

**Testimony of
Bethanne Cooley
Director, State Legislative Affairs
CTIA-The Wireless Association®
In Opposition to Kansas House Bill 2084
February 19, 2015**

Before the Kansas House Utilities and Telecommunications Committee

Chairman Seiwert, Vice Chair Alford, and members of the Committee, on behalf of CTIA-The Wireless Association®, I am here today to respectfully urge your rejection of House Bill 2084 related to the sale of prepaid cell phones. CTIA is the international trade association for the wireless communications industry. Membership in the association includes wireless providers and their suppliers, including the major wireless carriers, AT&T, Verizon, Sprint, T-Mobile, US Cellular and TracFone as well as manufacturers of wireless data services and products. We are concerned House Bill 2084 could limit consumer access to important communication services, would be costly to prepaid consumers, would be onerous and burdensome for business to administer and runs afoul of federal law in numerous aspects.

House Bill 2084 would require a purchaser of a prepaid cell phone or SIM card to provide personal information, including the purchaser's government issued identification, name, home address and the mobile equipment identifier to the prepaid retailer. In addition, the bill would require the prepaid retailer to disclose the customer's personal information into a State database (the "mobile communications devices identification system"), where the State will maintain this personal information. Failure to comply with this provision would result in a civil penalty imposed upon the prepaid retailer. Furthermore, House Bill 2084 would also impose a new and costly "mobile communications devices identification fee" of 1% per retail transaction.

Firstly, House Bill 2084 could have the unintended consequence of hampering citizens from purchasing prepaid wireless services and limiting access to communications services, especially for those consumers who do not have the required identification. Consumers who currently purchase prepaid wireless services include senior citizens who are limited wireless users, parents who want to better manage their children's cell phone use and domestic violence victims who want to secure a communications device without fear of their personal information being

disclosed. House Bill 2084 may hinder these law-abiding consumers from obtaining access to vitally important wireless communications services.

Secondly, House Bill 2084 significantly differs from previous iterations this Committee has seen in prior years. Through the creation of the “Mobile Communications Devices Identification System,” the State would be creating a database that would house prepaid customer’s information. The bill would also charge the Kansas Department of Administration to identify a vendor to create and maintain this database. Under this bill, the State would compel wireless providers to disclose consumer information in conflict with federal law. Additionally, the bill compels prepaid retailers to disclose their customer’s information to be stored in this database—without any safeguards that customers’ personal information is protected and secured.

Thirdly, House Bill 2084 would also impose additional new fees on prepaid wireless consumers. The proposed 1% “mobile communications devices identification fee” could add over \$1 million to prepaid consumers’ costs annually. Given the growing popularity of prepaid wireless services, this fee would impact nearly 1 in 4 wireless consumers.¹ Furthermore, it is important to note that imposing any administrative fee cap on wireless providers is preempted under Section 332 of the Communications Act, which prohibits states from regulating the rates charged by wireless providers.²

House Bill 2084 would place onerous administrative burdens on retailers as well. Retailers would be required during busy times to collect personal information from the purchaser. Additionally, retailers would need to install new equipment and software to connect with the State’s database, the “Mobile Communications Devices Identification System.” Retailers would also be required to train personnel to administer this new regime. Given that no state in the country has implemented such a system, this financial and administrative burden on retailers could be significant.

¹ “CTIA Year-End 2013 Semi-Annual Wireless Industry Survey http://www.ctia.org/docs/default-source/Facts-Stats/ctia_survey_ye_2013_graphics-final.pdf?sfvrsn=2, last accessed 2/15/2015.

² 47 U.S.C. § 332

It is important to note that in 2011, the Commonwealth of Puerto Rico enacted legislation similar to House Bill 2084. CTIA filed suit against the Commonwealth arguing the bill conflicted with federal law - specifically the federal Stored Communications Act (SCA), which expressly prohibits wireless providers from disclosing information regarding its customers or subscribers except under specific, statutorily-enumerated circumstances and conditions.³ In May 2014, the U.S. Court of Appeals for the First Circuit reaffirmed a lower court's decision and struck down the law finding that it conflicted with the SCA. House Bill 2084 is similarly fraught.

In closing, it is important to note that existing tools are already available to assist law enforcement agencies in apprehending those who misuse prepaid wireless devices to further criminal activity. Wireless providers comply with subpoenas and other court orders for call records and law enforcement wiretaps, and also respond to emergency requests in exigent circumstances. Wireless providers comply with all state and federal laws in this area and have dedicated centralized teams in place to respond to law enforcement inquiries. Additionally, law enforcement can already use the same tools to investigate call records of prepaid wireless devices as it uses to investigate those of postpaid wireless devices.

Thank you for the opportunity to testify today. For all the reasons described herein, CTIA respectfully requests the Committee's rejection of House Bill 2084.

³ 18 U.S.C. § 2701