National Association of Regulatory Utility Commissioners

NARUC

NOTICE OF ORAL AND WRITTEN EX PARTE PRESENTATION (47 C.F.R. § 1.1206)

March 2, 2005

VIA ECFS

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

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

Dear Ms. Dortch:

Today, the undersigned General Counsel of the National Association of Regulatory Utility Commissioners, spoke separately by phone with the FCC's Jay Keithley, Chris Libertelli, Sam Feder, Jessica Rosenworcel, and Scott Bergmann. Mr. Ramsay also left a voice mail for Matt Brill. In addition, Mr. Ramsay forwarded electronic copies of this letter to the listed FCC personnel. During each of those conversations, Mr. Ramsay made specific reference to one or more of the following arguments. NARUC's resolution (attached as appendix A), among other things, specifically:

- Opposes the imposition of monthly surcharges that are not mandated or specifically authorized by law or regulation to be passed on to the consumer;

- States that clear, full and meaningful disclosure of all applicable surcharges should be made at the time of execution of the service agreement between the company and the consumer as such disclosure is one of the keys to empowering the consumer to make an informed decision regarding its choice;

- States that monthly invoices should separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers; and

- Agrees with the principles advanced in the NASUCA's March 30, 2004, petition and supports an FCC investigation into the billing practices of the carriers with regard to such surcharges.

Press accounts have indicated that the FCC may be considering opening an investigation into these practices at some level. Public statements by FCC spokespersons suggest that either in an order or proposed rulemaking, the FCC is considering shared State and FCC enforcement authority. If true, depending on the nature of the investigation outlined, those suggestions are generally consistent with NARUC's resolution. Unfortunately, it also appears CTIA and the wireless carriers have filed numerous ex parte's covering advocacy that, according to a conversation NARUC's counsel had with an industry spokesman today, have apparently successfully been incorporated into the draft order and proposed rulemaking.

Those industry arguments urge limitations on State's ability to establish more stringent standards for consumer protection. In addition to the principles listed above, NARUC's resolution also specifically " …urges that any order resulting from these proceedings should not preempt States from establishing more stringent standards for consumer protection." The industry arguments also sought incorporation of limiting tentative conclusions in the further notice.

Specifically, conversations with the industry spokesman suggests the FCC may be considering expanding the definition of what constitutes "ratemaking" under Section 332 of the Telecommunications Act of 1996, advanced most recently in litigation in Minnesota, to cover valid State exercises controlling billing format that have little to do with the recovery or rate charged an end-user. Federal law clearly preempts 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". The wireless industry's jurisdictional arguments lack merit. Moreover, 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.

Again, if it is true that the FCC is considering another expansive interpretation of Section 332, the minimum the FCC should do is consider taking this item up on circulation (to avoid barriers to critical input imposed by sunshine rules starting this Thursday afternoon at around 5:00) or delaying it to the April agenda meeting. This would allow the Commission more time (i) to consider the possible chilling impact of the order and/or rulemaking's tentative conclusions on State consumer protection initiatives and (ii) to receive additional input from NARUC's member commissions and other interested parties.

Please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org, if you have any questions about the forgoing.

Respectfully Submitted,

James Bradford Ramsay
NARUC General Counsel

Resolution Concerning the Truth-In-Billing Petition filed at the Federal Communications Commission by the National Association of State Utility Consumer Advocates (NASUCA)

WHEREAS, Some State Commissions have seen a trend where some wireline and wireless telecommunications carriers impose separate monthly surcharges and fees that are not mandated or specifically authorized by the Federal and/or State governments to be passed through to consumers; and

WHEREAS, Some States have reported that consumers frequently complain about these monthly surcharges on their telecommunications bills and that the explanation provided by the carriers for the charges sometimes is inadequate; and

WHEREAS, These monthly surcharges, as described by carriers, may be misleading by implying that the fees are not only the product of government regulation but are sanctioned or required by either Federal or State governments; and

WHEREAS, Many consumers do not discover the full cost of their telephone service until they receive their monthly bills; and

WHEREAS, Some carriers' monthly surcharges may violate the FCC's Truth-In-Billing Order's requirement that carrier bills "contain full and non-misleading descriptions of the charges that appear therein"; and

WHEREAS, On July 30, 2003, the National Association of Regulatory Utility Commissioners (NARUC) Board of Directors adopted a resolution stating that NARUC has numerous concerns regarding the current practice of some wireless carriers imposing separate explicit charges for Federally mandated programs such as enhanced 9-1-1 service, local number portability, number pooling, and Universal Service programs funding; and

WHEREAS, On July 30, 2003, the NARUC Board of Directors adopted a resolution encouraging the FCC to conduct a proceeding to determine whether its existing Truth-in-Billing rules should be revised to address wireless carriers' current billing practices; and

WHEREAS, On July 31, 2002, the NARUC Board of Directors adopted a resolution urging that a Consumer Bill of Rights be developed for consumers of all telecommunications services that should include

the right of consumers to receive clear and complete information regarding rates,
terms and conditions for services; and

WHEREAS, On March 30, 2004, NASUCA filed a petition with the FCC detailing wireline and wireless carriers' practices with respect to such monthly surcharges and fees and asking the FCC to enter an order addressing this problem.

WHEREAS, On May 25, 2004, the FCC established a pleading cycle to consider NASUCA's petition and docketed NASUCA's petition as CG Docket No. 04-208; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2004 Summer Meetings in Salt Lake City, Utah, opposes the imposition of monthly surcharges that are not mandated or specifically authorized by law or regulation to be passed on to the consumer; and be it further

RESOLVED, That NARUC believes that a clear, full and meaningful disclosure of all applicable surcharges should be made at the time of execution of the service agreement between the company and the consumer as such disclosure is one of the keys to empowering the consumer to make an informed decision regarding its choice; and be it further

RESOLVED, That NARUC believes that monthly invoices should separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers; and be it further

RESOLVED, That NARUC agrees with the principles advanced in the NASUCA's March 30, 2004, petition and supports an FCC investigation into the billing practices of the carriers with regard to such surcharges; and be it further

RESOLVED, That NARUC urges that any order resulting from these proceedings should not preempt States from establishing more stringent standards for consumer protection; and be it further

RESOLVED, The NARUC General Counsel is directed to file comments in support of the NASUCA petition and take any appropriate action to further the intent of this resolution.

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Sponsored by the Committee on Consumer Affairs
Adopted by the NARUC Board of Directors, July 14, 2004