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**State of Vermont
Public Service Board**

April 7, 2005

Roseann B. MacKechnie, Clerk
Office of the Clerk
United States Court of Appeals, Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

COMMISSION
CLERK

APR 13 AM 9:36

RECEIVED-FPSC

BY FEDERAL EXPRESS

Re: Vermont Public Service Board v. Federal Communications
Commission and United States of America, Docket No. 05-1578-AG

Dear Ms. MacKechnie:

Enclosed for filing on behalf of the Vermont Public Service Board are an original and one copy of Form C-A for the above referenced proceeding. The original and copy each include a copy of the Order appealed from.

I have also included a third copy of form C-A that I request be date-stamped and returned to me in the enclosed envelope.

CMP _____ Because this is an appeal from an agency decision, I have not ordered a transcript
COM _____ from any court reporter, and I am not filing a Form D.

CTR _____ The docket fee was paid previously with the filing of the Petition for Review.

ECR _____ Thank you.

GCL _____

OPC _____

MMS _____

RCA _____

SCR _____

SEC 1 Enclosures
cc: Service list

OTH Lochner

Sincerely,

Peter M. Bluhm, Esq.
Attorney for Vermont Public Service Board

DOCUMENT NUMBER-DATE

03575 APR 13 05

FPSC-COMMISSION CLERK

(SPECIFY STATUTES UNDER WHICH APPEAL IS TAKEN): 47 USCA § 402(a); 28 USCA § 2342(a), 2344; 5 USCA § 706.

PETITIONER IS: / / AGENCY / / OTHER PARTY /XX/ NON-PARTY.

SPECIFY STANDING: The FCC order preempts states from prescribing line item billing standards for wireless carriers. Petitioner made an *ex parte* filing with FCC Commissioners opposing that action. Petitioners also are harmed by the preemption because states can no longer control the presentation of state taxes on wireless carrier bills. The agency decision will or may affect several Vermont taxes, including the utility Gross Receipts Tax, the Sales Tax and the Vermont Universal Service Fund charge.

FACTS UPON WHICH VENUE IS BASED: Petitioner's principal office is within the Second Circuit. 28 U.S.C. § 2343.

NATURE OF ORDER ON WHICH REVIEW OR ENFORCEMENT IS SOUGHT: Administrative Regulation / Rulemaking

CONCISE DESCRIPTION OF PROCEEDINGS BELOW AND ORDER TO BE REVIEWED OR ENFORCED (NOTE THOSE PARTS OF THE ORDER FROM WHICH RELIEF IS SOUGHT): The proceedings below were initiated by a petition filed by the National Association of State Utility Consumer Advocates. The petition sought a declaratory ruling prohibiting certain billing practices by both wireline long distance carriers (interexchange carriers) and wireless telecommunications carriers (CMRS carriers) on grounds that such practices were not consistent with the FCC's "Truth-in-Billing" order and related orders. After taking comment and reply comment, the FCC issued an order that preempted states from prohibiting CMRS carriers from showing, or requiring them to show, certain line items on customer bills. See ¶ 32. The primary basis of this decision was that "line item" billing amounts to "rates" under 47 U.S.C. § 332(c)(3)(A). Relief is sought from this preemption decision.

ISSUES PROPOSED TO BE RAISED ON PETITION OR APPLICATION:

- 1) Whether the order exceeds the FCC's statutory jurisdiction and authority under 47 U.S.C. § 332(c)(3)(A) because line item billing is not "rates" under that statute;
- 2) Whether the order was contrary to constitutional right, power, privilege, or immunity of the states with regard to their taxing powers.
- 3) Whether the order was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because it fails to state a sufficient basis for preemption.
- 4) Whether the order was without observance of procedure required by law because it was issued without sufficient notice.

RELIEF SOUGHT: To reverse the agency action that preempts states from prohibiting CMRS carriers from showing, or requiring them to show, certain line items on customer bills.

TO YOUR KNOWLEDGE, IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY WHICH ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL: Yes.

INVOLVES AN ISSUE SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL? Yes

Docket No. 05-11682-D

Case Name: National Association of State Utility Consumer Advocates v. Federal Communications Commission and United States of America

Court or Agency: U.S. Court of Appeals for the Eleventh Circuit

Citation: _____

Number: _____

Please note: The FCC has submitted this case to the Panel on Multidistrict Litigation.

For Petitioner Vermont Public Service Board:

April 7, 2005



Peter M. Bluhm

Special Assistant Attorney General

112 State Street, Drawer 20

Montpelier, Vermont 05620-2701

(802) 828-2358

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Vermont Public Service Board)
 Petitioner,)
 v.)
Federal Communications Commission)
and United States of America,)
 Respondents)

CERTIFICATE OF SERVICE

I, Peter M. Bluhm, do hereby certify that I caused a copy of the Form C-A to be served by First Class Mail on this date on all parties on the attached service list. A copy of the FCC's Order is attached to the original filing at the Court, but it was not included with the service copies. The Agency's order is available at:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-55A1.pdf

Dated: April 7, 2005

Respectfully submitted,



Peter M. Bluhm, Esq.
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