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IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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COMMISSION
CLERK

National Association of State Utility Consumer Advocates
Petitioners,

v.

Federal Communications Commission
And the United States of America
Respondents.

No. 05-11682-D

MOTION FOR LEAVE TO INTERVENE

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, 11th Cir. R. 15-4 and 28 U.S.C. § 2348, the National Association of Regulatory Utility Commissioners ("NARUC")¹ moves for leave to intervene in the above-referenced proceedings. Petitioner, the National Association of State Utility Consumer Advocates ("NASUCA"), seeks review of the *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking* of the Federal Communications Commission ("FCC" or "Commission") in the matter of *Truth-in-*

CMP _____ *Billing and Billing Format and the National Association of State Utility Consumer Advocates'*
COM _____ *Petition for Declaratory Ruling Regarding Truth-in-Billing, CC Docket Nos. 98-170 and 04-208,*
CTR _____
ECR _____ *FCC 05-55 (rel. Mar. 18, 2005).*

GCL _____

OPC _____

MMS _____

RCA _____

SCR _____

SEC _____

OTH _____

¹ NARUC is a quasi-governmental nonprofit organization founded in 1889. NARUC's members include the administrative agencies of all fifty States and the District of Columbia that are engaged in the economic, rate, safety and the reliability regulation of public utilities that provide telecommunications services. NARUC's member commissions must assure that telecommunications services are established and maintained as required by the public convenience and necessity. They must also ensure that these services are provided at rates and conditions that are just, reasonable and non-discriminatory.

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FCC - COMMISSION CLERK

The *Declaratory Ruling* denied NASUCA's request seeking to prohibit telecommunications carriers – including Commercial Mobile Radio Service (CMRS) carriers – from imposing any separate line item or surcharge on customers' bills that was not intended or authorized by federal, State or local law. Instead the FCC's order preempts valid State policies intended to protect CMRS end-users based upon a novel legal theory that conflates rate regulation with formatting requirements for billing inserts.

I.

NARUC requests leave to intervene in support of Petitioner NASUCA to challenge certain findings and conclusions of law in the *Declaratory Ruling*.

NARUC actively participated in the underlying proceeding. NARUC has been recognized by Congress¹ and the Courts² as an appropriate representative for State commission interests. NARUC cannot be adequately represented by any other party to this proceeding. NARUC's member commissions' ability to protect the public health and welfare is specifically constrained by the preemption in the FCC's ruling. The unusual rationale advanced by the FCC in this order is overbroad and, if upheld on review, will provide the basis for arguments to constrain State authority in related areas. Central to any disposition of this appeal is the question of the permissible constraints on State authority imposed by the FCC's legal theory. As a "party in interest in the proceeding before the agency whose interests will be affected" by this review proceeding, NARUC is entitled to intervene "as [a matter] of right." 28 U.S.C. § 2348.

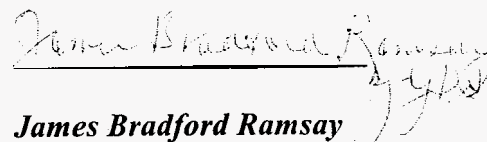
¹ See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns; *Cf.*, 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). *Cf.* *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.).

² See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985).

For the foregoing reasons, NARUC respectfully requests that it be permitted to intervene in these proceedings.

Respectfully submitted,

**National Association of Regulatory Utility
Commissioners**

A handwritten signature in cursive script, reading "James Bradford Ramsay", is written over a horizontal line.

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DATED: April 22, 2005

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National Association of State
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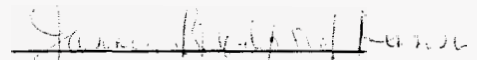
No. 05-11682-D

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, NARUC submits the following corporate disclosure statement: NARUC is a quasi-governmental corporation organized under the laws of the District of Columbia with its principle place of business in Washington, D.C. NARUC has no parent corporation. No publicly traded company owns any equity interest in NARUC.

Respectfully submitted,

**National Association of Regulatory Utility
Commissioners**



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I, Sarah Henry, hereby certify that on this 22th day of April, 2005, copies of the foregoing "Motion for Leave to Intervene" were served via first class U.S. Mail, postage prepaid, on the following:

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