



February 1, 2006

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

Re: *In re: Truth-in-Billing and Billing Format*, Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, CG Docket No. 04-208; NOTICE OF EX PARTE PRESENTATION (47 C.F.R. § 1.1206)

Dear Ms. Dortch:

On January 27, 2006, representatives of the National Association of State Utility Consumer Advocates (“NASUCA”) met with the following staff members of the Commission’s Consumer and Governmental Affairs Bureau (“CGB”): Jay Keithley, Deputy Bureau Chief, Policy; Erica McMahon, Acting Consumer Policy Chief; Richard Smith; and Leon Jackler, Legal Advisor. NASUCA’s representatives were: Charles Acquard, Executive Director; Patrick Pearlman, Deputy Consumer Advocate, West Virginia Consumer Advocate Division; and Kathleen O’Reilly, Counsel.

The meeting covered issues regarding the Second Further Notice of Proposed Rulemaking (“*TIB 2nd FNPRM*”) in the above-captioned dockets. During the course of the meeting, NASUCA representatives discussed the following issues with CGB staff:

> Preemption: NASUCA reiterated its opposition to federal preemption of state regulation in this area, as set forth in its initial and reply comments previously filed. NASUCA representatives urged that any order adopted by the Commission not reverse the Commission’s decision, in its

1999 order adopting Truth-in-Billing principles and guidelines,¹ to allow States to establish and enforce their own laws governing carriers' billing practices, including more stringent standards for consumer protection. NASUCA representatives briefly restated the organization's opposition to the Commission's preemption of state laws requiring or prohibiting commercial mobile radio service ("CMRS") carriers' use of certain line items on customers' bills in the Declaratory Ruling that accompanied the *TIB 2nd FNPRM*, and stated that further preemption of State oversight of carriers' billing practices, whether specified in the order, or suggested in a proposed rulemaking, is not in the public interest.

> In response to the comments and *ex parte* submissions filed in these proceedings arguing that preemption is needed to reduce allegedly widespread and unreasonably burdensome state regulations, NASUCA noted:

o Carriers' comments in the record of this proceeding consist of broad generalizations rather than compelling examples of specific state laws, unaccompanied by any quantification of the extent of the burden imposed or the difficulty complying with both the state's laws and the Commission's Truth-in-Billing rules and principles..

o The carriers have widely circulated "horror stories" describing the unreasonable burden of having to comply with state laws governing the appearance of carriers' monthly bills, regulating such details as type-face and font-size. NASUCA representatives repeated their comments filed in these proceedings that no such requirement apparently exist. NASUCA representatives reiterated that the "onerous" bill requirement described by Cingular Wireless in its comments was fiction, as the carrier itself readily admitted.²

o NASUCA representatives addressed the California statute that addressed font-size in utilities' written service orders and solicitation materials as the only example of a state that actually regulated this aspect of carriers' service. That statute, as NASUCA had previously discussed in its comments, imposes *de minimis* obligations on carriers and does not even appear to apply to billing.³ CGB staff suggested that carriers had noted a New Mexico regulation as another example of a state law regulating type-face and font size on consumers' telephone bills. NASUCA representatives were not familiar with such a regulation but indicated that they would seek to review it and provide a further opinion. NASUCA has reviewed the carriers' comments and reply comments in these proceedings and, although New Mexico's regulations are mentioned, the criticism of that state's regulations in the carriers' comments has nothing to do with font size but rather with provisions that seek to limit "cramming" and "slamming" by carriers.⁴ NASUCA has also reviewed carriers' *ex parte* submissions and found a New Mexico

¹ *In re: Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 F.C.C.R. 7492, 7507-08 ¶26 (1999) ("1999 TIB Order"); 47 C.F.R. §64.2400(c).

² *See In re: Truth-in-Billing and Billing Format*, Comments of Cingular Wireless, CC Docket No. 98-170 & CG Docket No. 04-208, at 16-17, n.45 (June 24, 2005).

³ *See id.*, Reply Comments of NASUCA, at 31 & n.94 (July 25, 2005).

⁴ *See, e.g., id.*, Comments of Verizon Wireless, CC Docket No. 98-170 & CG Docket No. 04-208, at 10-12, n.31 & 32 (June 24, 2005); NASUCA found no citation to any other specific state regulations governing such matters as type-face of font-size on telephone bills in its review of the carriers comments filed in these proceedings, though certainly carriers left the impression many such laws exist. For example, T-Mobile suggested that there are "dozens of rules" governing bill format, font size, etc. but did not cite any specific state law. *See id.*, Comments of T-Mobile USA at 13 (June 24, 2005).

regulation recently adopted, effective on February 1, 2006, which adopts certain consumer protection requirements for all telecommunications carriers regulated by the state, including CMRS carriers.⁵ None of the provisions of that regulation mention font-size or type-face and many apply only to wireline local exchange carriers. The regulation does include a section, entitled “Bills” that applies to wireline and wireless carriers but again, nothing in this section mentions items relating to the format and appearance of carriers’ bills, such as font-size or type-face.⁶ Moreover, the requirements of this section are hardly onerous or inconsistent with either other states’ requirements or the Commission’s Truth-in-Billing principles and guidelines.

- o NASUCA representatives also discussed the reasonableness of state regulations in their treatment of both CMRS carriers and wireline interexchange carriers (“IXCs”) generally. NASUCA representatives discussed specific state regulations governing carriers’ billing and related practices, using West Virginia’s telephone rules as an example. Under those rules, telecommunications carriers are prohibited from including charges for non-telecommunications services on the customer’s bill, unless a waiver is first sought and obtained from the state commission. CMRS carriers are exempted from this requirement.⁷ Likewise, West Virginia’s rules exempt both and CMRS carriers from provisions governing disconnection notices, requirements to provide customers with the opportunity to enter into deferred payment plans to avoid disconnection, and provisions that prohibit termination of service where the customer can demonstrate that disconnection threatens the health or safety of a member of the customer’s household.⁸

> In response to carriers’ claims that it is unreasonably burdensome to track and comply with more than fifty state and local regulatory requirements, NASUCA representatives noted that many state commissions, through state legislation, no longer have any authority to regulate CMRS carriers. Further, NASUCA representatives noted that state commissions typically subject wireline interexchange carriers (“IXCs”), as well as CMRS carriers, to substantially lessened regulatory burdens with respect to their customer relations and billing practices. NASUCA representatives also noted that the requirement to comply with state and local regulations is one routinely experienced by participants in all or most industries; there is no reason why communications providers should be exempt from such requirements.

> NASUCA representatives also responded to carriers’ claims that the record is insufficient to warrant adopting additional Truth-in-Billing rules or rules governing point-of-sale disclosures. The carriers assert that the public interest does not warrant rulemaking, as evidenced by a) the consistently low number of complaints filed and b) the low number of consumer complaints as a percentage of industry customer billings. NASUCA representatives noted:

- o The number of complaints has remained relatively constant with no notable decrease in

⁵ See *id.*, Cingular Wireless *ex parte*, Attachment 2 (Dec. 13, 2005).

⁶ *Id.*; see *N.M. Admin. Code* §17.11.16.14 (2006).

⁷ NASUCA representatives did not cite to the specific regulation during the meeting. Those rules, however, are located at *W. Va. Code State Reg.* §§150-6-2.1.a.1 & .a.2 (2004). The rules, in their entirety, are available at: <http://www.wvsos.com/csr/verify.asp?TitleSeries=150-06>.

⁸ Likewise NASUCA is providing a cite to the specific regulations discussed during the meeting. See *W. Va. Code State Reg.* §150-6-2.2.f.7 (2004).

wireless billing and rates-related complaints over the past three years, even following CTIA's enactment of a voluntary code of conduct. In fact, as NASUCA pointed out, wireless billing and rates-related complaints actually increased after the CTIA Code was adopted (*ca.* September 2003). The same pattern appears for billing and rates-related complaints for wireline carriers regulated by the Commission.

- o CGB's quarterly and annual reports make it impossible to determine the level of complaints for the various specific behaviors that typically prompt consumer complaints. Evaluating the evidence of consumer dissatisfaction from CGB records is made more difficult because the basis for designating a consumer contact as a "complaint" or an "inquiry" appears to lack clear written guidelines as to how that classification is made, what technologies those complaints are directed at, the timeliness or adequacy of industry response to complaints, etc.

- o The significance of the problem, and the inability of the competitive marketplace to remedy the problem, was demonstrated by the effort 32 state Attorneys General undertook to investigate billing and related practices of the three largest CMRS carriers in the country, which ultimately led to the adoption of Assurance of Voluntary Compliance ("AVC") agreements entered into with those carriers. Each of the CMRS carriers executing an AVC agreed to pay \$1.7 million, a substantial sum, in order to settle the States' investigations.

- o The scope and extent of the problem experienced by state consumer advocates led directly to the filing of NASUCA's petition for declaratory ruling in the Truth-in-Billing docket (which was redesignated CG Docket No. 04-208 but ultimately was the docket in which the Commission's *TIB 2nd FNPRM* was issued). NASUCA documented those problems in its March 2004 petition, and thousands of individual consumer comments were filed in support of NASUCA's petition, again demonstrating that the problem is neither minimal nor inadequately understood.

> Finally, NASUCA also noted the administrative efficiency to be gained by delaying further consideration of this matter until the 11th Circuit has ruled on NASUCA's petition for review of the Declaratory Ruling issued in conjunction with the *TIB 2nd FNPRM* (NASUCA v. FCC, No. 05-11682-DD (11th Cir., pending on appeal). Briefing closed only on January 30, 2006 and NASUCA anticipates that its appeal will likely be scheduled for oral argument as early as April 2006. Such postponement would allow the Commission to formulate an Order consistent with the 11th Circuit's determination.

Please do not hesitate to contact me or Mr. Pearlman at ppearlman@cad.state.wv.us (Tel: 304-558-0526) if you have any questions about the foregoing.

Respectfully Submitted,

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