WIRELESS CARRIERS ARE COMMITTED TO THE CONSUMER CODE?**

The industry has worked together for more than a year to craft the Consumer Code, and there is wide support for the final product. Many of the nation's large wireless carriers – including ALLTEL, AT&T Wireless, Cingular, Nextel, Sprint PCS, T-Mobile USA, Verizon Wireless and Western Wireless – are all participating in the Code. Small and rural carriers across the country have committed their support, as well. Additional carriers will also begin implementation in the coming months.

## **THE CONSUMER CODE IS VOLUNTARY.**

### **WILL EACH COMPANY IMPLEMENT ALL 10 POINTS?**

Every wireless carrier that signs the voluntary Consumer Code is committing to all 10 points. Only by adhering to all 10 points is a company entitled to display the Seal. The Seal of Wireless Quality/Consumer Information will remain consistent across company Web sites and collateral materials, as a sign that the wireless carrier has integrated all 10 points of the Consumer Code. A carrier's participation in the Code is not required as a part of CTIA membership.

## **WHY IS A 'VOLUNTARY' CODE BETTER FOR CONSUMERS THAN GOVERNMENT REGULATION?**

The wireless industry is different from traditional telecommunications services because of its high level of competition. In a monopoly environment the government substitutes for the lack of competition. In a competitive environment competition is a less costly, and less enhancement-inhibiting governor. The wireless industry Code is designed to give consumers information, while still permitting the innovation that consumers have come to expect from wireless services. Regulators simply cannot be as flexible, responsive and cost-controlling as a self-regulatory Code.

## **WHO WILL ENFORCE THE VOLUNTARY CONSUMER CODE?**

Wireless carriers will have to annually re-certify that they are in compliance with the Code. Those not in compliance will not be permitted to display the Seal of Wireless Quality/Consumer Information. One of the benefits of competition is that each carrier's competitors will be watching other companies' compliance and will respond accordingly.

## IS THE INDUSTRY ADOPTING THIS CONSUMER CODE BECAUSE OF INCREASED CONSUMER COMPLAINTS?

While the wireless industry has experienced fantastic growth in recent years, per capita wireless complaints have fallen or held steady. The data shows that the wireless industry receives fewer complaints than the more regulated wireline industry.

## WHEN WILL CONSUMERS START TO SEE THE RESULTS OF THESE CHANGES?

The wireless carriers that today announced their participation in the voluntary Consumer Code have already begun to implement the consumer points. Examples are included in the Media Kit, and distributed at today's announcement event. Each carrier can highlight different aspects of the Code, and incorporate the Seal of Wireless Quality/Consumer Information into its own marketing and advertising once all 10 points of the Code are in place. Larger, systemic changes, such as printed collateral materials, will be phased in throughout the fall.

## WILL THE CONSUMER CODE MAKE THE WIRELESS INDUSTRY MORE COMPETITIVE?

The Code is designed to assist consumers in making informed choices when shopping for wireless services, and in understanding their wireless service and rate plans. The wireless industry is already hyper-competitive, by far the most competitive sector of telecommunications. About 98% of Americans can choose among 3 or more wireless carriers and 83% can choose from at least 5 or more carriers in their market. The result has been lower prices for consumers. Research shows that wireless prices have fallen more than 80% in the last 8 years.

## HOW WILL CONSUMERS LEARN ABOUT THE CONSUMER CODE?

### IS THE INDUSTRY PLANNING AN EDUCATIONAL CAMPAIGN?

Today's unveiling of the Consumer Code is the first step in educating consumers. From there, each carrier has the flexibility to tailor communications and marketing of its participation to its customers. As soon as all 10 points of the Code are in place, consumers may find the Seal of Wireless Quality/Consumer Information on the carrier's Web site, at retail stores or on collateral materials. Examples are included in the Media Kit.

## HOW BIG IS THE WIRELESS INDUSTRY IN THE U.S.?

About 148 million Americans – more than 50% of the population – have a wireless phone. Since 1993, wireless users have increased 806% and wireless minutes of use have grown 3128%. In 2002, wireless consumers used more than 600 billion minutes.

For more information on the voluntary Consumer Code and the Seal of Wireless Quality/Consumer Information, please visit [www.wow-com.com/consumer/issues](http://www.wow-com.com/consumer/issues).



**H. B. 1323**

**Presented by: Commissioner Susan Wefald  
Public Service Commission**

**Before: House Industry Business and Labor  
Honorable George Keiser, Chairman**

**TESTIMONY**

Mr. Chairman and committee members, I am Commissioner Susan Wefald of the Public Service Commission. These are my own thoughts and not those of the full Commission.

I am here today to testify in support of HB 1323, which may not be perfect, but which reflects the frustrations of customers of the wireless industry with some quality of service issues today. For the record, since July when the Public Service Commission announced its wireless initiative, 467 wireless customers have contacted the Commission with service concerns.

However, at the present time, the Commission does not have any authority in state law to process a quality of service complaint against a wireless company. We do have the ability to determine if federal universal service funds are being properly used in our state, as mentioned in this bill. However, withdrawing universal service funds should be an option and not mandated as it is in this bill.



This year the Commission held hearings in three towns in North Dakota regarding cellular service. These town meetings were held in Wimbledon, Ellendale and Ashley. Lots of people attended each meeting sharing their concerns. At the conclusion of each meeting, the Commission wrote a letter to each wireless company asking what their plans were for improving service in each community. One company involved responded that it planned to hold a community meeting in Wimbledon offering people suggestions for improving service until a new tower could be built. A representative of the company told me that the meeting in Wimbledon would be held in the summer. No meeting was held over the summer. Next I was told that the meeting would definitely be held in October. No meeting was held in October. Next I was told that the meeting would be held in late November or early December. No meeting has yet been held in Wimbledon. The other company involved did not even offer to hold a community meeting and neither company, as of now, has announced any service improvements to address the concerns expressed by these communities.

You may be told by a wireless carrier that the Federal Government has pre-empted states from regulating wireless carriers.

It is true that we cannot regulate entry and rates. However other states, such as the South Dakota Public Utilities Commission, do regulate aspects of service quality for wireless carriers.

I am attaching some language which you may wish to add to this bill, or you may wish to replace the language in 1323 with my suggested amendment language. It basically provides that a customer has a period of 14 days to try out new wireless service, and if within that 14 day time period the customer is not satisfied with the service, the customer can terminate their contract and return their new cell phone for full credit. It does provide that airtime usage charges may still apply. And it allows the customer or the Public Service Commission to file a complaint under chapter 49-02 if this law has been violated. We have heard from many rural customers that they are told they will have good wireless coverage in their town or area, only to find out that this is not the case.

These provisions are very similar to one of the voluntary provisions major companies have agreed to in the Consumer Code for Wireless Service and also, they are similar to language which Verizon has to obey for three years under a settlement approved by the North Dakota Attorney General's office last summer. Mr.

Chairman this concludes my testimony and I would be happy to answer any questions from the Committee.

### Suggested Amendment language for House Bill 1323

When a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the new service. The carrier will not impose any early termination fee if the Consumer cancels service within the 14 day period, and will refund any activation or other non-usage based fee charged to the Consumer if the Consumer cancels within three days (not including national holidays) after activation, provided in each case that the Consumer complies in full with applicable return and/or exchange policy. In addition, if a cellular company customer service map indicates that service is available, and if within 14 days of purchasing a cellular phone and contract a customer finds that good quality service is not available in the areas indicated on the map, a customer shall be able to terminate their contract, and return their cell phone for full credit. Other charges, including airtime usage, may still apply. If any customer, and/or the Public Service Commission, have reason to believe that the provisions of this section have been violated by a wireless carrier, a quality of service complaint may be filed against the wireless carrier under Chapter 49-21.