SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART

Re: *Truth-in-Billing and Billing Format (CC Docket No. 98-170); National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing (CG Docket No. 04-208), Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, (FCC 05-55)*

My starting point here is that competitive communications markets function best when consumers have access to accurate and meaningful information. When end users have the facts—and have access to those facts in an understandable format—they can make informed choices. Too often, we know, that's not the case. Most phone bills make my point. It's baffling how complicated they are. The explosion of new services and the line items and fees accompanying them have made it more difficult than ever for consumers to compare rates and shop around. You need an accountant or a lawyer—preferably both—to root out what you're being charged for and why.

This is what led NASUCA last year to file a Petition for Declaratory Ruling. NASUCA asked the Commission to prohibit carriers from imposing line items unless the charges are mandated by government action. This is perhaps not the cure for all of our billing ills. It could actually have the unintended effect of inhibiting national wireless one-rate plans. Nevertheless, this petition was the ideal vehicle for the Commission to initiate a fresh dialogue on how to make bills more honest, readable and easy to understand.

I don't believe we are taking advantage of this opportunity. We take one step forward by applying basic truth-in-billing to wireless services. That's good. Then, amazingly, given the language we hear today on how pro-consumer this Order is, the majority proceeds to put the kibosh on state consumer protection efforts. Now I support the decision to require that wireless carrier billing descriptions be brief, clear and non-misleading. But I must dissent to the majority's decision to preempt state efforts to curb line item abuses or to require that such charges be explained.

The majority says preemption is compelled by the law. This is an incredibly cramped interpretation that ignores the plain meaning of the statute. Congress specifically prohibited states from regulating wireless "rates" but reserved for states the ability to regulate "other terms and conditions." State efforts to curtail or require line item explanations are ***not*** exercises in ratemaking. The legislative history bears me out. It describes the "other terms and conditions" reserved for the states as "such matters as customer billing information and practices." The majority blows breezily by the will of Congress in pursuit of its fixation—or at least its present curious flirtation—with federal preemption.

The majority says that preemption does not preclude state laws of general applicability. Commenters here tell us that state laws as diverse as the Texas Deceptive Trade Practices Act and the Vermont Universal Service Fund Collection Statute may be preempted. Tennessee may find that its billing mechanism to support enhanced 911 services is suddenly suspect. The record suggests that the fate of Washington State's 911 funding system may be similarly uncertain. Indiana's effort to curb line item abuses through that state's Utility Receipts Act may be cut short, and Maine's initiative to make wireless service pricing more transparent is now in question. Many other states may lose authority over consumer billing complaints. It will take some time for states to survey the debris from this erosion of cooperative federalism. And there may be

further wreckage on the horizon, because in the Notice of Proposed Rulemaking accompanying today's Order, the majority tentatively concludes that it should preempt ***all*** state laws involving billing clarity that are more extensive than our minimal federal requirements. As I understand it, this could even apply to wireline as well as to wireless bills.

The majority says that with the states preempted, the Commission will not hesitate to enforce its truth-in-billing requirements. But to date all the Commission has done is hesitate. In the six years since adoption of our truth-in-billing requirements, I cannot find a single Notice of Apparent Liability concerning the kind of misleading billing we are talking about today—the only ones I find involve slamming. Yet in the last year alone, the Commission received over 29,000 non-slamming consumer complaints about phone bills.

So we are very likely doing more harm than good here. Lots of people agree with me. Nearly 14,000 consumers have written the Commission urging us not to take this kind of action. Their concerns are echoed in the comments of the AARP, Consumers Union, the National Consumer Law Center, the Massachusetts Union of Public Housing Tenants, the National Consumers League, the Governor of Maine, the Maine Department of Attorney General, the Massachusetts Office of the Attorney General, the Utility Reform Network, the Utility Consumers Action Network, the Vermont Public Service Board, the Minnesota Department of Commerce, the Office of the People's Counsel for the District of Columbia, the Indiana Utility Regulatory Commission, the Office of the Attorney General of Texas, the Tennessee Emergency Communications Board, the Iowa Utilities Board, the New Jersey Division of the Ratepayer Advocate, the National Association of State Utility Commissioners and others. Yet we forge ahead, bypassing the opportunity NASUCA gave us to rein in incomprehensible bills. I'm afraid consumers will remember that when they called this Commission for help understanding their phone bills, we hung up.