

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Cellular Telephone & Internet Association's	)	WT Docket No. 05-194
Petition for Declaratory Ruling Regarding	)	
Early Termination Fees in Wireless Service	)	
Contracts	)	

**WRITTEN TESTIMONY OF PATRICK W. PEARLMAN  
ON BEHALF OF NASUCA  
EN BANC HEARING, JUNE 12, 2008**

**ATTACHMENT 1  
(NASUCA RESOLUTION 2007-03)**

**THE NATIONAL ASSOCIATION OF  
STATE UTILITY CONSUMER ADVOCATES  
RESOLUTION 2007- 03**

**CALLING FOR FCC REEXAMINATION OF WIRELESS CARRIERS' EARLY  
TERMINATION FEES**

**WHEREAS**, Commercial mobile radio service (“CMRS” or “wireless”) providers typically require customers to sign service contracts that obligate customers to maintain service with the wireless carrier for one or more years and often extend the contract’s term in response to customer-initiated changes in service; *and*

**WHEREAS**, Most wireless carriers impose Early Termination Fees (“ETFs”) ranging from \$150 to \$240 on customers who seek to, or for various reasons must, cancel their service prior to the expiration of the service contract’s term; *and*

**WHEREAS**, In addition to ETFs imposed by wireless carriers, many independent vendors of wireless equipment and services impose additional ETFs that vary in amount, depending on the vendor; *and*

**WHEREAS**, It was estimated that ETFs cost consumers \$4.6 billion from 2002 through 2004 in penalties paid or foregone opportunities to obtain lower-cost services, and thereby limit consumers' choices among carriers and services;

**WHEREAS**, Consumer complaints regarding ETFs are consistently in the top five categories of informal complaints and inquiries received by the Federal Communications Commission’s (“FCC’s”) Consumer and Governmental Affairs Bureau (“CGB”); *and*

**WHEREAS**, Consumers seeking redress on service quality and/or billing issues often have no state or federal venue for recourse, either through the courts, their state utility commission, their state attorneys general or the FCC, and are tied to their contracts due to the onerous ETFs; *and*

**WHEREAS**, Wireless carriers continue to assert that ETFs are necessary in order to reduce, or subsidize, customers’ costs of wireless products (*i.e.*, handsets) and services (rate plans) and to ensure that carriers’ fully recover customer-acquisition costs; *and*

**WHEREAS**, The FCC has not revisited the economic or policy assumptions underlying its 1992 determination that “subsidizing wireless phones” via the utilization of ETFs coupled with fixed term contracts “is an efficient promotional device which reduces barriers to new customers”; *and*

**WHEREAS**, Conditions in the wireless market that may have justified the economic and policy assumptions underlying the *Cellular Bundling Order* have changed radically since 1992; *and*

**WHEREAS**, The wireless industry has flourished since 1992, growing its subscriber base from just under 9 million to over 219 million by mid-2006, and consistently showing solid revenue and profit increases compared to the traditional wireline sector during this time frame; *and*

**WHEREAS**, Wireless carriers have aggressively sought and obtained designation as Eligible Telecommunications Carriers (“ETCs”) under 47 U.S.C. §214(e), allowing them to support their costs to serve customers in high-cost areas with monies disbursed from the Federal Universal Service Fund (“USF”); *and*

**WHEREAS**, According to the most recent data compiled by the Universal Service Administration Company, the total amount of Federal USF subsidies received by wireless carriers has more than doubled in the last two years, from \$471 million to approximately \$1 billion in 2006, and constitutes over 99 percent of all Federal USF subsidies received by competitive ETCs; *and*

**WHEREAS**, The wireless industry has become increasingly concentrated in the hands of a few carriers and equipment manufacturers since 1992; *now therefore be it*

**RESOLVED**, That the National Association of State Utility Consumer Advocates (“NASUCA”) calls upon the Federal Communications Commission to reexamine the economic and policy assumptions underlying its 1992 *Cellular Bundling Order*, in order to determine whether wireless carriers’ – or their independent vendors’ – use of ETFs remains an “efficient promotional device” that benefits *both* consumers and wireless carriers; *and be it further*

**RESOLVED**, That the FCC should fully investigate the equipment and customer acquisition or retention costs cited by the wireless industry as justification for ETFs, in order to determine whether such costs are being reasonably and appropriately recovered from consumers; *and be it further*

**RESOLVED**, That this Resolution shall not, in any way, be construed as endorsing the proposition, asserted by wireless carriers, that the FCC has exclusive jurisdiction over wireless carriers’ ETFs under 47 U.S.C. §332(c)(3)(A); *and be it further*

**RESOLVED**, that the NASUCA Telecommunications Committee and Consumer Protection Committee, with the approval of the Executive Committee of NASUCA, are authorized to take all steps consistent with this Resolution in order to secure its implementation.

ADOPTED BY THE MEMBERSHIP

June 12, 2007

Denver, Colorado