

FCC Comments
En banc ETF hearing
June 12, 2008

Good morning, Mr. Chairman and Commissioners, my name is Anne Boyle. I am Chair of the Nebraska Public Service Commission and the Vice-Chair of the Consumer Affairs Committee for the National Association of Regulatory Utility Commissioners (NARUC). Thank you for the privilege of allowing me to testify before you today whereby I will provide my perspective on contract early termination fees (ETFs) based on my experience as a state regulator.

Last summer, I sponsored a resolution at NARUC that asked you to reconsider the 1992 Bundling Order that established ETFs. It seemed that our government was putting the cart before the horse and it made sense to thoroughly examine the original purpose for the contracts. The conclusions from such a re-examination of the current impacts of ETFs on both wireless consumers and carriers should reveal the rationale for their existence has changed dramatically. If, among the original reasons for ETFs, the primary goal was to increase availability of wireless service to more consumers and foster competition, obviously, the former has been achieved. The recent 2008 census indicates there are approximately 309 million people in our country. With 260 million customers, the wireless carriers have nearly saturated the telecommunications market. Consumers have embraced the technology. And, today, we see an ever-increasing erosion of landline phone usage. It is a success by any measure. At the same time, the latter dream of robust competition has diminished. Consumers have fewer carriers from which to choose. Perhaps, that is the natural progression in business as industries consider the

savings with consolidation. Those savings even with limited competition however should result in savings to consumers as well.

Since last summer, I have spent a considerable amount of time researching the need for ETFs and upon digesting all the information gathered I have come to the following conclusion: I believe the wireless industry and its 260 million customers in our country today would be better off if early termination fee contracts were abolished.

Why would it be good for carriers? For some time, the wireless industry has ranked among the highest in the nation for consumer complaints. Based on our experience in Nebraska, billing is the chief reason for the majority of them and many are related to misunderstanding, misstatements and confusing non-negotiable contracts.

I expect that the carriers will be uneasy with my suggestion as whenever a major change or direction is offered there is an immediate concern that they will lose customers. Yet, they have survived and flourished regardless of the changes that have taken place. As an example, many of us remember how vigorously they opposed local number portability only to find that their fears were unfounded.

What changes would take place if contracts were no longer necessary? First and foremost, Congress and the FCC could move forward and address other issues that are of great importance to this country. The wireless carriers would no longer be severely criticized for the number one complaint regarding their business. Their call center employees could address and solve matters that are network related rather than responding to frustrated and oft-times angry customers and at the same time avoid the high costs of lobbying, and legal proceedings, including potential legal challenges to the

questionable practices of calling contract terms a rate when no cost based analysis of the network cost of providing service has ever been done.

Why would it be good for consumers? Some say that consumers would object as they have become accustomed to subsidized phones. What would be their response if the complications were taken out of the purchase? What if they simply chose a phone and paid for it with cash or credit card and were billed month to month service with the options or services they desired rather than signing a contract for a set period? Wouldn't they automatically save money once their phone was paid for? Does this sound novel? It's not. That is the current practice with landline phones and many other services. Carriers would not incur any additional costs for billing as they currently send statements to their customers on a monthly basis. The relief from the cost and burden of angry customers trying to resolve ETF billing issues should result in considerable savings.

As a matter of fact, the real costs of services could be established and it could bring fairness and economy to the industry and customers alike. Some have stated that ETFs are reasonable and can be considered rates because carriers hold the purchaser accountable rather than the entire customer base. However, since there has been no analysis of the network costs of providing service the premise is incomplete. Furthermore, the cost of recouping fees through collection efforts simply adds to costs that are passed onto the customer base and/or become bad debt tax deductions.

In addition, there are some customers that have paid for their phone outright who are charged a higher rate for service than those with ETF contracts which include a subsidized phone. Common sense would dictate that the customers who have paid for

their phone outright should be charged less than those customers whose contracts include a subsidized phone.

Other wireless industry changes are on the horizon while other are in the process of being implemented. Network compatibility between carriers has begun. Will consumers be given the option of using existing equipment on different wireless networks in the future? Consumers are able to purchase phones with an array of services that include entertainment or restrict themselves to more simplified offerings at less cost. Fees would be based on the true cost of providing service including network costs and appropriate business expenses.

As we have seen, the wireless industry has evolved at a rapid pace compared to phone service of the past. Government attempts to forecast this ever-changing industry by introducing pro rated contracts may be unnecessary work. It was reported recently that for the first time consumer purchases of new phones was less than in the past because of consumer saturation and an uncertain economy. Some consumers have been more cautious about entering into long term contracts. In addition, there is a question if prorated contracts with virtually no cost based analysis or oversight would be fair. Today they are about \$175.00. Could they become \$300.00 or \$500.00? Would they require constant oversight? How burdensome and costly would that be to taxpayers? It would be unnecessary if ETFs were abolished.

Simply stated consumers should have the option of paying for the equipment separately from the service. As mentioned, the simplified method I have suggested is not novel. As matter of fact, it is the most common method of obtaining products and services today. I ask that you seriously consider this proposal.

As I close, I would like to address state preemption. It is accepted that states are usually the first to identify problems, particularly consumer-based problems. As a matter of fact, if they did not, you would not witness the efforts of states attempting to remedy them with what is called a “patch work” of state regulation.

The industry has long sought to have uniformity and to establish all rules and oversight in Washington. This would establish an imbalance in serving the public interest and isolate customers from carriers and from efficient and cost saving relief. With respect, again, I submit that it is difficult to fully determine unique problems of an industry that operates nationwide from afar. There are diverse issues depending on company size, territory and topography. In addition, customers should not be held at bay with long drawn out proceedings waiting for relief.

States can solve problems quickly and efficiently. We can save money for government, consumers and industry alike. We recognize problems as they begin and can solve them before they become difficult. I know, because Nebraska has done so. While we do not always find on behalf of consumers, problems are usually solved in a matter of a few days and sometimes only hours.

I would suggest an office be established to collect, categorize, and analyze data that tracks wireless problems. Solutions would be offered and all carriers would be alerted relative to appropriate policy and steps the carriers should take to address network problems.

As insight, a few months ago a woman called me regarding a network problem. She moved to Nebraska from Arkansas two years ago. She called her wireless provider and gave them her new address. For two years, she received bills that included Arkansas

and Nebraska taxes. She made repeated efforts to get the carrier to correct the problem, sometimes spending nearly an hour on the phone all the while paying double taxes, as she did not want to be turned over to a collection agency. When she contacted the Nebraska Commission, we recognized that the carrier had failed to change her point of service, which would have deleted the Arkansas taxes. The problem was solved in a day. Ironically, the very same day, the New York Assembly passed a bill on a 138-0 vote addressing the same problem. Recently the Washington State PUC addressed a similar problem. A newly created office that receives reports could categorize, find commonality and find solutions.

A somewhat similar solution was offered at NARUC in February; however, this would be more streamlined and efficient. Network and consumer issues data could be sent to all carriers once received on a timely basis. Furthermore, future network problems would be included that could not be anticipated with the ceiling offered with the NARUC proposal. Obviously this needs more thought; however, on its face it seems to be an orderly way to send mass information to the entire wireless network to remedy a host of different issues.

In closing, the abolishment of ETF contracts and establishing an office, possibly within the FCC's Wireless Telecommunications Bureau, to review and notify carriers of consumer and network problems would diminish many of the problems we face today. I thank you for the invitation to testify and would be pleased to answer any questions you may have.