



November 25, 2009

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: *Petition for Declaratory Ruling Filed by CTIA, WT Docket No. 05-194*

Dear Ms. Dortch:

The National Association of State Utility Consumer Advocates (“NASUCA”) hereby submits this ex parte presentation to the Commission to supplement the joint response in opposition to CTIA’s withdrawal notice that NASUCA and other parties filed with the Commission on June 26, 2009.¹ NASUCA and the other parties to the joint response took strong exception to CTIA’s assertion, in its June 12, 2009 withdrawal notice, that terminating the above-docketed proceeding was “fully consonant with the evolution of the competitive wireless marketplace during the more than four (4) years since the filing of the Petition for Expedited Declaratory Ruling and serves the principle of conserving the agency’s administrative resources.”² Among other things, NASUCA and the other parties to the joint response noted that the “uncertainty” or “controversy” regarding wireless carriers’ imposition of early termination fees (“ETFs”), and state efforts to rein in those ETFs, has not been resolved in the years since CTIA filed its petition for declaratory ruling.³ Recent events have demonstrated just how right NASUCA and others were in that respect.

¹ The other signatories to the joint response in opposition consisted of the National Consumer Law Center, the U.S. Public Interest Research Group and Consumers Union.

² See Joint Response in Opposition, p. 5 (June 26, 2009); see also CTIA “Notice” Letter (June 12, 2009).

³ *Id.* at 7-9.

As the Commission is aware, Verizon Wireless recently announced that it was doubling its current ETF for “smartphones,” from \$175 to \$350, effective November 15, 2009.⁴ As the Commission is also aware, Verizon Wireless’ move has also drawn fire from consumer advocates, including Senator Amy Klobuchar, one of the sponsors of the Cell Phone Consumer Empowerment Act. Senator Klobuchar appeared before the Commission at its June 12, 2008 *en banc* hearing to express her concerns regarding wireless ETFs.⁵ Verizon Wireless’ action is almost certain to provoke the sort of consumer complaints that have been the subject of numerous class action lawsuits around the country and review by state legislatures, regulators and attorneys general, which prompted CTIA’s petition in the first place. Verizon Wireless’ action is certainly evidence that the “controversy” or “uncertainty” cited by CTIA in its original 2005 petition for a declaratory ruling remains as vital today as it was nearly five years ago and that the Commission’s – and states’ – need to investigate such contract penalty clauses to fully understand their effects on consumer behavior and their alleged validity remains critically important.

Accordingly, NASUCA reiterates its opposition to CTIA’s attempt to sweep this matter under the rug by unilaterally withdrawing its petition long after the issues have been joined, and after considerable expense and effort by groups such as NASUCA who, unlike the wireless industry, cannot recover the cost of that effort from a captive base of customers. Accordingly, the Commission should reject CTIA’s withdrawal notice and proceed to a decision on the merits of the issues framed by all the parties in this proceeding. Further, NASUCA urges the Commission to take Verizon Wireless’ latest action into consideration as it considers what course of action to take, both in response to CTIA’s June 12, 2009 letter as well as in its ultimate ruling on the merits (or rather the lack thereof) of CTIA’s petition.

Very truly yours,

/s/

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⁴ Jacqui Cheung, “Verizon’s \$350 early termination fee rubs senator wrong way,” *ARS Technica* (Nov. 10, 2009), available at <http://arstechnica.com/telecom/news/2009/11/verizons-350-early-termination-fee-rubs-senator-wrong-way.ars>; see also John Paczkowski, “Is Verizon’s New Early-Termination Fee Anti-Consumer?,” *Digital Daily* (Nov. 6, 2009), available at <http://digitaldaily.allthingsd.com/20091106/ve/>.

⁵ “Klobuchar: Wireless Carriers Early Termination Fees are Anti-Competitive and Anti-Consumer - Criticizes Verizon Wireless plan to double Early Termination Fees for new smart phone customers,” Press Release of Senator Amy Klobuchar (Nov. 9, 2009), available at http://klobuchar.senate.gov/newsreleases_detail.cfm?id=319787&.

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Commissioner Meredith Attwell Baker
Commissioner Robert M. McDowell