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U.S. COURT OF APPEALS  
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ATLANTA GA.

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

NATIONAL ASSOCIATION OF STATE  
UTILITY CONSUMER ADVOCATES,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION and UNITED STATES OF  
AMERICA,

Respondents.

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No.

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344 and Fed. R.

App. P. Rule 15(a), the National Association of State Utility Consumer Advocates

("NASUCA"), on behalf of its members,<sup>1</sup> hereby petitions this Court for review of

the Second Report and Order, Declaratory Ruling, and Second Further Notice of

- OMP \_\_\_\_\_
- OM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SEC   1
- OTH   Lockwood

<sup>1</sup>NASUCA is a voluntary association of 43 advocate offices in 41 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate

DOCUMENT NUMBER-DATE

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Proposed Rulemaking of the Federal Communications Commission (“FCC”) in In re Truth in Billing and Billing Format, National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing, CC Docket No. 98-170 and CG Docket No. 04-208, released March 18, 2005 (“Order”).<sup>2</sup> A copy of the Order is attached hereto. Venue is proper in this Court pursuant to 28 U.S.C. § 2343, as the Petitioner is incorporated and therefore resides in Florida and hence in this judicial circuit. *American Civil Liberties Union v. FCC.*, 774 F.2d 24, 26 (1st Cir. 1985).

Petitioner seeks an order and judgment from the Court that the Order be set aside as it is in excess of the FCC’s statutory jurisdiction, authority, or limitations, or short of statutory right, 5 U.S.C. § 706(2)(C); is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, 5 U.S.C. § 706(2)(A); or is otherwise unlawful, 5 U.S.C. § 706(2).

NASUCA meets the requirements for standing under the associational standing rules set forth in *Warth v. Seldin*, 422 U.S. 490, 511 (1975), and *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 344-45 (1977). In *Warth*, the United States Supreme Court, addressing the issue of standing for a voluntary membership association, stated:

Even in the absence of injury to itself, an association may have standing solely as the representative of its

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members also serve utility consumers but are not created by state law or do not have statewide authority. See Attached Affidavit of Charles Acquard, NASUCA’s Executive Director.

<sup>2</sup>Although the Order was released March 18, 2005, it did not appear in the FCC’s Daily Digest distributed to the public until March 21, 2005.

members. ... The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. ... So long as this can be established, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.<sup>3</sup>

In *Hunt*, which addressed whether a state agency had standing to appeal on behalf of the apple growers whose interests state law directed the state agency to protect, the Supreme Court cited *Warth* with approval, then expressed the rule succinctly:

[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.<sup>4</sup>

In *Hunt*, the Supreme Court found that a state agency had standing to appeal because its constituents had the characteristics of members.

Here, NASUCA is a voluntary association of state agencies representing the interests of consumers pursuant to state law and satisfies the requirements of *Warth*. As required under *Warth*, NASUCA's members, pursuant to state law,

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<sup>3</sup>*Warth*, 422 U.S. at 511.

<sup>4</sup>*Hunt*, 432 U.S. at 343.

represent the interests of retail consumers in their states who may be harmed under the FCC's decision.

The FCC's policy is a national policy setting forth a rule that affects all of NASUCA's members' interests. The individual participation of any single office is not necessary to seek review of the FCC's decision in this Court.

NASUCA satisfies the first prong of *Hunt*. *Hunt* requires that the members of the association would otherwise have standing to sue in their own right. In addition to having authority to represent the interests of utility consumers in their respective jurisdictions, many NASUCA members also have the authority to represent these consumer interests before federal regulatory agencies and courts.<sup>5</sup>

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<sup>5</sup>*See, e.g.*, 71 P.S. § 309-4(a) (1990), empowering the Pennsylvania Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission, before similar federal regulatory commissions and before state and federal courts; W. Va. Code § 24-1-1(f)(2) (1997) and Public Service Commission of West Virginia General Order No. 195.3, Section A(5), Rule Establishing a Consumer Advocate Division, empowering the West Virginia Consumer Advocate to participate in matters affecting West Virginia consumers before federal utility regulatory commissions and federal courts; MD Public Utilities Code Ann. §2-205(b) (1999), empowering the Maryland Office of People's Counsel to participate in state and federal proceedings and in state and federal courts relating to utility rates for Maryland consumers; Minn. Stat. §8.33 (2003), empowering the Minnesota Attorney General to participate in federal proceedings relating to utility rates for Minnesota consumers; N.C. Gen. Stat. §62-20 (2004), N.C. Gen. Stat. §114-2 (2004), N.C. Gen. Stat. §75-9 (2004) empowering the North Carolina Attorney General to initiate proceedings before state and federal agencies and in state and federal courts to protect North Carolina utility consumers; D.C. Code Ann. §34-804 (2004), empowering the Office of the People's Counsel for the District of Columbia to represent the interests of utility consumers in proceedings before the Public Service Commission of the District of Columbia, similar federal agencies and federal courts; 29 Del. C. §8808 (2004), empowering the Delaware Public Advocate to represent the interests of Delaware's utility consumers in proceedings before the Delaware Public Service Commission, similar federal agencies and state and federal courts; Conn. Gen. Stat. §16-2a (2003), empowering the Connecticut Office of Consumer Counsel to appear in and participate in any regulatory or judicial proceedings, federal or state, in which Connecticut consumer interests may be affected; Colo. Rev. Stat. §40-6.5-106(2.5) (2003), authorizing the Colorado Office of Consumer Counsel to petition, initiate or seek to intervene in any proceeding before a federal agency which regulates utility rates or service, or federal court when the matter before such court or agency will affect rates or services for consumers of utility services within the state; Ala. Code §37-1-16 (2003), empowering the Alabama Attorney General to initiate proceedings before federal agencies and courts in matters affecting the interests of its citizens in utility issues; Iowa Code §475A.1-2 (2003), authorizing the Iowa Consumer Advocate to act as an attorney for Iowa consumers in proceedings before federal and state agencies and related judicial review proceedings and appeals related to utility issues; Ind. Code Ann. § 8-1-1.1-9.1(c) (2004), empowering the Indiana Office of Utility Consumer

NASUCA satisfies the second prong of *Hunt* as well. The second prong of *Hunt* requires that the interests the association seeks to represent are germane to the association's purpose. Article II of NASUCA's Articles of Incorporation and Article II of NASUCA's Constitution both provide that the purpose of the association is to "improve communication among members, to enhance their impact on public policy at the State and Federal levels, and otherwise to assist them in the representation of utility consumer interests."<sup>6</sup> Article X of NASUCA's Constitution provides for the adoption of By-Laws. Article V of NASUCA's By-Laws authorizes NASUCA to "take positions in regulatory or judicial litigation, by majority vote, in behalf of the organization."<sup>7</sup>

The interest here that NASUCA seeks to represent is the interest of its members in representing the consumers in their respective jurisdictions in ensuring that consumers' bills are truthful and accurate. The consumers' interest is related to a matter of federal policy. This interest is identical to the purpose of NASUCA as set forth in its Article of Incorporation and its Constitution to represent its members' interests in matters of federal policy. In this appeal and in the

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Counselor to appear on behalf of Indiana ratepayers and the public in hearings before the Federal Energy Regulatory Commission and in appeals from the orders of the Federal Energy Regulatory Commission where consumer interests in utility issues are at stake; Tenn. Code Ann. §65-4-118 (2003) empowering the Tennessee Consumer Advocate Division to represent the interests of Tennessee consumers of public utilities services in any matter or proceeding before the authority or any other administrative, legislative or judicial body; and Ariz. Rev. Stat. §40-461, §40-462, §40-464 (2004), empowering the Arizona Residential Utility Consumer Office to represent the interests of residential utility consumers in regulatory proceedings.

<sup>6</sup>Articles of Incorporation, National Association of State Utility Consumer Advocates, Inc., Art. II, Charter Number 752992 (on file with Florida Department of State), 17 Jun. 1980.

<sup>7</sup>Article V, Section 3 (b) of the By-Laws of the National Association of State Utility Consumer Advocates, Certified June, 1993.

proceeding before the FCC below, NASUCA's members authorized the association to bring these actions on their behalf.

NASUCA also satisfies the third and final prong of the *Hunt* standards. The third prong of *Hunt* requires that neither the claim asserted nor the relief requested requires the participation of individual members in the suit. Pursuit of this appeal by NASUCA on behalf of its members is significantly more efficient than requiring its forty-three members individually to intervene in administrative and judicial proceedings on behalf of consumers affected by the policies at issue in this case.<sup>8</sup> Since NASUCA is authorized to take legal action on behalf of its members and the individual participation of any single member is not necessary to obtain the relief sought, NASUCA satisfies the third prong in *Hunt* and has standing to bring this appeal.

Respectfully submitted,



Clare McGuire  
Staff Attorney  
Governor's Office of Consumer Affairs  
Consumers' Utility Counsel Division  
2 MLK, Jr. Drive  
Suite 356 East Tower  
Atlanta, GA 30334



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<sup>8</sup>Many NASUCA member offices are small and rely on NASUCA for representation in matters of federal policy.

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Fax (301) 589-6380

March 28, 2005

State of Maryland

Montgomery County

**AFFIDAVIT**

I, Charles A. Acquard, do say and depose that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am the Executive Director of the National Association of State Utility Consumer Advocates ("NASUCA").
2. NASUCA is a non-profit corporation incorporated in the State of Florida in 1980. NASUCA is a voluntary association of 43 advocate offices in 41 states and the District of Columbia. NASUCA's full Members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before regulatory agencies and in courts. NASUCA member offices operate independently from the regulatory commissions in their states. Some are separately established utility advocate offices, while others are divisions of larger departments, such as their states' Offices of Attorney General. Additionally, NASUCA has several Associate and Affiliate member offices who also serve utility consumers, but who have not been established by state law or do not have statewide authority to represent consumers.
3. In addition to having authority to represent the interests of utility consumers in their respective jurisdictions, many NASUCA members also have the authority to




represent these consumer interests before federal regulatory agencies and courts.<sup>1</sup>

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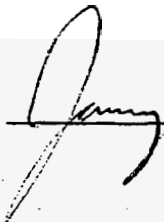
<sup>1</sup> See, e.g., Pennsylvania, 71 P.S. § 309-4(a) (1990) empowering the Pennsylvania Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission, before similar federal regulatory commissions and before state and federal courts; West Virginia, W. Va. Code § 24-1-1(f)(2) (1997) and Public Service Commission of West Virginia General Order No. 195.3, Section A(5), Rule Establishing a Consumer Advocate Division, empowering the West Virginia Consumer Advocate to participate in matters affecting West Virginia consumers before federal utility regulatory commissions and federal courts; Maryland, MD Public Utilities Code Ann. §2-205(b) (1999), empowering the Maryland Office of People's Counsel to participate in state and federal proceedings and in state and federal courts relating to utility rates for Maryland consumers; Minnesota, Minn. Stat. §8.33 (2003), empowering the Minnesota Attorney General to participate in federal proceedings relating to utility rates for Minnesota consumers; North Carolina, N.C. Gen. Stat. §62-20 (2004), N.C. Gen. Stat. §114-2 (2004), N.C. Gen. Stat. §75-9 (2004) empowering the North Carolina Attorney General to initiate proceedings before state and federal agencies and in state and federal courts to protect North Carolina utility consumers; District of Columbia, D.C. Code Ann. §34-804 (2004), empowering the Office of People's Counsel for the District of Columbia to represent the interests of utility consumers in proceedings before the DC Public Service Commission, similar federal agencies and federal courts; Delaware, 29 Del. C. §8808 (2004), empowering the Delaware Public Advocate to represent the interests of Delaware's utility consumers in proceedings before the Delaware Public Service Commission, similar federal agencies and state and federal courts; Connecticut, Conn. Gen. Stat. §16-2a (2003), empowering the Connecticut Office of Consumer counsel to appear in and participate in any regulatory or judicial proceedings, federal or state, in which Connecticut consumer interests may be affected; Colorado, Colo. Rev. Stat. §40-6.5-106(2.5) (2003), authorizing the Colorado Office of Consumer Counsel to petition, initiate or seek to intervene in any proceeding before a federal agency which regulates utility rates or service, or federal court when the matter before such court or agency will affect rates or services for consumers of utility services within the state; Alabama, Ala. Code §37-1-16 (2003), empowering the Alabama Attorney General to initiate proceedings before federal agencies and courts in matters affecting the interests of its citizens in utility issues; Iowa, Iowa Code §475A.1-2 (2003), authorizing the Iowa Consumer Advocate to act as an attorney for Iowa consumers in proceedings before federal and state agencies and related judicial review proceedings and appeals related to utility issues; Indiana, Ind. Code Ann. § 8-1-1.1-9.1(c) (2004), empowering the Indiana Office of Utility Consumer Counselor to appear on behalf of Indiana ratepayers and the public in hearings before the Federal Energy Regulatory Commission and in appeals from the orders of the Federal Energy Regulatory Commission where consumer interests in utility issues are at stake; Tennessee, Tenn. Code Ann. §65-4-118 (2003) empowering the Tennessee Consumer Advocate Division to represent the interests of Tennessee consumers of public utilities services in any matter or proceeding before the authority or any other administrative, legislative or judicial body; and Arizona, Ariz. Rev. Stat. §40-461, §40-462, §40-464 (2004), empowering the Arizona Residential Utility Consumer Office to represent the interests of residential utility consumers in regulatory proceedings.

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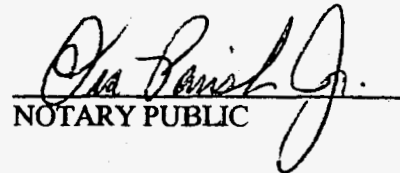
4. By filing this appeal, NASUCA seeks to represent the interests of its members in discharging their responsibilities to protect the interests of utility consumers in their respective jurisdictions.
5. NASUCA, through its Constitution and its Articles of Incorporation, is empowered to act on behalf of its members and does not require the participation of individual member offices to participate in court proceedings. The Articles provide in part that: "The general purpose of this corporation shall be to improve communication among members, to enhance their impact on public policy at the State and Federal level, and otherwise to assist them in the representation of the utility consumer interests."<sup>2</sup>



CHARLES A. ACQUARD  
Executive Director, NASUCA



Taken, sworn, and subscribed before me this 7<sup>th</sup> day of \_\_\_\_\_, 2005.



NOTARY PUBLIC

ORA PARISH, JR.  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires November 15, 2008

<sup>2</sup>Articles of Incorporation, National Association of State Utility Consumer Advocates, Inc., Art. II, Charter Number 752992 (on file with Florida Department of State), 17 Jun. 1980.

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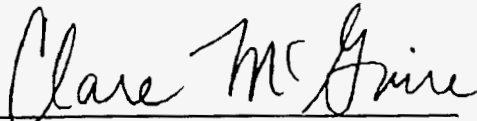
NATIONAL ASSOCIATION OF STATE	)	
UTILITY CONSUMER ADVOCATES,	)	
	)	
Petitioner,	)	
	)	
v.	)	No.
	)	
FEDERAL COMMUNICATIONS	)	
COMMISSION and UNITED STATES OF	)	
AMERICA,	)	
	)	
Respondents.	)	

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, NASUCA submits the following corporate disclosure statement.

NASUCA is a non-profit corporation incorporated in the State of Florida, with offices at 8380 Colesville Road, Suite 101, Silver Spring, MD 20910. NASUCA is an association of 43 advocate offices in 41 states and the District of Columbia. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA member offices operate independently from the regulatory commissions in their states. Some are separately established utility advocate organizations, while others are divisions of larger departments, such as the Office of Attorney General. NASUCA associate and affiliate member offices also serve utility consumers, but have not been created by state law or do not have statewide authority.

Respectfully submitted,



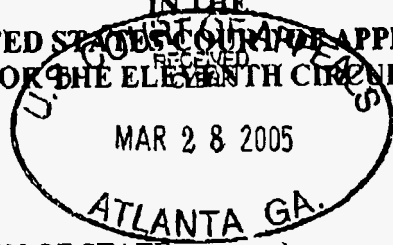
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	)	
FEDERAL COMMUNICATIONS	)	
COMMISSION and UNITED STATES OF	)	
AMERICA,	)	
	)	
Respondents.	)	

**CERTIFICATE OF SERVICE**

I, Clare McGuire, do hereby certify that I caused a copy of the Petition For Review and Corporate Disclosure Statement of the National Association of State Utility Consumer Advocates to be served by First Class Mail this 28<sup>th</sup> day of March, 2005, on all parties on the attached service list. The order attached to the petition is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-05-55A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-55A1.pdf) and is not being included with the service copies.

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