

Consumer Choice and Telecommunication Contracts: HB 1835, HB 1953, HB 3167, and HB 3169

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Texas has been at the forefront of telecommunications policy reform since 1995 when its reforms set the stage for the passage of the Federal Telecommunications Act, the first major overhaul of federal telecommunications law since the 1930s. Texas again showed its leadership in 2005 with the passage of SB 5. Fifteen million local phone service consumers benefitted from the shift away from the old monopoly-era regulatory scheme.

Competition has flourished under the reforms and spawned a new wave of telecommunications innovations and consumer products in Texas. Countless wired and wireless phone service plans are available, video consumers have multiple entertainment and technology options, and Internet service is faster and more accessible than ever. Consumers have also enjoyed decreasing prices due to competition.

One of the primary ways consumers have benefitted from the competitive markets is through their ability to choose and voluntarily contract with telecommunications providers. Secure revenue streams through contracting create efficiencies and cost savings that providers can then pass along to consumers. One and two year contracts enable providers to pay consumers for their contractual “loyalty” through discounts. The discounts might also reflect the providers’ belief that consumers who sign up for one or two years terms will become longer-term customers, and thus they are willing to sacrifice some revenue now for steady future revenue streams.

Strong, enforceable contracts are also an important tool in protecting consumers and solidifying obligations that must be fulfilled by both parties. Far from having their choices limited under contracts, consumers have myriad options in terms of the kinds of retail telecommunications services they desire and under what terms. And once it is signed voluntarily, the contract becomes a powerful consumer protection by clearly defining the obligations of both the consumer as well as mobile service provider. Both parties are required under law to faithfully execute these obligations or risk litigation.

Current Legislation

*Texas ... stands out among the states for the competitive performance of both its retail and wholesale [electricity] markets. ... The success was largely due to the willingness to let markets work and not manipulate price or access policies. ... Texas did not “design” a retail market in any meaningful sense—it instead set general rules for retail electric providers ... and allowed them to compete as they wished within those rules. The details of what would be sold and how it would be priced were left to the ingenuity of buyers and sellers.” —Dr. Robert J. Michaels California State University, Fullerton**

Like the electric market, the success of the telecommunications industry in Texas can largely be attributed to the state’s willingness to let telecommunications companies

* Robert J. Michaels, *Competition in Texas Electric Markets: What Texas Did Right & What’s Left to Do*, Texas Public Policy Foundation, March 2007.

compete. Texas was a forerunner during the Internet and technology boom of the late 1990s in promoting sound policies that encouraged innovation and growth. Although the telecommunications industry as a whole is still bogged down by excessive taxes, day-to-day strategy and business operations are largely left to the interaction between buyers and sellers.

Several bills filed this session threaten competition and the integrity of contracts in the telecommunications market by telling consumers and producers what they can and cannot agree to in a contract. HB 1835 and 1953 would seriously weaken—to the point of nullifying—telecommunications contracts in Texas. Together they would strip out consumer obligations to adhere to any length or duration of their contract in mobile voice and video services. Similarly, HB 3169 and HB 3167 seek to direct the language and scope of private contracts and would interfere with the process of creative competition.

As Dr. Michaels points out, the market functions best when the rules are clearly defined and remain steady. Weakening, standardizing, or nullifying contracts will significantly reduce the benefits of competition for consumers, and changing the rules of contract law would be counter-intuitive to the goal of protecting consumers by requiring that companies live up to their obligations.

HB 1835 & HB 1953

HB 1835 and HB 1953 would essentially render all mobile service and video service contracts meaningless by voiding any contract that provides for consumer fees or charges when the consumer breaks or opts out early from their contract.

Many customers voluntarily choose to enter into a contracted agreement with a mobile service company, most often to lock in a certain price for a given period of time and/or to secure good promotional discounts.

Many phone companies specialize in what kind of phones they offer to retail customers. Cell phone manufacturers will often only sell certain models through a particular retailer. AT&T, for example, is currently the only compa-

ny that offers service for the Apple iPhone. Generally the phone is offered at either \$199 or \$299 depending on the model with a two year contract although AT&T recently announced that it would sell no-commitment iPhones at \$599 or \$699.* In essence, mobile service providers would have no incentive to offer phones at discount prices if contracts could be broken or opted out of at any point, negating the comparative advantage or certain companies and disrupting the entire competitive structure of the wireless market.

Company	Phone	Contract Price	Retail Price
AT&T	iPhone	\$299	\$599
Sprint	Blackberry Curve	\$199.99	\$569.99
Verizon	Blackberry Storm	\$199	\$500 and up

Source: AT&T, Sprint, Verizon

For those consumers not wanting to enter into a contract, either because of the annualized agreements or initial credit checks, the market has already moved in the direction of providing customers with alternatives to one and two year contracts. There are many pre-paid and pay-as-you-go plans available from many of the major wireless retail service providers.

New mobile service companies have been able to enter into the market by specializing in prepaid and pay-as-you-go plans. Boost (Sprint) and Cricket in particular offer consumers the option of month-to-month prepaid plans that require no background or credit check. Similarly, AT&T and Verizon have begun offering these types of plans. While the goal of HB 1835 may be to promote non-contract options for mobile service consumers, it seems as though the market has already responded to this demand. The existence of these plans is proof that markets will meet the needs of various types of consumers without legislation.

*Tom Krazit, "Apple joins AT&T with no-contract iPhones®," CNET News, March 27, 2009, http://news.cnet.com/8301-13579_3-10205894-37.html.

Company	Plan	Price	Credit-Check	Annual Contract
AT&T	Unlimited Pre-Paid	\$69.99/ Month	No	No
Boost (Sprint)	Unlimited Pre-Paid	\$50.00/ Month	No	No
Cricket	Unlimited Pre-Paid	\$60.00/ Month	No	No
Verizon	Unlimited Pre-Paid	\$3.99/ Day Used	No	No

Source: AT&T, Boost Mobile, Cricket, Verizon, Sprint

As with phones, many cable and satellite retailers can offer promotional deals on entertainment packages when customers enter into a contractual agreement. Rescinding the power of contracts will only hurt consumers and limit their choices when selecting what video services meet their needs. Many price reductions and programming packages are dependent on a firm commitment from the buyer. These options may simply disappear with the passage of HB 1953.

HB 3167 & HB 3169

HB 3169 would allow consumers to opt out of their contracts or switch equipment if their wireless phone has needed repair or replacement three or more times during their contract period. This is despite the fact that many contracts already contain provisions for defective equipment replacement or repair. HB 3169 would also allow consumers the option to upgrade their current equipment by paying the difference at the “best promotional price” of the new phone or downgrade their equipment at the expense of the retail mobile provider.

Many of the “best promotions” on phones are offered to consumers who are renewing their contracts. Because the language of the bill is unclear as to what promotional pricing would be applicable in these cases, it might be the case that consumers could acquire certain phone equipment at the exclusive contract renewal price. Again, just as a real world example, an iPhone® that might retail for \$599 could be acquired at the contract renewal promotion price for \$299. By offering consumers the option to buy any phone at the “best promotional price” it undermines the company’s ability to offer that promotional deal at all. Ultimately, other customers will be left with fewer choices and promotional deals.

Contracts have always played an important legal role in clearly defining the obligations of the signatories. By undermining the clearly enforceable and meaningful contracts, the market will be distorted and competition disrupted. Ultimately, consumers will pay higher prices and lose out on discounted promotions.

One core function of government is to enforce contract law by compelling parties to conform to the language defined in the contract agreement. Enforcement at this level is appropriate to promote fair competitive and effectiveness in the market. However, the language and content of contracts is a matter of competitive change. Telecommunications service providers must conform to consumer demand in order to stay competitive and earn profits. HB 3167 would undermine this innovative process by commanding what kind of language can be used in electronic contracts offered by mobile service providers. Standardization of language and options will only hurt the competitive process and stifle innovation in contract formation. ★

About the Author

Chris Robertson graduated from the University of Texas with a B.A. in Government and joined the Foundation's Center for Fiscal Policy in January 2007. He returned to the Texas Public Policy Foundation's Center for Economic Freedom this spring after having served on a prominent U.S. presidential campaign in 2007-2008.

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