

CELL PHONE TERMINATION RIGHTS FOR RELOCATING SERVICE MEMBERS

M.S. ARCHER

Regional Legal Assistance Officer
Marine Corps Installations East

Have you received orders to deploy? Even if you are allowed to bring your personal cell phone, it is unlikely in the extreme that your wireless plan includes service to such hot spots as Afghanistan or Iraq. Or maybe you have received permanent change of station (PCS) orders to serve overseas or to serve in a distant location within the United States. Either of these PCS moves also have the potential to affect your ability to use your cell phone service under your current wireless contract. Does executing a military move mean that you are stuck with paying the monthly cell phone bill for a service that you can no longer use? Or, if you decide to cancel the contract early, are you stuck with an early termination fee? What are your rights?

On October 10, 2008, the Service Member Civil Relief Act (SCRA) was amended to add section 535a, requiring wireless providers to cancel or suspend contracts, without any additional fee, at the request of service members who received PCS orders within the United States or orders to deploy overseas, whenever such orders had a “material effect” on ability to use the service. Probably due to oversight, the statute did not specifically provide any protection to service members who received PCS orders overseas; e.g., to Japan or Germany. Oddly, a Marine assigned to Camp Lejeune who received PCS orders to Camp Pendleton, California, was covered, but orders to Okinawa, Japan did not give rise to any statutory protection.

On October 13, 2010, President Obama signed into law the Veteran’s Benefits Act, which, among other provisions, amended section 535a of the SCRA. As anticipated, the amendment erased the odd distinction between various types of orders. Now, the Act applies to any “military orders to relocate for a period of not less than 90 days to a location that does not support the [cell phone service] contract.” Note also that the old language requiring a “material effect” on ability to use the service has vanished. Now the standard is that the new location does not support the service contract.

If the new location does not support the contract, the current law gives the consumer the opportunity to terminate the wireless service contract earlier than it would otherwise end. For example, if the consumer has a two year wireless plan and then after three months receives orders to relocate to a place that does not support the contract, the consumer can terminate at the three month mark, even though there would otherwise be 21 months left on the contract. Furthermore, a consumer that terminates early under the SCRA cannot be charged any early termination fee.

When does the location “not support” the wireless contract? The statute does not contain a definition of this phrase. Clearly however, if the consumer cannot get any wireless service in the new location, the contract is not supported. But what happens if a North Carolina consumer with orders to California has a plan that provides service

outside the Carolinas, but only at a much higher rate? It would seem that this situation is also one in which the new location, California, does not support the contract.

To terminate service, the relocating consumer must notify the wireless provider in writing of intent to terminate, and must provide the wireless provider with a copy of the PCS or deployment orders which cause the relocation.

If the service member is eligible to terminate service under the SCRA and is on a family cell phone service plan, the service member can choose to terminate his own cell phone service only, or may elect also to terminate the cell phone service of other family members who accompany him to the new location.

After wireless service termination under the SCRA, the service member has a right to his old telephone number back, provided that (a) the period of relocation did not exceed three years, and (b) the service member applies within 90 days after the period of relocation.

Even before the enactment any federal cell phone termination rights, some wireless providers were perfectly willing to suspend cell phone service during a deployment. Typically, the service member made the request by phone and the service was shut off within minutes of the call. However, there were recurring problems when the employees who turned off the service neglected to make the necessary changes to the billing codes. Thus, the wireless companies provided no service but continued to bill the customer. Service members found that, upon return from deployment, the wireless provider had referred the account to a collections agent who had no interest whatsoever in anything except collecting money from the service member and had no authority to make the necessary changes to the account. In other words, the left hand of the company (billing) didn't know what the right hand (terminating service) had done.

To prevent this problem, keep a copy of your written request to terminate. If possible, obtain confirmation that the wireless provider received the request. Keep any response that the wireless provider makes indicating that the service is terminated under the SCRA and that no early termination fees will be charged. Additionally, have the wireless provider make a note in their electronic records as well. Call up the wireless provider a second time prior to deployment and ask the status of your account; make sure there is no billing. Have them read the notation to you.

In addition, to head off any problems, you need to ensure that you promptly pay all existing charges prior to your deployment or PCS move. Make sure to account for any partial months. For example, if you ask on April 10th the balance owed on your account, you may be provided with the balance only as of the end of the last billing cycle March 31st. Make sure to pay off any amounts right up to the date of termination. If you fail to do so, you may find that your account is in collections and the wireless provider has caused adverse entries to be made in your credit history.

The legal assistance office has found that, either through ignorance or the law or disregard, wireless providers sometimes refuse to terminate service (without a fee) even though the law requires it. In such cases, it may be necessary to continue pushing the request to higher levels of the business' command structure until someone closer to the top of the food chain realizes that they have to obey the law. If the business simply refuses to obey the law, the legal assistance office may refer the case to the SCRA enforcement section of the United States Department of Justice. As you can imagine, the Department of Justice can be extremely effective in compelling compliance from a recalcitrant business. Consumers experiencing difficulty obtaining compliance from the wireless provider are encouraged to make a complaint to the consumer protection division of the state Attorney General, to make an on line complaints to the Better Business Bureau, to make an on line complaint to the Federal Trade Commission Military Sentinel, and to seek advice from your military legal assistance office.

Click [here](#) for the complete text of section 535a of the SCRA, as amended by the October 13, 2010 Veteran's Benefits Act.

Rev 9 November 2010