



February 28, 2005

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Notice of Ex-Parte Filing

Re: National Association of State Utility Consumer Advocates' Petition For Declaratory Ruling Regarding Truth-tin-Billing and Billing Format, CG Docket No. 04-208

Dear Ms. Dortch:

Consumers Union, the nonprofit publisher of *Consumer Reports*, files this letter in reply to the Notices of Ex Parte Presentation filed by the Cellular Telecommunications and Internet Association (CTIA), and individual carriers, including Verizon Wireless, Nextel and T-Mobile, as well as to add our support to the comments set forth in the National Association of State Utility Consumer Advocates and the National Association of Regulatory Utility Commissioners, Notice of Ex Parte Presentation, filed February 14, 2005, in the above captioned proceeding. Copies of this letter we sent to the Chairman and all four Commissioners.

Specifically, Consumers Union wishes to comment that it appears CTIA and the wireless carriers are attempting to hijack this petition to further their own anti-consumer agenda. CTIA, et al have urged that the Commission use this petition to declare that states may not lawfully regulate CMRS provider billing line items under the Communications Act,. Federal law clearly preempts states from rate and entry regulation **only**. Just as clearly, the same provision of law specifically does not prohibit states from regulation other terms and conditions of service, which were described in the legislative history as including “such matters as customer billing information and practices and billing disputes”.¹ The pre-emption claims fly in the face of the plain language of the law. Several states, either through their regulatory commissions or legislatures, are attempting to address consumer abuse in the wireless phone market. By preempting the states, the FCC would be siding with the industry over consumers by improperly barring states from exercising their consumer protection authority.

¹ H.R. REP. NO. 03-111, at 261 (1993)

The wireless industry's argument for pre-emption is premised at least in part on its assertion that the wireless phone market is competitive. Such a claim simply does not stand up to scrutiny, as the industry marches toward even greater concentration with one major merger under its belt and two more pending. Nor can the industry's self-proclaimed responsiveness to consumers stand up in the face of overwhelming survey data, including *Consumers Reports'* own surveys, to the contrary. The record in this proceeding is replete with evidence demonstrating the need for the relief proposed by NASUCA; the petition is strongly supported by consumer advocacy organizations and hundreds of individual consumers who have submitted comments in favor of the petition.

Consumers Union urges the Commission to reject the wireless industry's attempt to turn the NASUCA petition from a pro-consumer and pro-disclosure rule clarification of the Truth-in-Billing order into an anti-consumer measure shutting down those states who are trying to be responsive to consumer complaints. Not only is the wireless industry's position without merit, the issue of federal pre-emption was not part of the NASUCA petition and thus has not been properly noticed for comment by the public.

Pursuant to Section 1.1206 of the Commission's Rules this letter is being electronically filed with your office.

Sincerely,

Janee Briesemeister
Senior Policy Analyst
Consumers Union
1300 Guadalupe, Ste. 100
Austin, Texas 78701