



CONSUMER ADVOCATE DIVISION  
STATE OF WEST VIRGINIA  
PUBLIC SERVICE COMMISSION  
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February 13, 2006

**NOTICE OF EX PARTE PRESENTATION**  
(47 C.F.R. § 1.1206)

**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

Dear Ms. Dortch:

On February 8, 2006, representatives of the National Association of State Utility Consumer Advocates (“NASUCA”) met with the following Commission staff: Monica Desai, Chief, Consumer and Government Affairs Bureau (“CGB”); Jay Keithley, Deputy Chief, CGB – Policy; and Jeffrey Tignor, Wireline Competition Bureau (“WCB”). 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 followed up on a number of issues discussed during an earlier January 27, 2006 meeting with the CGB. NASUCA representatives advised that they were still in the process of gathering information related to issues raised in that prior meeting and would forward that information to the Commission. For example, the CGB staff requested NASUCA to provide documentation supporting its comments concerning Verizon Wireless’ actions regarding its “regulatory” and “administrative” charges, as well as quantifying the scope of billing and rates-related complaints, compared to other types of complaints, received by the CGB. That information is provided herewith and discussed more fully below.

The February 8, 2006 meeting similarly covered many of the same issues regarding the Second Further Notice of Proposed Rulemaking (“*TIB 2nd FNPRM*”) in the above-captioned

docket that had been discussed during the January 27, 2006 meeting. During the course of the February 8, 2006 meeting, NASUCA representatives discussed the following issues with CGB staff:

- Preemption:

NASUCA reiterated its opposition to preemption, as set forth in its initial and reply comments previously filed herein. 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,<sup>1</sup> to allow States to establish and enforce their own laws governing carriers' billing practices, including more stringent standards for consumer protection. NASUCA representatives noted 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 consumer's interest.

- Alleged Burden of State Regulation:

With regard to comments and *ex parte* submissions characterizing state regulation of carriers' billing practices as widespread and unreasonably burdensome, NASUCA reiterated that there is no evidence of specific examples that support the carriers' claims. NASUCA representatives restated the relaxed regulatory requirements imposed on wireless and wireline interexchange carriers by states previously discussed with CGB on January 27, 2006 and referenced in NASUCA's January 31, 2006 *ex parte* submission. In addition, NASUCA representatives advised that the claim advanced by wireless carriers that it is unreasonably burdensome for them to track and comply with more than fifty state and local regulatory requirements is contradicted by the fact that many state commissions have no authority to regulate wireless carriers.<sup>2</sup>

- The Record Confirms the Problems Consumers Continue to Experience:

During its January 27, 2006 meeting with CGB, NASUCA contested carriers' claims that the record is insufficient to warrant adopting additional Truth-in-Billing rules or rules governing

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<sup>1</sup> *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).

<sup>2</sup> NASUCA representatives noted that, according to a 1996 survey, nineteen (19) states had no jurisdiction over wireless carriers (Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Maryland, Michigan, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Vermont, Washington and Wisconsin). Further, NASUCA representatives advised that Pennsylvania subsequently removed wireless carriers from its utility commission's jurisdiction and noted that at least two additional states have taken similar action since 1996.

point-of-sale disclosures. NASUCA representatives restated their characterization of the record during the February 8, 2006 meeting and provided further information, based on the CGB's quarterly reports from the First Quarter 2002 through Third Quarter 2005. Those reports indicate that billing and rates-related complaints constitute a very substantial proportion of the complaints received by the CGB in any given quarter. Attached hereto is a spreadsheet analyzing the number of billing and rates-related complaints received by the CGB during this time period. For the majority of this four-year period, billing and rates-related complaints associated with wireless service constituted 55-64% of the total wireless complaints received by the CGB. Only in the first two quarters of 2005 have those complaints dropped to slightly less than 50% of the total wireless complaints received by the Commission.

Billing and rates-related complaints similarly constituted a significant percentage of the total wireline complaints received by the CGB. If complaints related to the Telephone Consumer Protection Act ("TCPA") are excluded, billing and rates-related complaints constitute anywhere from 57% to 71% of the total wireline complaints received during this time period.<sup>3</sup> In contrast, the level of complaints related to slamming, for which the Commission adopted specific regulations and an aggressive enforcement regime, has never accounted for more than 24% of wireline complaints (not including TCPA-related complaints). Even when TCPA-related complaints are considered, and the relative ratio of billing and rates-related and slamming-related complaints thereby diluted, billing and rates-related complaints exceed slamming-related complaints by several orders of magnitude.

NASUCA representatives emphasized that the number of the number of wireless billing and rates-related complaints has generally trended upward throughout this period, and (with one exception) exceed the number of such complaints received prior to CTIA's enactment of a voluntary code of conduct in September 2003.

- Carriers' Continued Use of "Regulatory" Line Items – the Verizon Wireless Example.

Finally, NASUCA representatives discussed carriers' use of "regulatory" line items in the wake of the Commission's March 18, 2005 order in this proceeding. At the January 27, 2006 meeting with the CGB, NASUCA representatives had noted that some carriers had removed or reduced such line item charges while a ruling on NASUCA's petition for declaratory ruling was pending, only to re-impose such charges after the Commission denied NASUCA's petition. By way of example, Verizon Wireless' actions with respect to its monthly "Regulatory" and "Administrative" charges were specifically discussed. As NASUCA representatives noted, shortly before NASUCA's petition for declaratory ruling was filed, Verizon Wireless increased its "Regulatory Charge" from \$0.05/mo. to \$0.45/mo., ostensibly to recover the carrier's costs of

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<sup>3</sup> Interestingly, the number of billing and rates-related wireline complaints received by the CGB, again if TCPA-related complaints are excluded, have been trending upward since the Second Quarter 2004, reaching 70.9% of the total, non-TCPA wireline complaints in the First Quarter 2005.

implementing wireless number portability.<sup>4</sup> The company reduced its “Regulatory Charge” back to \$0.05 a few months later, while a ruling on NASUCA’s petition was still pending.<sup>5</sup> Five months after the Commission’s March 18, 2005 order denying NASUCA’s petition was issued, Verizon Wireless announced the introduction of a new, \$0.40 monthly “Administrative Charge,” effective October 1, 2005, in bill inserts to its customers.<sup>6</sup> Although NASUCA does not presently have a copy of Verizon Wireless’ bill insert, it understands the insert was worded as follows:

Notice of Introduction of Administrative Charge

Verizon Wireless will begin assessing an "Administrative Charge" of \$0.40 per line per month on October 1, 2005. This charge will help defray certain costs we incur, currently including: (i) fees and assessments on network facilities and services, (ii) charges we, or our agents, pay local telephone companies for delivering calls from our customers to their customers, and (iii) certain costs and charges associated with proceedings related to new cell site construction. The sum of Verizon Wireless’ Regulatory Charge (\$0.05 per line per month) and Administrative Charge will still be the lowest of such charges among national wireless carriers.

The Administrative Charge, and what's included, is subject to change from time to time, and we will notify you if the charge increases. Please note that this is a Verizon Wireless Charge, not a tax that we are required to collect from you. For more information about this charge, visit [www.verizonwireless.com](http://www.verizonwireless.com) or call 1-888-684-1888. Please consult your Customer Agreement for information about rate changes.<sup>7</sup>

NASUCA observed that Verizon Wireless dropped the \$0.40/month increase to its “regulatory” surcharge while NASUCA’s petition was pending, and then, once the Commission had denied that petition, conveniently found another means of charging customers *exactly the same amount*, justifying the new charge on recovering vaguely defined but clearly longstanding operating costs.

- Other Concerns/Issues:

As previously noted in the January 27, 2006 meeting with the CGB, NASUCA representatives expressed concerns that the CGB’s quarterly and annual reports make it

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<sup>4</sup> See *In re: Truth-in-Billing and Billing Format*, NASUCA Petition for Declaratory Ruling, CC Docket No. 98-170 at 19 (Filed March 30, 2004).

<sup>5</sup> See “Verizon Wireless Eliminates Number Portability Charge” (Nov. 15, 2004), available at <http://www.wi-fitechnology.com/displayarticle1621.html>.

<sup>6</sup> See Louis Hau, “Latest Utility Trend: Billing customers for their bills,” *St. Petersburg Times* (Aug. 23, 2005), available at [http://www.sptimes.com/2005/08/23/Business/Latest\\_utility\\_trend\\_.shtml](http://www.sptimes.com/2005/08/23/Business/Latest_utility_trend_.shtml); Michael Finney, “Cost of Verizon Wireless Goes Up: Company tacks on Administrative Charge,” *KGO-TV/DT* (Dec. 1, 2005), available at [http://abclocal.go.com/kgo/story?section=7on\\_your\\_side&id=3686998](http://abclocal.go.com/kgo/story?section=7on_your_side&id=3686998).

<sup>7</sup> See <http://www.sprintusers.com/forum/archive/index.php/t-75763.html>.

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impossible to determine more precisely the level of complaints for the various specific behaviors that typically prompt consumer complaints. NASUCA representatives reiterated their belief that evaluating the level and nature of consumer dissatisfaction from CGB records is difficult if not impossible because, for example, the Commission designates each consumer contact as either a “complaint” or an “inquiry,” yet there is no way to evaluate the basis for making that discretionary classification is made. The reporting system likewise does segregate complaints by hat technology or provider. The CGB’s complaint reporting includes no systematic process for evaluating consumer satisfaction with complaints that the Commission passes along to the provider for resolution. Nor is there any means for evaluating either the timeliness or adequacy of industry response to complaints, etc. NASUCA representatives provided specific examples of ongoing problems in navigating the Commission’s, and the CGB’s websites, which make the process of gleanng relevant information more time-consuming, inefficient and difficult than necessary.

NASUCA representatives also expressed concern about suggestions that the Commission’s protocols and procedures for handling comments submitted to the Electronic Comments Filing System by individual consumers and commenters, be revised to aggregate such comments rather than quantifying them for the record as separate comments. NASUCA representatives noted that this proposal would alter longstanding Commission practice and would skew the record in proceedings where substantial consumer interest would otherwise be evident, as was the case with respect to NASUCA’s March 30, 2004 petition for a declaratory ruling in this proceeding.

Please do not hesitate to contact me at [ppearlman@cad.state.wv.us](mailto:ppearlman@cad.state.wv.us) or 304.558.0526 if you have any questions about the foregoing.

Very truly yours,

/s/  
PATRICK W. PEARLMAN  
Deputy Consumer Advocate