



1300 I Street N.W.
Suite 400 West
Washington, DC 20005
202-589-3740

October 4, 2005

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Notice of Ex Parte Presentation* – CG Docket No. 04-208, CC Docket
No. 98-170

Dear Ms. Dortch:

This letter is to advise you that on October 4, 2005, on behalf of Verizon Wireless, I met with Jay Keithley and Gene Fullano of the Consumer and Governmental Affairs Bureau to discuss positions that Verizon Wireless has taken in comments on the Commission's *Second Further Notice of Proposed Rulemaking* ("*Second FNPRM*") in the captioned dockets.

In our discussion, I underscored the need for the Commission to preempt state regulation targeted at wireless billing practices and to confirm its tentative conclusion in paragraph 53 of the *Second FNPRM* that "the line between the Commission's jurisdiction and the states' jurisdiction over carriers' billing practices is properly drawn to where states only may enforce their own generally applicable contractual and consumer protection laws." This is appropriate because wireless providers offer service across multiple states through national rate plans and national billing and customer service operations. State-specific billing regulation harms consumers by forcing carriers to forego economies of scale associated with national standardization.

I discussed the need for clarification that Section 332 expressly preempts state "billing" rules that in essence regulate rates, and that the "other terms and conditions" language of Section 332 does not bar the FCC from finding that preemption is necessary to accomplish Federal objectives.

The Commission has already reached the conclusion that it has the authority to preempt state regulation of “other terms and conditions”. *See* Implementation of Section 3(n) & 332 of the Communications Act, *Second Report and Order*, 9 FCC Rcd 1411, 1506 ¶ 257 n.517 (1994). We also discussed whether there should be a role for the states in enforcing FCC rules, and I stated that Verizon Wireless

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opposes state enforcement of FCC rules because this could lead to varying interpretations of the FCC’s rules. As the National Association of Statute Utility Consumer Advocates (“NASUCA”) has conceded in this proceeding, allowing states to enforce the FCC’s truth-in-billing rules would also be an unlawful sub-delegation of the Commission’s authority. *See* Comments of NASUCA at 17, *citing United States Telecomm Ass’n v. FCC*, 359 F.3d 566 (D.C. Cir.), *cert. denied sub. nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. United States Telecomm Ass’n*, 125 S.Ct. 313 (2004).

Before imposing new federal billing rules, the FCC must compile a record demonstrating that rules are necessary, and then may adopt rules only if there is a “clear cut need.” *See, e.g.*, Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority To Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, *Report and Order*, 10 FCC Rcd 7872, 7874 ¶ 10 (1995). Additional rules are not necessary because Verizon Wireless provides consumers ample disclosures in its bills and at the point of sale, but if the Commission decides to adopt rules, the Commission should base such rules on the Assurance of Voluntary Compliance (“AVC”) that Verizon Wireless, Cingular, and Sprint have entered with several state attorneys general. *See* Letter from Kathryn A. Zachem, Counsel for Verizon Wireless, to Marlene H. Dortch, FCC, CC Docket No. 98-170, CG Docket No. 04-208, dated Jan. 10, 2005 (attaching the AVC). This includes the “collect and remit” definition of mandated charges and the point of sale disclosures required by the AVC. We also discussed Verizon Wireless’ point of sale disclosure practices, and the fact that there is no need for a Commission rule that requires disclosure of wireless carriers’ charges before the customer signs a contract because wireless carriers provide customers with an extended return period.

Consistent with the Commission’s rules on *ex parte* communications, this letter is being filed electronically in the captioned dockets. Please let me know if there are any questions related to this filing.

Very truly yours,


Charon Phillips

Cc: J. Keithley
G. Fullano