

# Ensuring Wireless Consumer Protection

**Consumer Advocates' Perspectives  
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# Organization of Presentation

- Part I: Quick Review of Federal/State Wireless Regulation.
- Part II: Developments in the Wireless Industry in a Largely Deregulated Market.
- Part III: Why Consumer Protection Standards are Needed.

# Part One: Federal/State Regulation Of Wireless

- Joint Federal – State Regulation
  - Pre-1993: States regulate intrastate “public mobile services” providers as common carriers; FCC regulates interstate.
    - *Regulation at both levels limited – focused mainly on licensure and rates.*
    - “Private land mobile service” unregulated.
  - 1993: Congress adds 47 U.S.C. § 332(c)(3) of FCA:
    - Introduces “commercial mobile radio services” (CMRS); “public mobile services” & “private land mobile services” distinction eliminated.
    - States completely prohibited from regulating “entry of” CMRS, generally prohibited from regulating “rates charged by CMRS.”

- Joint Federal – State Regulation cont'd
  - 1994: FCC deregulates wireless per 47 U.S.C. § 332(c)(1).
  - 1995: FCC denies petitions by states seeking to continue regulating CMRS rates.
  - 1996: Congress substantially amends FCA:
    - Opens local exchange to competition.
    - Grants FCC broad forbearance authority.
    - Creates explicit Federal Universal Service Fund (FUSF) and procedures for designating Eligible Telecommunications Carriers (ETCs) entitled to receive FUSF subsidies in exchange for assuming certain service obligations.

# Congress' Goals in '93 Amendments

- Primary purpose of 1993 amendments:
  - To eliminate disparate regulatory treatment of wireless carriers based on nonsensical distinction between “public mobile services” and “private land mobile services.”
- Two clear goals in eliminating disparate regulatory treatment of wireless:
  - First, encourage growth of wireless infrastructure.
  - Second, ensure that consumers are better protected than under current law.

# Consumer Protection Was, And Remains, Goal of '93 Amendments

- “The Committee finds that the ***disparities in the current regulatory scheme could*** impede the continued growth and development of commercial mobile services ***and deny consumers the protections they need*** if new services such as PCS were classified as private.”
  - H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. (1993) *reprinted in* 1993 U.S.C.C.A.N. 378, 587 (emphasis added).

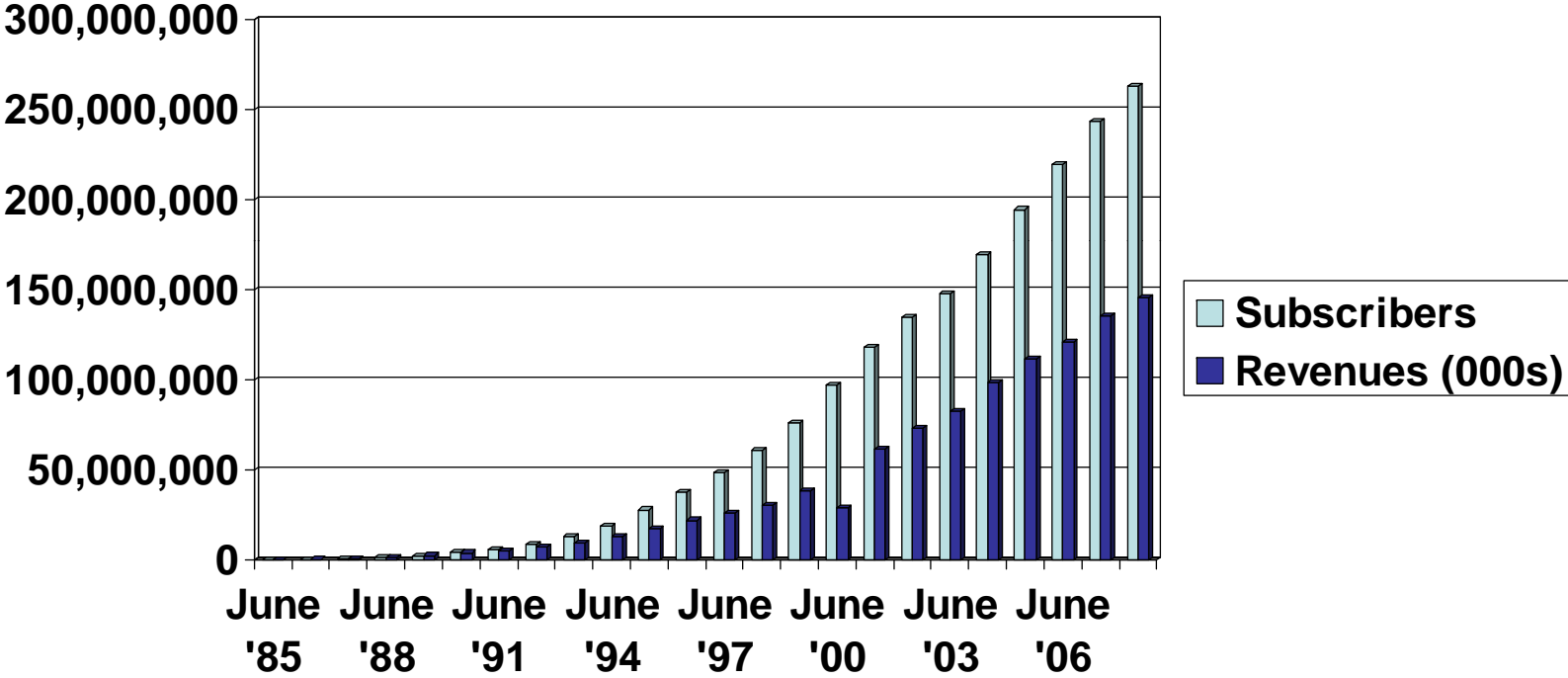
# States' consumer protection role preserved in '93 amendments.

- It is the intent of the Committee that the states would still be able to regulate the terms and conditions of these services. ***By “terms and conditions,” the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (i.e., zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a states lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under “terms and conditions.”***
  - H.R. Rep. No. 103-111, 103rd Con., 1st Sess. (1993) *reprinted in 1993 U.S. Code Cong. & Admin. News* 378, 588 (emphasis added).

# Part II: Congress' First Goal Met – Wireless Industry Growth

- 1985: Commercial wireless service introduced.
  - 203,000 subscribers; 599 cell sites; \$354M revenues.
- 1993: Wireless industry still nascent but growing rapidly.
  - 13M subscribers; 11,551 cell sites; \$9B revenues.
- 1996: Rapid growth continues.
  - 38M subscribers; 24,802 cell sites; \$21.5B revenues.
- 2008: Steady growth, market maturation.
  - 262.7M subscribers; 220,472 cell sites; \$143.7B revenues.

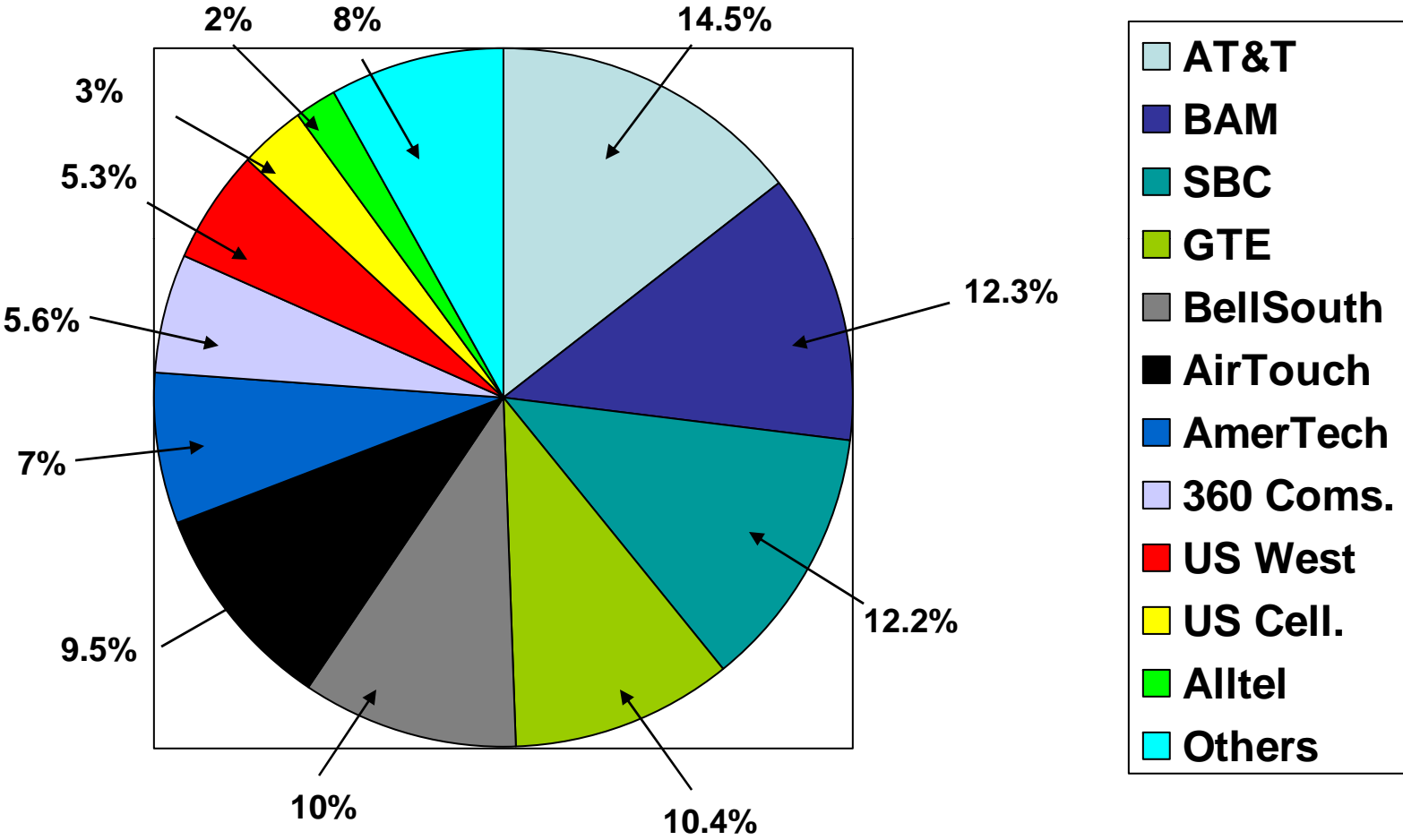
# No Longer A Nascent Industry



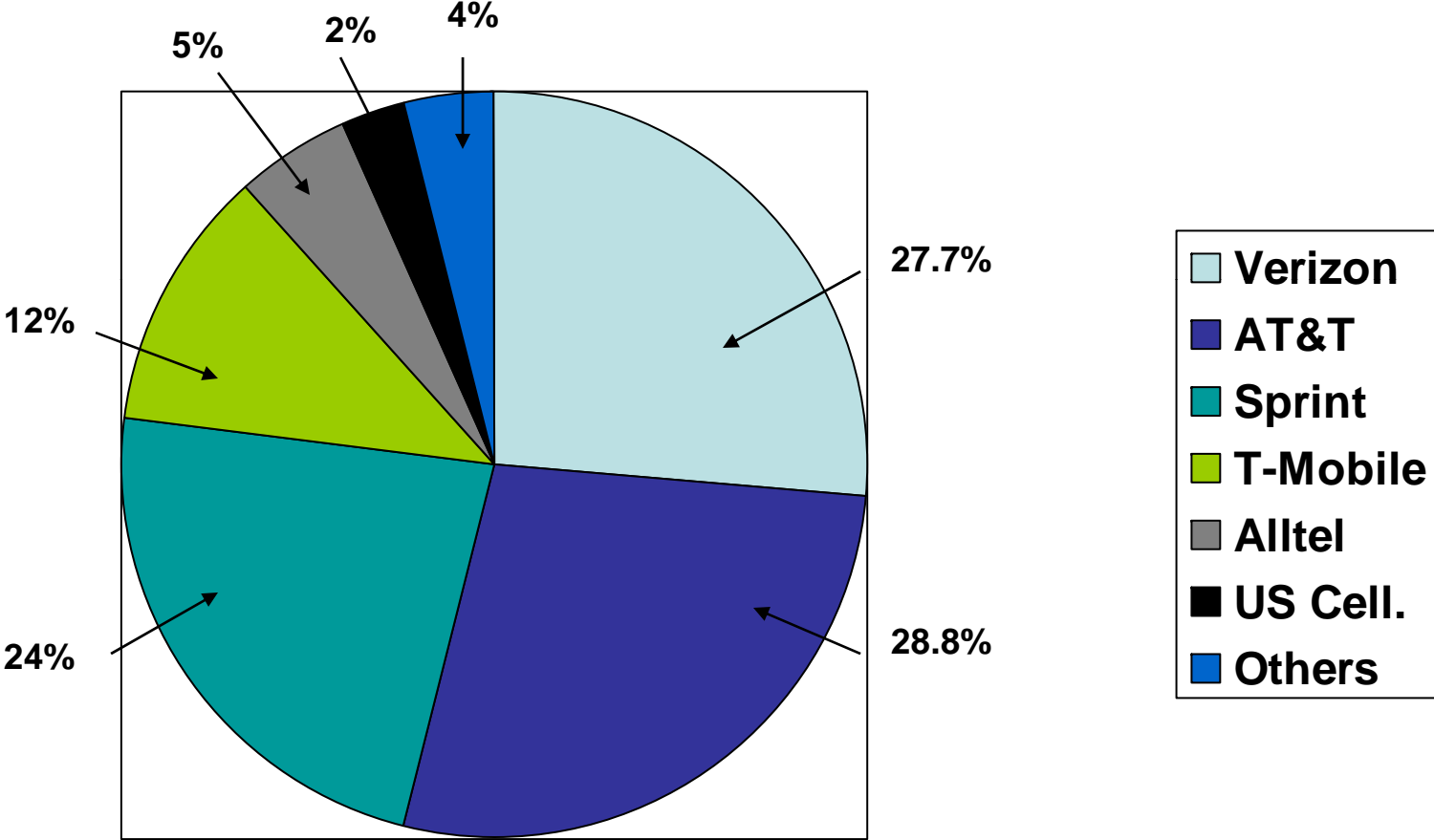
# Deregulation Leads to Market Consolidation and Higher Rates

- Ca. 1996 onwards, states increasingly relax regulatory oversight over CMRS
  - Some state legislatures removed CMRS from utility commission oversight.
  - In some states, utility commissions declared CMRS not subject to commission oversight
- Meanwhile, CMRS market has become increasingly concentrated.
- Average CMRS rates bottomed out and began increasing in 1998.

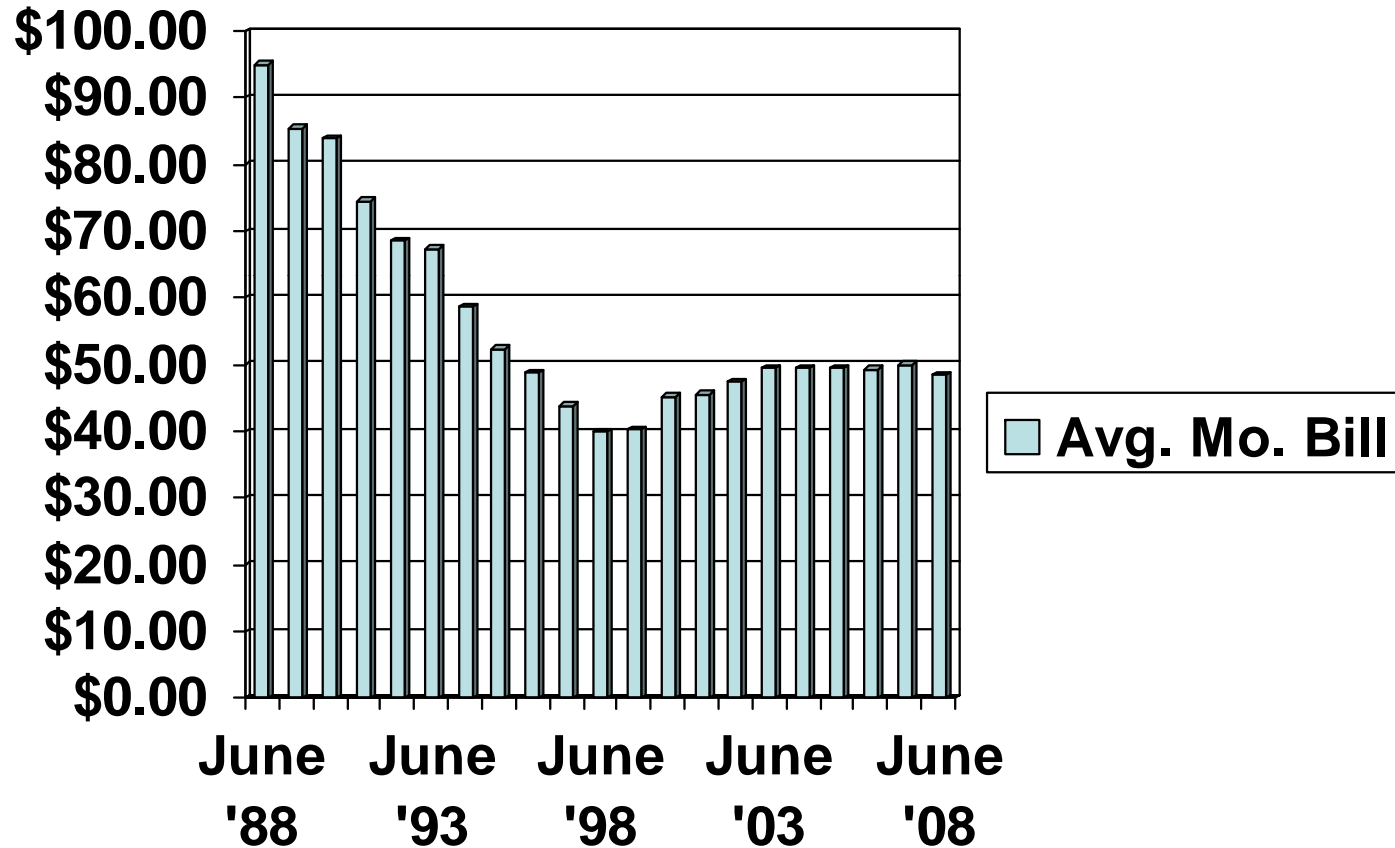
# Wireless Consolidation: YE 1997 (35,968,476 subscribers)



# Wireless Consolidation: YE 2006 (217,418,404 subscribers)



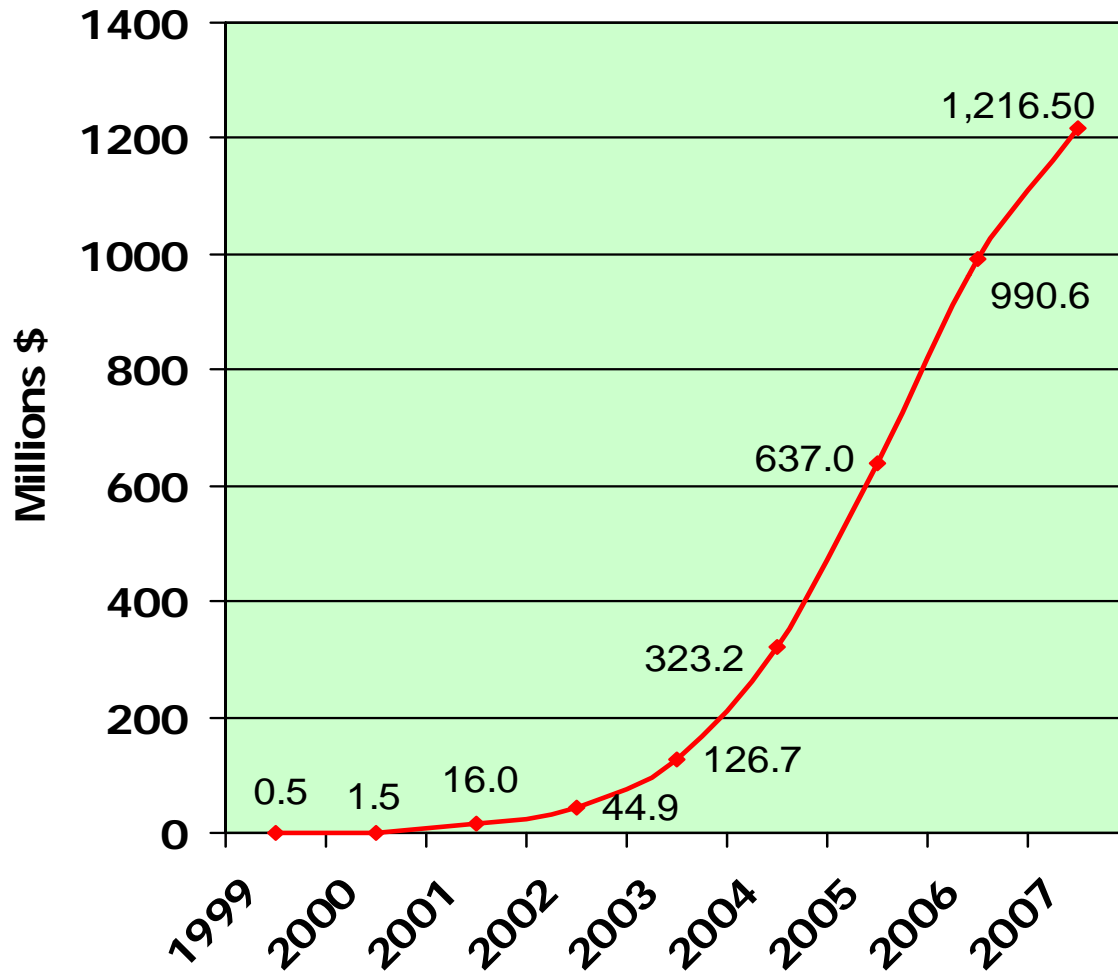
# CMRS Rates Bottom Out As Deregulated Industry Consolidates



# CMRS Providers Increasingly Obtaining FUSF Subsidies

- First wireless ETC designated in 1999.
- 1999, wireless ETCs received approx. \$500,000 in FUSF high-cost support.
- By YE 2007, wireless ETCs received approx. \$1.2B in FUSF high-cost support.
- Wireless ETCs account for over 99% of growth in FUSF high-cost fund.
- Recent changes to the FUSF (e.g., CETC cap) designed to halt explosive increase in subsidies to wireless ETCs and others.

# Growth In Wireless ETC FUSF Support 1999-2007



# Part III: Why Consumer Protection Standards Are Needed

- Congress' first goal of '93 amendments met – *i.e.*, wireless industry growth.
- However, second goal of '93 amendments – *i.e.*, greater consumer protection than under former regulatory model – largely unfulfilled.
- Several reasons second goal not met:
  - Many states have, by statute, deregulated wireless industry entirely.
  - In other states, utility commissions have either concluded they lack statutory authority over wireless or have chosen not to regulate wireless.
  - Justifiable fear of costly litigation over the scope of preemption under 47 U.S.C. § 332(c)(3)(A).
  - Intense lobbying by wireless industry and regulators' conversion to religion of “deregulation.”

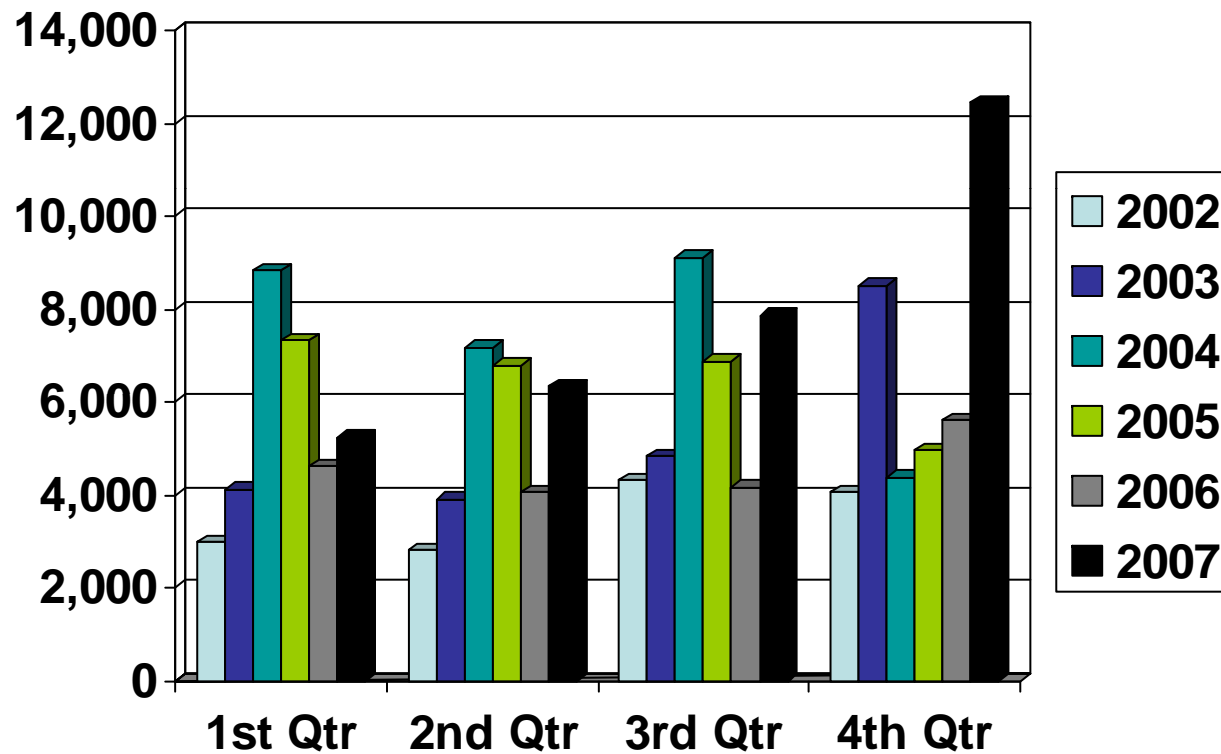
# Consumers Continue To Complain About Wireless Service

- Wireless service continues to rank at or near the bottom in consumer surveys.
- FCC's wireless complaints have held steady or increased.
- FCC itself acknowledged increasing consumer complaints, confusion, dissatisfaction, in proposing additional consumer protections.
- Complaints lodged with the FCC are “tip of the iceberg.”

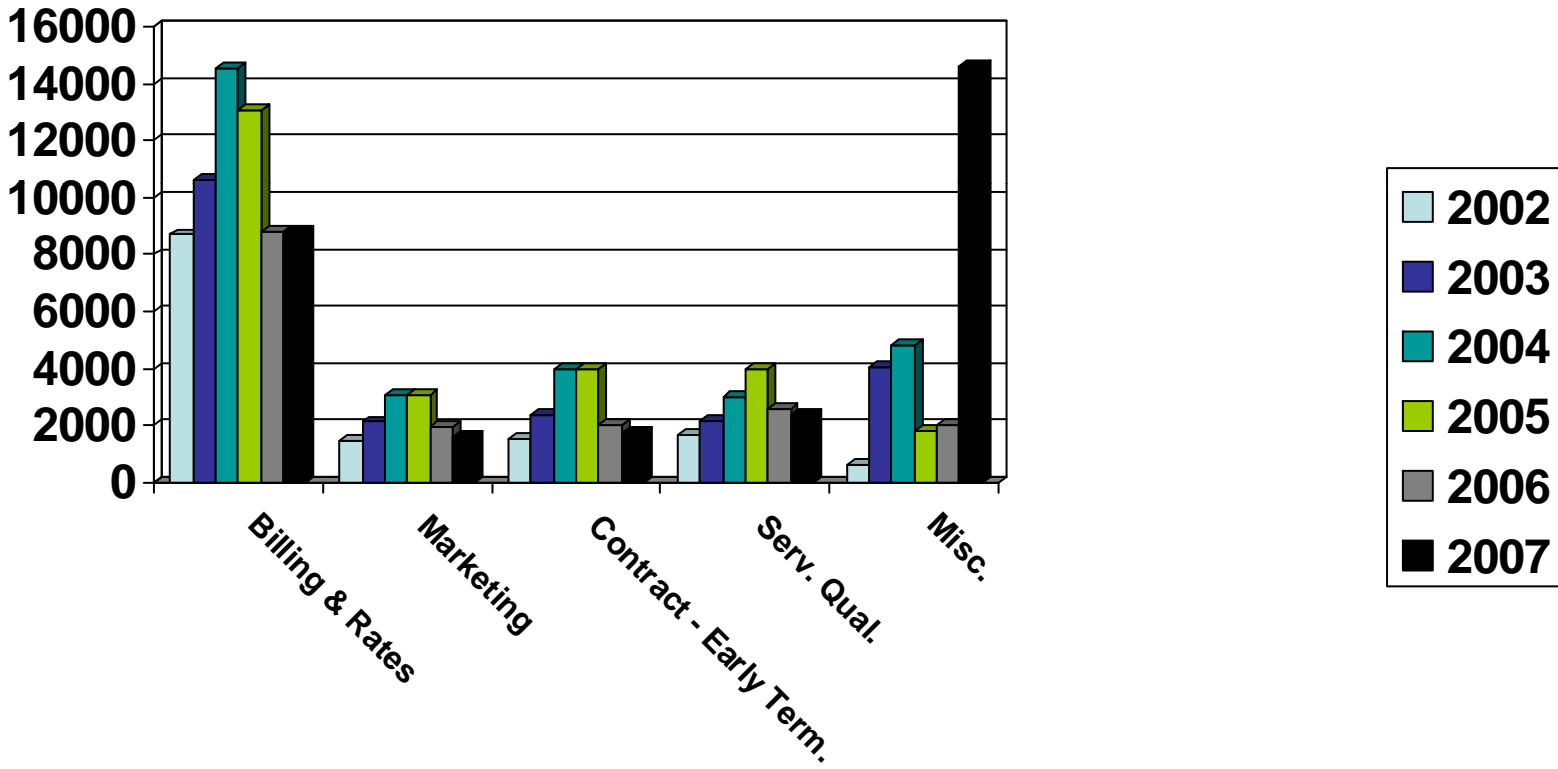
# Wireless Consumer Survey Results

- Consumer Reports Annual Survey of Cell-Phone Service (Jan. 4, 2008) found <50% users satisfied with service (consistent with surveys over past 6 years).
- Better Business Bureau 2004 report noted that wireless industry trails only the used car sales industry in consumer dissatisfaction, with wireless complaints up 263 percent (from 5,928 to 21,524) between 2001 and 2002.
  - Source: Better Business Bureau, “Better Business Bureau Analysis of Cell Phone Complaints Reveals Root Causes of Customer Dissatisfaction,” Press Release (May 4, 2004); available at <http://www.bbb.org/alerts/article.asp?ID=511>

# FCC Wireless Complaints Remain High



# Top FCC Wireless Complaints



# FCC Recognizes High Level of Consumer Complaints, Confusion

- “The Commission's more recent data indicates that ***complaints regarding wireless ‘billing & rates’ and ‘marketing & advertising’ have increased significantly since [1999]*** . . . . [I]n 1999, the Commission received only a few dozen complaints regarding wireless billing. In 2004, the Commission received approximately 18,000 complaints . . . in these categories. [W]e believe [the increase] is demonstrative of consumer confusion and dissatisfaction with current billing practices. 20 F.C.C.R. 6448, 6456 ¶16 (March 18, 2005).
- “[T]he ***increasing number of consumer complaints*** to this Commission and state regulatory agencies regarding wireless billing practices ***provides empirical evidence that application of the truth-in-billing rules to CMRS carriers is necessary and in the public interest.***” *Id.* at 6457 ¶17.
- “Nearly six years after adoption of the Truth-in-Billing Order, ***the record reflects that consumers still experience a tremendous amount of confusion regarding their bills***, which inhibits their ability to compare carriers' service and price offerings, in contravention of the pro-competitive framework of the 1996 Act.” *Id.* at 6468 ¶39.

# FCC Complaints Are “Tip Of The Iceberg”

- Substantial number of consumer complaints about wireless service never find their way to the FCC, or even to state regulators and consumer advocates.
- According to a nationwide survey of wireless customers, nearly half (46%) did not know who to contact in case their carrier could not resolve a billing or service problem to their satisfaction.
- Only 4% of survey respondents indicated that they would contact the FCC and only 5% indicated that they would contact state regulators.
  - Source: Baker & Kim-Sun, “Understanding Consumer Concerns About the Quality of Wireless Telephone Service” AARP Public Policy Institute, p. 4 (June 2003); available at [http://research.aarp.org/consume/dd89\\_wireless.html](http://research.aarp.org/consume/dd89_wireless.html).
- Cal. PUC’s complaint data showed 5,698 complaints about wireless service in 2003 alone.
  - Initial Comments of the Cellular Carriers Association of California on Issues Other Than Economic Impact, CPUC Docket No. R.00-02-004, at 5 (Filed March 23, 2004).

# Identifying Issues For Consumer Protection Standards

- Top 5 Categories of FCC Wireless Complaints.
  - Carrier Marketing & Advertising; Contract - Early Termination; Billing & Rates; Service Related Issues; Telephone Consumer Protection Act.
- Categories in FCC Proposed Rules.
  - Billing of Government Mandated and Non-Mandated Charges; Combination of Federal Regulatory Charges in Line Items; Point of Sale Disclosure.

# Identifying Issues For Consumer Protection Standards – cont'd

- State AGs' 2004 AVC Agreements.
  - Disclosing Material Rates and Terms during Sales Transaction; Accurate Service Coverage in Marketing and Advertising; Cancellation Period for New Wireless Service; No Misrepresentation of Term or Condition of Products or Services (including cost) in Advertising (misrepresenting any); Disclosing Taxes and Surcharges on Bills; Information for Consumer Inquiries and Complaints on Bills.
- Consumer Advocates' Experience.
  - Contract/Billing Issues; Quality of Service Issues (both call quality and equipment); Health and Public Safety Issues; Access to Customer Service; Interoperability (handset unlocking); Spam and Unwanted Text Messaging.

# Summary: Recommendations

- Time is ripe for states/FCC to address the 2nd goal of Congress' '93 Amendments – *i.e.*, protecting consumers.
  - Wireless industry is well-established, increasingly concentrated (2 largest CMRS providers are also 2 largest ILECs, broadband providers)
  - Rates have bottomed out or increased since 1998.
  - Wireless carriers have largely assumed ILEC-like obligations as ETCs in order to share in FUSF subsidies.
  - Regulation of wireless service quality and business practices has become increasingly important as number of customers “cutting-the-cord” has increased (15%, according to one estimate).

# Summary: Recommendations

- Limits of “Deregulation” Model Better Understood.
- Scope of State Authority over “Other Terms and Conditions” More Clear.
- General Consensus on Consumer Issues That Warrant Standards.
- Nationally Applicable, Minimum Consumer Protection Standards, Enforceable By States, FCC, or Consumers, Appropriate.
- Freedom of States to Adopt More Stringent, Particularized Standards Reasonable and Consistent With Both Historic Dual Federal-State Role and Congressional Intent.