

December 8, 2009

Senator Mark Begich  
144 Russell Senate Office Building  
Washington, DC 20510

Re: **“Cell Phone Early Termination, Transparency, and Fairness Act,” S. 2825**

Dear Senator Begich:

On behalf of the National Association of State Utility Consumer Advocates (“NASUCA”) and the utility consumer advocate offices in 40 states and the District of Columbia that NASUCA represents, I wish to commend you for introducing the “Cell Phone Early Termination, Transparency, and Fairness Act” (“Cell Phone ETF Act”) yesterday. NASUCA and its members fully support the Cell Phone ETF Act and its goals of reining in the wireless industry-wide practice of imposing early termination fees (“ETFs”) on customers who wish to cancel service before the end of the lengthy service contracts that the industry norm.

NASUCA and its members have long been at the forefront in opposing wireless ETFs, both at the state and federal level. Among other things, NASUCA has steadfastly challenged the wireless industry’s economic justification for their ETFs and pointed out that the industry has never rebutted evidence that such fees are both anti-competitive and anti-consumer. In addition, NASUCA has been a leader in opposing the wireless industry’s efforts to persuade the Federal Communications Commission (“FCC”) to declare state laws regulating wireless ETFs to be preempted under 47 U.S.C. § 332(c)(3)(A).<sup>1</sup> In June 2009, NASUCA filed a brief with the FCC, in which other national consumer advocates joined, opposing the industry’s misguided attempt to unilaterally withdraw its petition for a preemptive ruling. More recently, NASUCA filed a *ex parte* presentation with the FCC decrying Verizon Wireless’ November 15, 2009 100% increase (from \$175 to \$350) in the ETF it applies to a long list of “smart phones” it offers to customers, and citing that action as further evidence of the need for an FCC ruling on the wireless industry’s

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<sup>1</sup> *Cellular Telephone & Internet Association’s Petition for Declaratory Ruling Regarding Early Termination Fees in Wireless Service Contracts*, WT Docket No. 05-194. *See id.*, NASUCA Initial Comments (Filed Aug. 5, 2005); NASUCA Reply Comments (Filed Aug. 25, 2005). In addition, NASUCA has filed numerous *ex partes* supporting its opposition to the wireless industry’s petition for a preemptive ruling, most significantly a 27-page dissertation setting forth the factual and legal flaws in the industry’s arguments for preemption, filed with the FCC on Aug. 26, 2008.

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preemption effort and investigation to determine whether such contract penalties are justified from an economic or policy standpoint. Copies of these filings are attached for your consideration.

NASUCA wishes you every success on obtaining passage of the Cell Phone ETF Act and stands ready to provide any assistance toward that end. If there is any way NASUCA or its members can be of assistance, please do not hesitate to contact us.

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Charles A. Acquard  
Executive Director  
NASUCA

cc: Senate Commerce Committee