Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
National Association of State Utility Consumer	)	
Advocates' Petition for Declaratory Ruling	)	CG Docket No. 04-208
Regarding Monthly Line Items and Surcharges	)	
Imposed by Telecommunications Carriers	)	

REPLY COMMENTS OF T-MOBILE USA, INC.

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Dated: August 13, 2004

SUMMARY

T-Mobile agrees with NASUCA that misleading or deceptive billing practices have no place in the telecommunications marketplace. As the oppositions filed in response to the Petition demonstrate, however, NASUCA's proposal to prohibit carriers from imposing line item charges, unless the charges are expressly mandated by federal, state or local regulatory action, would cause far greater harm than good. The prohibition would inhibit competition, reduce the variety of service plans available to consumers, and interfere with the ability of carriers to communicate with their customers regarding the rates and charges for those service plans. By preventing carriers from recovering their costs in a targeted manner, the prohibition could also lead many consumers to incur higher overall averaged rates.

The prohibition NASUCA proposes is also unnecessary, as the oppositions filed in response to the Petition explain. NASUCA has failed to demonstrate that (1) consumers are being misled or deceived by carrier line item charges, (2) existing restrictions on misleading and deceptive practices are insufficient, or (3) the prohibition could benefit consumers and that this benefit would outweigh the harm the prohibition would cause. The markets for wireless and long distance telecommunications services are highly competitive. In a competitive marketplace, any unscrupulous carrier that seeks temporary advantage through misleading or deceptive practices will be punished quickly as consumers learn that other carriers offer better services or lower rates. Carriers that compete vigorously with respect to rates also compete with respect to surcharges, because sales personnel for these carriers seek to increase sales by educating potential consumers about differences in both the rates and surcharges of their competitors. Ironically, consumers would receive less information from carriers about their bills under the NASUCA proposal than they currently receive in a competitive marketplace.

In any event, the relief NASUCA requests cannot be granted, as the oppositions to the petition demonstrate. NASUCA has asked the Commission to prohibit carriers from imposing line item charges unless the charges are expressly mandated by federal, state or local regulatory action. However, the Commission's current rules expressly allow carriers to recover their costs in separate line items, as NASUCA itself acknowledges. As such, NASUCA seeks a change in the Commission's rules rather than merely an interpretation of those rules, but its "Petition for Declaratory Ruling" does not provide the Commission with the proper procedural vehicle for changing Commission rules. Rather, the Commission would have to issue a Notice of Proposed Rulemaking in order to consider the changes NASUCA proposes, or face the prospect that requiring any such changes would run afoul of the Administrative Procedures Act ("APA"). Such a rulemaking is unnecessary and could not lead to the adoption of the prohibition NASUCA proposes. Absent any real showing of market failure or customer abuse, which is wholly lacking in NASUCA's petition and contrary to the realities of the marketplace, such a prohibition would be arbitrary and capricious and constitute reversible error. Moreover, adoption of the prohibition that NASUCA proposes would violate the First Amendment rights of carriers by unlawfully censoring truthful, non-misleading speech. The prohibition would also violate Section 332 of the Communications Act of 1934, as amended, (the "Act") to the extent the changes NASUCA proposes authorize states to dictate the structures and levels of CMRS rates through the regulation of CMRS surcharges.

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REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile") hereby replies to comments submitted in response to the May 25, 2004 *Public Notice* issued by the Federal Communications Commission ("FCC" or "Commission")[1] regarding the Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates ("Petition") on March 30, 2004.[2] As explained in more detail below, T-Mobile respectfully requests the Commission to deny the Petition.

Consumers benefit the most when there is robust competition among telecommunications service providers. As a result of competition in the market for wireless services, for example, consumers enjoy the freedom to choose among a greater variety of innovative products, services, and service plans at lower prices. The FCC has found that competition is also far more effective than regulation for ensuring that the practices and rates of carriers serving consumers are just and reasonable.[3] Recognition of this fact led to the Telecommunications Act of 1996, which requires

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1 *National Association of State Utility Consumer Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-in-Billing and Billing Format*, Public Notice, DA 04-1495, CG Docket 04-208 (rel. May 24, 2004).

2 *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Carriers,* CC Docket No. 98-170 (rel. March 30, 2004).

3 *Truth-In-Billing and Billing Format*, 14 FCC Rcd. 7492, ¶ 55 (1999) ("*Truth-In-Billing Order*).

the Commission to establish a "pro-competitive, *deregulatory* national policy framework" and affirmatively promote efficient competition.

T-Mobile agrees with NASUCA that misleading or deceptive billing practices have no place in the telecommunications marketplace. As the oppositions filed in response to the Petition demonstrate, however, NASUCA's proposal to prohibit carriers from imposing line item charges, unless the charges are expressly mandated by federal, state or local regulatory action, would cause far greater harm than good. The prohibition would inhibit competition, reduce the variety of service plans available to consumers, and interfere with the ability of carriers to communicate with their customers regarding the rates and charges for those service plans. By preventing carriers from recovering their costs in a targeted manner, the prohibition could also lead many consumers to incur higher overall averaged rates.

The prohibition NASUCA proposes is also unnecessary, as the oppositions filed in response to the Petition explain. NASUCA has failed to demonstrate that (1) consumers are being misled or deceived by carrier line item charges, (2) existing restrictions on misleading and deceptive practices are insufficient, or (3) the prohibition could benefit consumers and that this benefit would outweigh the harm the prohibition would cause. The markets for wireless and long distance telecommunications services are highly competitive. In a competitive marketplace, any unscrupulous carrier that seeks temporary advantage through misleading or deceptive practices will be punished quickly as consumers learn that other carriers offer better services or lower rates. The rate at which consumers can change carriers with the advent of Local Number Portability has only assisted in this regard. Carriers, which compete vigorously with respect to rates, also compete vigorously with respect to surcharges, and sales personnel seek to increase sales by educating potential consumers about differences in the rates and surcharges of their

competitors. Ironically, consumers would receive less information from carriers about their bills under the NASUCA proposal than they currently receive.

In any event, the relief NASUCA requests cannot be granted, as the oppositions to the petition demonstrate. NASUCA has asked the Commission to prohibit carriers from imposing line item charges unless the charges are expressly mandated by federal, state or local regulatory action. However, the Commission's current rules expressly allow carriers to recover their costs in separate line items, as NASUCA itself acknowledges. As such, NASUCA seeks a change in the Commission's rules rather than merely an interpretation of those rules, but its "Petition for Declaratory Ruling" does not provide the Commission with the proper procedural vehicle for changing Commission rules. Rather, the Commission would have to issue a Notice of Proposed Rulemaking in order to consider the changes NASUCA proposes. Absent any real showing of market failure or customer abuse, which is wholly lacking in NASUCA's petition and contrary to the realities of the marketplace, such a prohibition would be arbitrary and capricious and constitute reversible error. Moreover, adoption of the prohibition that NASUCA proposes would violate the First Amendment rights of carriers by unlawfully censoring truthful, non-misleading speech. The prohibition would also violate Section 332 of the Act to the extent the changes NASUCA proposes authorize states to dictate the structures and levels of CMRS rates through the regulation of CMRS surcharges.

I. THE PROHIBITION NASUCA PROPOSES IS UNNECESSARY

The prohibition NASUCA proposes is unnecessary, as the oppositions filed in response to the Petition demonstrate.[4] NASUCA has failed to demonstrate that consumers are being

[4] *See, e.g.,* Comments by the Coalition for a Competitive Telecommunications Market ("CCTM") at 2 (stating that NASUCA's proposition is unnecessary); Comments by CTIA – the Wireless Association ("CTIA") at 12 (same); Comments by IDT America, Corp. ("IDT") at 1 ("NASUCA has failed to submit any record evidence that the number

misled or deceived by carrier line item charges, or that the existing restrictions on misleading and deceptive practices are insufficient to protect consumers. As several parties noted, NASUCA provided no evidentiary support for the allegations it made in support of its petition, including its claim that carriers are over-recovering through the use of line item charges.[5] NASUCA claims that consumers are confused about whether the line item charges are mandated by government bodies,[6] yet the carriers in each of the examples NASUCA provides explicitly inform consumers that the line item charges are not mandated by any government entities.[7] In reality, the billing practices of most commercial mobile radio service ("CMRS") providers, including those NASUCA discusses in its petition, are entirely consistent with the *Truth-in-Billing* ("TIB")

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of complaints regarding line items are at a level requiring the promulgation of *additional* billing rules."); Comments by Leap Wireless International, Inc. ("Leap") at 6 (stating that NASUCA's proposition is unnecessary); Comments by the National Telecommunications Cooperative Association ("NTCA") at 5 (same); Comments by the United States Telecom Association ("USTA") at 7 (arguing that "no additional and no more restrictive truth-in-billing rules are necessary.").

5 *See, e.g.,* Comments by AT&T Wireless Services, Inc. ("AWS") at 6 ("NASUCA's unsupported allegation that wireless carriers are somehow over-recovering for regulatory programs is as misguided as its contention that consumers would be better served by regulatory restrictions on the information that carriers may provide to them."); Comments by Cingular Wireless ("Cingular") at 7 ("NASUCA fails to provide any evidentiary or policy basis for disturbing ...[the TIB] decision."); IDT Comments at 2 ("Aside from its rhetoric, NASUCA presents no statistical evidence to support its claim of a "mushrooming contagion" of line item problems."); NTCA Comments at 2 ("NASUCA has not submitted specific information to back up its allegations."); Comments by the Rural Cellular Association ("RCA") at 3 (explaining that NASUCA's Petition is based on an "unfounded and undocumented contention"); Comments by Sprint Corporation ("Sprint") at 8 ("NASUCA provides no evidence that any customer has been misled or deceived by any surcharge assessed by a carrier."); Comments by the United States Cellular Corporation ("USCC") at 4 (same); Comments by Verizon Wireless at 30 (same).

6 *See* NASUCA Petition at 32 (claiming that "surcharges appear to have been named in a way calculated to mislead or confuse consumers about the origin of the charge in question.")

7 *See* NASUCA Petition Attachments A-E.

guidelines,[8] and many have voluntarily taken additional steps to ensure that consumers have access to information they need to make informed decisions.[9]

T-Mobile agrees with the Rural Cellular Association,[10] CTIA,[11] the Coalition for a Competitive Telecommunications Market,[12] AT&T Wireless Services, Inc.,[13] and the National Telecommunications Cooperative Association[14] that the TIB guidelines already provide effective protection for consumer interests while allowing the vibrant and competitive CMRS market to thrive. In the TIB proceeding, the Commission fully addressed the issues raised by the NASUCA Petition. The Commission determined that carriers in competitive markets should be allowed to determine how costs are passed through to consumers.[15] In light of the highly

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8 *See, e.g.,* Comments by AT&T Corp. ("A&T") at 16 (explaining that its billing practices are consistent with the Commission's Truth-in-Billing guidelines); CTIA Comments at 3 (same); Cingular Comments at 8 (same); Comments by Global Crossing North America, Inc. ("Global Crossing") at 2 (stating that, even as NASUCA recognizes, the various line items complained about in the Petition are in fact truthful and compliant with the Commission's Truth-in-Billing guidelines); Comments by MCI at 11 ("Carriers such as MCI fully comply with standardized labeling of charges resulting from federal action as required by the *TIB Order*.").

9 *See, e.g.,* Comments by Nextel Communications, Inc. and Nextel Partners, Inc. ("Nextel") at 11 ("Nextel has taken further steps to provide information about he FPCR fee and other non-government mandated fees to customers – both prior to and during their service relationship...."); Comments by Verizon at 7 ("Verizon...is constantly undertaking efforts to make its bills clearer and responsive to consumer desires."); Verizon Wireless Comments at 26 ("Verizon makes extraordinary and industry leading efforts to disclose all charges to its customers, whether such disclosures appear on its Bills, point of sale or in its advertising.").

10 *See* RCA Comments at 8.

11 *See* CTIA Comments at 12.

12 *See* CCTM Comments at 7.

13 *See* AWS Comments at 2.

14 *See* NTCA Comments at 2.

15 *See Truth-In-Billing Order* at ¶ 55 ("We decline at this time to mandate such requirements, but rather prefer to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in separate line items.").

competitive CMRS market,[16] the Commission exempted CMRS carriers from compliance with almost all of the principles and guidelines contained in the federal rules, concluding that many of those requirements would be inapplicable or unnecessary.[17]

Nothing has changed,since the Commission concluded the TIB proceeding, and the type of prohibition NASUCA proposes remains unnecessary for highly competitive markets, including the CMRS market.[18] Therefore, T-Mobile supports continued adherence to the Commission's existing TIB guidelines, because the prohibition NASUCA proposes is not necessary to ensure that consumers have adequate access to accurate information about their bills and would not serve the public interest.[19] Moreover, T-Mobile agrees with CTIA that the Commission should permit the industry-led voluntary consumer code to operate undisturbed for a sufficient time so that its efficacy can be fairly gauged.[20]

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16 *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service*, WT Docket No. 02-379, *Eighth Report*, FCC 03-150 at 9 (July 14, 2003) ("*CMRS Competition Report*") ("[W]e conclude that there is effective competition in the CMRS marketplace.").

17 *See Truth-In-Billing Order*, ¶ 47.

18 *See, e.g.,* CTIA Comments 8-9 (stating that the type of regulation NASUCA proposes is unnecessary in a competitive CMRS market); NTCA Comments at 5 (explaining that consumers should be permitted to determine what provider and related billing system best meet their needs); USCC Comments at 4 ("The FCC found no reason to adopt general regulation of wireless bill in 1999 or 2002, when it modified wireless billing practices with respect to universal service line items. In light of ever increasing wireless competition, there is certainly no reason to so do now."); USTA Comments at 7 (stating that NASUCA's proposal ignores the "competitive nature of today's telecommunications market).

19 *See, e.g.,* CCTM Comments at 10 ("The relief requested by NASUCA would harm public welfare by compromising the benefits of a competitive marketplace."); CTIA Comments at 11-12 (same); Global Crossing at 3 (stating that NASUCA fails to explain how providing less information to consumers would serve the public interest); NTCA Comments at 5 (same); RCA Comments at 9 (explaining that the NASUCA petition "exceeds what is necessary in the public interest to advance consumers' access to knowledge"); Verizon Comments at 15 (same).

20 *See* CTIA Comments at 1.

II. THE PROHIBITION NASUCA PROPOSES WOULD CAUSE MORE HARM THAN GOOD

NASUCA rightly seeks to eliminate misleading and deceptive practices. However, the prohibition that NASUCA proposes to achieve this worthy goal would harm the consumers NASUCA seeks to protect, as many of the parties who participated in this proceeding explained.[21] This harm would far outweigh any potential benefits of the proposed prohibition. T-Mobile agrees with parties opposing the petition that the unnecessary prohibition would limit consumer choice and access to information,[22] burden CMRS providers,[23] and result in rate increases for many customers.[24]

Consumers would be directly harmed by the prohibition NASUCA proposes, as demonstrated in the oppositions to the Petition. The NASUCA Proposal would severely limit, if not abolish, the ability of CMRS carriers to provide nationwide and regional "one-rate calling plans" that consumers demand.[25] As CTIA noted in its opposition, telecommunications carriers are subject to approximately 14,412 federal, state, and local taxing jurisdictions.[26] Under NASUCA's proposal, CMRS providers would have to adjust their rates to reflect the regulatory

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21 *See, e.g.,* CTIA Comments at 5 (describing how consumers would receive less information, and be subject to greater confusion under NASCA's proposal); Global Crossing at 2 (stating that NASUCA's proposal is anti-consumer); NTCA Comments at 4 ("Hidden charges imposed across the industry leave the consumer with no knowledge and little recourse.").

22 *See, e.g.,* AWS Comments at 5 (explaining that NASUCA's proposal would limit consumer choice and reduce consumer access to information); Cingular Comments at 6 (same); CTIA Comments at 5 (same); Global Crossing at 2 (same); NTCA Comments at 4 (same); Verizon Comments at 9 (same).

23 *See, e.g.,* NTCA Comments at 5 (explaining that the proposed prohibition would unnecessarily burden CMRS providers); Nextel Comments at 30 (same).

24 *See, e.g.,* Cingular Comments at 6 (explaining that the proposed prohibition would result in rate increases); CTIA Comments at 19 (same).

25 *See, e.g.,* Cingular Comments at 6 (explaining why proposed prohibition would interfere with the ability of carriers to offer one-rate calling plans); CTIA Comments at 4-5 (same).

26 *See* CTIA Comments at 4.

costs they incur in each of these 14,412 jurisdictions. These rates would have to be amended each time regulatory compliance costs increase or decrease due to changes in tax rates, mandatory regulatory contributions (*e.g.*, changes to the USF contribution factor), or regulatory requirements.[27] The resulting hodge-podge of rates and billing practices – which could vary significantly even within the same state – would confuse consumers and make monitoring of billing practices by regulatory authorities difficult.[28] The rates consumers pay would also reflect the higher costs that carriers would incur to maintain localized rates.[29] If carriers nonetheless attempted to maintain popular national or regional "one-rate calling plans," most consumers would pay higher geographically averaged rates for those plans, which would punish consumers living in jurisdictions that impose lower taxes, regulatory fees or less burdensome regulatory requirements.

The prohibition NASUCA proposes would also indirectly harm consumers by inhibiting competition.[30] T-Mobile agrees with those who oppose NASUCA's petition because the proposed prohibition would threaten the national regulatory framework for CMRS that has successfully fostered vibrant competition for wireless services, which has led to tremendous

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27 *See, e.g.,* Cingular Comments at 6 (explaining why the proposed prohibition would lead to an increase in the frequency of rate changes); CTIA Comments at 7 (same); NTCA Comments at 5 (same); Verizon Wireless Comments at 13 (same).

28 *See, e.g.,* Cingular Comments at 6 (explaining likelihood of customer confusion under the proposed prohibition); NTCA Comments at 5 (same); Verizon Comments at 10 (same).

29 *See, e.g.,* CTIA Comments at 5 (discussing the operational problems and inefficiencies that would result from localized rates, inferring higher operational and consumer costs); Cingular Comments at 6 (explaining that localized rates would lead to inefficiencies and higher costs which would, in turn, result in higher rates for consumers); Verizon Wireless at 12 (stating that jurisdictional rate plans would be virtually impossible and "run counter to the pro-competitive benefits of national and multi-state rate plans.").

30 *See, e.g.,* CCTM Comments at 10 ("The relief requested by NASUCA would harm public welfare by compromising the benefits of a competitive marketplace."); Leap Comments at 6 ("It is…a widely recognized economic fact – that rate regulation decreases market efficiency in markets that are already competitive. NASUCA itself characterizes the telecommunications market as already competitive.").

benefits for consumers.[31] Competition has thrived in the CMRS market[32] because Congress directed the Commission, rather than the states, to regulate the rates of, and entry requirements for, CMRS providers, and the Commission has followed a largely "hands-off" regulatory approach, relying on market forces rather than burdensome, intrusive and unnecessary rules to protect consumers.[33] The imposition of an unnecessary prohibition that links CMRS rates to regulatory requirements imposed by state and local governments would eviscerate the key regulatory conditions which helped foster the robust competition that exists in the CMRS market today. As a result, competition in the CMRS market would be inhibited, thereby harming consumers.

III. THE RELIEF NASUCA REQUESTS CANNOT BE GRANTED

T-Mobile explained above that the prohibition NASUCA proposes is unnecessary and would result in far more harm than good, as the oppositions to the Petition demonstrate.[34] Apart from these fatal flaws, however, the Commission cannot grant NASUCA's Petition without violating the Administrative Procedure Act ("APA"), the Telecommunications Act of 1996, or the Constitution of the United States, as explained below. The Petition, therefore, must be denied.

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31 *See, e.g.,* Cingular Comments at 6 (explaining that proposed prohibition would threaten regulatory framework for CMRS); Nextel Comments at 14 (same).

32 *See, e.g., CMRS Competition Report* at 9 (finding that competition is thriving in the CMRS market).

33 *See, e.g.,* AWS Comments at 5, citing 47 U.S.C. § 332(c)(3). *See also, e.g.,* CCTM Comments at 12 (explaining that "the marketplace itself penalizes carriers that may inflate or otherwise misrepresent their costs in line-item charges.").

34 *See, e.g.,* CCTM Comments at 2 (stating that NASUCA's proposition is unnecessary); CTIA Comments at 12 (same); IDT Comments at 1 ("NASUCA has failed to submit any record evidence that the number of complaints regarding line items are at a level requiring the promulgation of *additional* billing rules."); Leap Comments at 6 (stating that NASUCA's proposition is unnecessary); NTCA Comments at 5 (same); USTA Comments at 7 (arguing that "no additional and no more restrictive truth-in-billing rules are necessary.").

A. Grant of NASUCA's Petition Would Violate the Administrative Procedure Act.

NASUCA asks the Commission to prohibit carriers from imposing line item charges unless "the charges are expressly mandated by federal, state or local regulatory authorities."[35] However, the Commission's current rules expressly allow carriers to recover their costs in separate line items, as NASUCA itself acknowledges.[36] As such, NASUCA seeks a significant change in the Commission's rules rather than merely an interpretation of those rules, but its "Petition for Declaratory Ruling" does not provide the Commission with the proper procedural vehicle for changing Commission rules.[37]

The oppositions to the Petition demonstrate that the Commission would have to issue a Notice of Proposed Rulemaking in order to consider the changes NASUCA proposes.[38] Thus, as NASUCA's petition is currently written, it is simply not possible for the Commission, in this proceeding, to consider NASUCA's request for declaratory ruling and still comply with the APA.[39]

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35 NASUCA Petition at 1.

36 *See* NASUCA Petition at 9 (acknowledging that current FCC rules expressly allow carriers to recover costs through separate line items).

37 *See, e.g.,* AT&T Comments at 5-6 (arguing that NASUCA seeks a change in the FCC's rules); BellSouth Comments at 5 (same); Cingular Comments at 7-8 (same); CTIA Comments at 21-22 (same); Nextel Comments at 28 (same); Sprint Comments at 4 (same); USTA Comments at 5 (same); Verizon Comments at 6 (same); Verizon Wireless Comments at 6 (same).

38 *See, e.g.,* AWS Comments at 3 (noting that FCC would have to issue NPRM before adopting NASUCA proposal); BellSouth Comments at 5 (same); CTIA Comments at 23 (same); NTCA Comments at 6 (same); Sprint Comments at 5-6 (same).

39 *See, e.g.,* Nextel Comments at 28 (arguing that FCC cannot grant the NASUCA Petition); NTCA Comments at 6-7 (same); Sprint Comments at 7 (same).

B. The Prohibition NASUCA Proposes Would Violate The First Amendment Rights of Carriers.

T-Mobile concurs with other parties opposing the Petition that the prohibition NASUCA proposes would unlawfully censor truthful, non-misleading speech.[40] Many of the costs recovered by CMRS providers through line item charges stem directly from the high cost associated with various government mandated programs, such as Local Number Portability, designed to protect and assist consumers. Under existing FCC regulations, CMRS carriers have the right both to communicate with customers about the costs of compliance with these government mandated programs and to recover those costs in a targeted manner.[41] CMRS carriers would lose this right if NASUCA's Petition were granted, which bans all speech without regard to whether the speech is truthful and non-misleading. Therefore, the prohibition NASUCA proposes would violate the First Amendment rights of carriers by unnecessarily banning truthful and non-misleading communications between a carrier and its customers. T-Mobile applauds the Public Utilities Commission of Ohio for recognizing this fact and for attempting to find an alternative approach that would be consistent with the First Amendment.[42]

Carriers have no better means for communicating with their customers than through bills.[43] T-Mobile is concerned not only about losing this important means for communications, but also about the potential effect this loss could have on the incentives that governmental

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40 *See, e.g.,* BellSouth Comments at 3 (arguing that proposed prohibition would violate the First Amendment); CTIA Comments at 17 (same); Leap Comments at 14 (same); Nextel Comments at 20 (same); USCC Comments at 6 (same); Verizon Wireless Comments 14-22 (same).

41 *See, e.g.,* AT&T Comments at 10 (discussing rights of carriers under current regulations); Cingular Comments at 16-17 (same); CTIA Comments at 21 (same); USCC Comments at 3 (same); USTA Comments at 10 (same); Verizon Comments at 6 (same).

42 *See* Comments of the Ohio Public Utilities Commission at 2, 6-8.

43 *See, e.g.,* CTIA Comments at 17 (explaining effectiveness of communicating with carriers through bills).

authorities have to impose taxes and regulatory costs. Specifically, if the Commission prohibits carriers from communicating with their customers regarding the origin of regulatory costs the carriers must pass through to the customers, the true costs of regulatory mandates would remain hidden to customers and the incentives that federal, state and local regulators might have to increase taxes and regulatory costs would not be tempered by concerns that customers – who are their constituents – might object and protest those increases.[44] Accordingly, T-Mobile believes that the First Amendment rights of carriers must be protected in order to maintain balanced incentives with respect to government taxes and regulations, which are crucial to protect consumers throughout the Nation.

C. The Proposed Prohibition Would Violate Section 332 of the Act to the Extent States Could Regulate the Structure and Level of CMRS Surcharges.

T-Mobile agrees with parties who explained that the prohibition NASUCA proposes is barred by Section 332(c) of the Act.[45] Specifically, to the extent that grant of the NASUCA Petition would authorize states to dictate the structure and level of CMRS rates through the regulation of CMRS surcharges, the Petition would effectively reverse years of Commission decisions deregulating non-dominant carrier rates and violate the prohibition on state and local

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44 *See, e.g.,* Cingular Comments at 7 ("By providing such information in a surcharge, the public can decide, for themselves, what regulatory obligations further their interest and hold the government accountable accordingly."); CTIA Comments at 20 ("By prohibiting lawful, nonmisleading speech, NASUCA would give Federal, State and local regulators free reign to pile more and more regulatory mandates on the telecommunications industry without affording carriers their most effective mans of letting their customers know that such costs have been imposed."); Global Crossing at 2 (discussing how NASUCA's proposal protects government from public scrutiny and denies consumers access to information necessary to make informed decisions); NTCA Comments at 3-4 ("Making consumers aware of how unfunded mandates affect the bottom line, ...permits the consumer to perform his own cost benefit analysis and decide whether to support the program."); Verizon Comments at 11 ("[I]t is critical that voters understand what costs their government is imposing on them in order to provide a check on governmental powers in a democratic society.").

45 *See, e.g.,* AWS Comments at 3-4 (explaining that Section 332 of the Act prevents grant of NASUCA Petition); Verizon Wireless Comments at 11 (same).

regulation of CMRS provider rates, as provided for under Section 332(c)(3)(A) of the Act and upheld by numerous Commission decisions.[46] As Nextel explained, the FCC has determined that the phrase "rates charged" in section 332(c)(3)(A) may include both rate levels and rate structures for CMRS - and that state and local authorities are precluded from regulating either of these.[47] To the extent NASUCA's proposal would, contrary to congressional intent as reflected in the Act, authorize state or local regulators to prescribe rate elements and rates levels by regulating CMRS surcharges, it would represent an impermissible delegation of FCC authority over CMRS ratemaking to state and local authorities.[48]

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46 *See, e.g., Petition of the People of the State of California and the Public Utilities Commission of the State of California To Regulatory Authority over Intrastate Cellular Service Rates*, 10 FCC Rcd. 7486 (1995) (explaining that in 1993, Congress amended the Communications Act to fundamentally revise the statutory system of licensing and regulating wireless telecommunications services. Among other things, Congress established new classifications to enable similar wireless services to be regulated symmetrically in ways that promote marketplace competition, and promote investment in new and innovative wireless telecommunications technologies. Congress also provided that, as of August 10, 1994, no state or local government would have authority to regulate "the entry of or the rates charged" for CMRS services.); *Petition of the State of Ohio for Authority To Continue To Regulate Commercial Mobile Radio Services*, 10 FCC Rcd. 7842 (1995) (same); *Petition of Arizona Corporation Commission, To Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services And Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 10 FCC Rcd. 7824 (1995) (same).

47 *See* Nextel Comments at 26-28.

48 *See, e.g.,* Nextel Comments at 36 (explaining that the Section 332 "effectively expanded the scope of federal power over wireless services, while at the same time it removed substantive jurisdiction from the states for any traditional form of regulation."); Verizon Wireless Comments at 8 (arguing that "NASUCA is asking the FCC to do indirectly what the states and local bodies cannot do directly, which it is to use CMRS carriers as a target for all manner of state and local taxes, surcharges, and fees while at the same time dictating that consumers who ultimately bear the cost of these programs cannot know about them.").

IV. CONCLUSION

For the reasons explained above, T-Mobile respectfully requests that the Commission deny NASUCA's Petition for Declaratory Ruling in its entirety.

Respectfully submitted,

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Dated: August 13, 2004