

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of

National Association of State Utility
Consumer Advocates' Petition for
Declaratory Ruling Regarding Monthly
Line Items and Surcharges Imposed
by Telecommunications Carriers

Truth-in-Billing
and Billing Format

CG Docket No. 04-208

CC Docket No. 98-170

To: The Commission

**REPLY OF
CTIA – THE WIRELESS ASSOCIATION™**

CTIA – The Wireless Association™¹ hereby submits its reply in the above-captioned proceeding.² CTIA opposes the petition filed by the National Association of State Utility Consumer Advocates (“NASUCA”) for a declaratory ruling prohibiting “monthly line-item charges, surcharges or other fees on customers’ bills unless such charges have been expressly mandated by a regulatory agency.”³

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS and ESMR, as well as providers and manufacturers of wireless data services and products.

² *National Association of State Utility Consumer Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-in-Billing and Billing Format*, CG Dkt. No. 04-208, *Public Notice*, DA 04-1495 (rel. May 25, 2004) (NASUCA Petition).

³ NASUCA Petition at 1.

I. INTRODUCTION

NASUCA's petition paints a picture of an industry fraught with improper billing practices. But this picture is based on innuendo and (in some cases) factual inaccuracies.⁴ Other than in certain extreme cases—resolvable by other means—the practices at issue here are not improper or unreasonable under the Communications Act of 1934, as amended. NASUCA proposes to remedy its illusory problem by imposing new regulations on wireless carrier line-item charges. NASUCA's proposal would impose unnecessary, burdensome requirements on a competitive market that already provides consumers with needed information about line-item charges. Rather than providing consumers with the information they need to make informed choices, NASUCA's proposal ultimately would reduce the information available to consumers.

II. THE COMMISSION SHOULD DECLINE TO ALLOW STATES TO REGULATE LINE-ITEM RECOVERY IN VIOLATION OF SECTION 332.

NASUCA asks the Commission to prohibit carriers from including line-item charges on customer bills unless *specifically mandated* by a federal, state or local regulatory agency. State regulatory agencies, as would be expected, have voiced their support for this action.⁵ However,

⁴ For example, NASUCA misrepresents the status of state recovery for E911 costs, implying that wireless carriers are engaging in double recovery for these costs. As the Tennessee Emergency Communications Board notes in its comments, some states “provide little or no cost recovery to carriers seeking to comply with FCC mandates on Phase I and Phase II Enhanced 911 deployment.” Tennessee Emergency Communications Board comments at 2. When the Commission declined to regulate CMRS cost recovery for E911, it expressly left it to the carriers to recover the costs from their customers, and the D.C. Circuit upheld that decision. *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, ¶¶ 49–54 (1999) (*E911 Second Memorandum Opinion and Order*).

⁵ Several commentators go even further, requesting that the Commission not preempt the states from enacting more stringent consumer protection regulations. For example, NARUC “[u]rges that any order resulting from these proceedings should not preempt States from establishing more stringent standards for consumer protection.” NARUC comments at 1. The DC Office of People's Counsel (“OPC-DC”) states, “Should the FCC adopt TIB rules, OPC-DC

granting NASUCA's and these commentors' requests would amount to impermissible rate regulation under section 332, by allowing states to dictate how carriers can recover the costs of complying with state mandates.

While states retain jurisdiction over "other terms and conditions," the Commission already has determined that the manner in which a carrier recovers its compliance costs is so intertwined with a carrier's rates that it is preempted by section 332. As Verizon Wireless notes in its comments, the Commission in 1997 found a state mandate lawful precisely because it did not dictate to wireless providers how they could recover the cost of the mandate.⁶ Notably, the Commission stated, "Because the Texas statute does not direct the CMRS providers to recover their contributions to TIF and USF through the rates they charge their customers, we find the Texas statute does not implicate the prohibition on state regulation in section 332(c)(3)[.]"⁷

Conversely, a state statute that directs carriers to recover mandate costs and other contributions through a specific rate structure and rate design would implicate the prohibition. While state agencies may be permitted to designate certain charges that carriers must recover

does not advocate the FCC should preempt states from adopting stringent guidelines or a code of conduct that is consistent with the FCC's policies." OPC-DC comments at 6. To the extent that these commentors seek Commission approval to regulate carriers on issues outside the arena of NASUCA's line-item petition, the Commission should decline to extend this proceeding beyond the scope of the petition. *See Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Dkt. No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 6422, n.78 (2004) ("We decline to address this issue because it is outside the scope of the ETC petition.").

⁶ See Verizon Wireless comments at 10–11.

⁷ *Petition of Pittencrieff Communications, Inc., for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, File No. WTB/POL 96-2, *Memorandum Opinion and Order*, 13 FCC Rcd 1735, ¶ 37 (1997), *aff'd sub nom Cellular Telecomm. Industry Ass'n v. FCC*, 168 F.3d 1332 (D.C. Cir. 1999).

from their customers and remit to state authorities (*e.g.*, state E911 funds and taxes), states may neither require nor prohibit CMRS carriers from incorporating or separating certain charges on their bills. To allow states to do so (or to allow carriers to recover via line items only when states have spoken on the issue) would be a clear violation of the terms of the statute and of Congress's unambiguous direction to avoid imposing burdensome regulation on wireless carriers.

The Commission should not lose sight of the fact that, in an industry that faces competition and is not rate-regulated, it is inadvisable to dictate how companies charge for their services or recover their costs. As many commentors have pointed out, the Commission has repeatedly made clear that the form of regulation NASUCA and its supporters seek is inappropriate for the CMRS industry. For example, the Commission has previously concluded, "By excluding CMRS carriers from formal rate regulation, Congress and the Commission have determined that the public inherently benefits from the promotion of competition among the carriers that results from market-based pricing for their services[.]"⁸ The NASUCA petition and those commentors who support it turn a blind eye to this ideal. It is nothing more than a request for traditional economic regulation of an industry that operates in a workably competitive market.⁹

Congress drew the line when it enacted section 332 in 1993; the Commission is not now authorized to erase it. In the highly competitive wireless industry, which has flourished and

⁸ *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, ¶ 52 (footnote omitted).

⁹ The Commission repeatedly has rejected requests to extend regulations imposed on wireline carriers to CMRS carriers. For example, the Commission—and more importantly the marketplace—has found CMRS "one rate" plans and CMRS bundling of handsets and service benefit consumers.

delivered innumerable consumer benefits in the absence of traditional economic regulation, the Commission should not permit or condone regulation of issues that market forces are best able to resolve.

III. THE COMMISSION SHOULD RELY ON EXISTING SOLUTIONS RATHER THAN IMPOSE ADDITIONAL COSTS ON WIRELESS CARRIERS AND THEIR CUSTOMERS.

NASUCA claims that new regulations are needed because consumers are unable to understand the line items included on their bills. However, even supporters of the petition note the availability of resources that help consumers learn about and compare the charges on their bills. For example, commenting consumer organizations describe public education initiatives by government, industry and nonprofit groups to help consumers understand their bills. NCL cites a section of its website, nclnet.org, titled “Understanding Your Phone Bill,” with an explanation of common charges and advice on how to shop for telephone services.¹⁰ Consumers Union points to its own online cell phone rights campaign, where consumers are provided advice on such topics as “Tips for Shopping for Wireless Phone Service” and links to each major carrier’s service agreement.¹¹

The tools consumers have available to them to investigate carrier charges continue to grow. The CTIA Consumer Code—widely adopted and created for the express purpose of improving the amount and quality of information carriers provide to their customers—ensures practices similar to those in proposed consumer codes. For example, the CTIA Consumer Code requires participating wireless carriers to disclose at the point of sale and on their web sites the

¹⁰ See <<http://www.nclnet.org/phonebill/>> (last visited Aug. 12, 2004).

¹¹ See <<http://www.consumersunion.org/campaigns>> (last visited Aug. 12, 2004).

amount or range of any fees or surcharges that are collected or retained by the carrier.¹² Moreover, the CTIA Consumer Code prohibits carriers from labeling cost recovery fees or charges as taxes.¹³ The Commission should give the CTIA Consumer Code a chance to work before attempting to achieve the same ends by burdening the industry with unnecessary regulation.

To the extent that NASUCA's concerns center on deceptive business practices, the states are not without their own remedies. For example, the Minnesota Department of Commerce describes its settlement with a wireline carrier charging an undisclosed \$20 service fee disguised as tax.¹⁴ Notably, the recent 32-state settlement indicates that more than half of state attorneys general have reached a conclusion they believe will provide adequate consumer protection to millions of wireless consumers.¹⁵ NASUCA's petition was filed before the state attorneys general announced their negotiated agreement with the CMRS carriers. Here again, the Commission should give the Assurance of Voluntary Compliance a chance to work before attempting to achieve the same ends by burdening the industry with unnecessary regulation.

¹² See CTIA, *The Consumer Code for Wireless Services*, available at <http://files.ctia.org/pdf/The_Code.pdf>.

¹³ See *id.*

¹⁴ See MN DOC comments at 5–6.

¹⁵ Among other things, the settlement calls for a clear explanation in advertisements and retail, Internet and telemarketing sales channels of all service charges in a calling plan, goals also achieved by CTIA's Consumer Code.

IV. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission deny NASUCA's petition for declaratory ruling.

Respectfully submitted,

CTIA – The Wireless Association™

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August 13, 2004

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 13th day of August, 2004, copies of the foregoing Reply Comments to the National Association of State Utility Consumer Advocates' Petition For Declaratory Ruling were delivered via postage pre-paid first class mail, unless otherwise indicated, to the following parties:

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