SB 1008

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 1008 (Senator Exum)
Finance

Wireless Telephone Service - Trial Periods and Termination of Service

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This bill requires a wireless telephone service provider to provide any customer with a minimum trial period during which the customer, after paying for the services used, may terminate the service without incurring any additional fees or penalties. Providers must also prorate an early termination fee (ETF) for customers who terminate service before the end of the service contract. The bill also allows a customer to return a phone during the trial period but before the end of the service agreement and receive a prorated refund of the purchase price. Violation of the bill's provisions is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA) subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A wireless telephone service provider must provide any customer with a trial period that continues for at least 30 days from the date the customer receives the first bill for monthly service. During the trial period, the customer, upon returning any handset purchased or leased in connection with the service, may receive a pro rata refund of the handset's purchase price.

If a customer terminates wireless telephone service after the end of the trial period but before the end of the term of the service agreement, the wireless telephone service provider must reduce any ETF or penalty by the percentage that corresponds to the number of months that have elapsed, divided by the total number of months in the agreement.

Current Law: State statutory law is currently silent on the permissibility of requiring wireless telephone providers to provide customers with a mandatory free trial period. However, under the Contracts Clause of the U.S. Constitution and corresponding decisions by the U.S. Supreme Court, new laws generally may not be created that substantially impair an already existing private contractual relationship.

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

Background: The 1993 federal Budget Reconciliation Act narrowly preempted State oversight of wireless carriers' rates but specifically reserved state authority to regulate "other terms and conditions of commercial mobile services." However, whether wireless carriers' ETFs are considered rates subject to federal oversight, or terms of a consumer contract subject to state consumer protection laws, has been contentiously litigated during the past few years.

CTIA, the wireless trade association, filed an industry petition in 2005 with the Federal Communications Commission (FCC) seeking a declaratory ruling that ETFs are rates and therefore not subject to any state enforcement jurisdiction. However, CTIA withdrew that petition in June 2009 as the FCC has recently considered issuing a rule that limits wireless carriers' ETF practices. In July 2008, a California state judge ruled that Sprint's ETFs violated California law and ordered Sprint to pay upwards of $18 million as part of a class-action lawsuit challenging Sprint's fees. (*Ayyad v. Sprint Spectrum, LP*, Superior Court of California.) However, other court cases have upheld the imposition of wireless carriers' ETFs (*Anderson v. Nextel Partners, Inc.*, 745 N.W. 2d 464 (Iowa 2008)). State attorneys general have also targeted wireless carriers' ETFs to require consumers to be provided with written notices that clearly disclose ETFs.

In response to federal and state efforts to restrict ETFs, several national wireless carriers have started prorating termination fees over the life of the consumer contract and now offer consumers a trial period within which the service can be canceled without penalty.

Additional Information: The bill requires a wireless telephone service provider to offer a specified trial period and return policy to any wireless telephone service customer. However, it is unclear whether certain wireless telephone customers that enter into contracts, such as governmental agencies, corporations, and nonprofit organizations, are afforded the protections offered under MCPA.

Additional Information

Prior Introductions: None.

Cross File: HB 1018 (Delegate Manno, *et al.*) - Economic Matters.

Information Source(s): National Association of Regulatory Utility Commissioners, Public Service Commission, Department of Legislative Services

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