

STATE OF FLORIDA

COMMISSIONERS:
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Public Service Commission

August 5, 2004

VIA ELECTRONIC FILING

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WC Docket No. 98-170, Truth-In-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Companies

Dear Ms. Dortch:

Forwarded herewith are reply comments of the Florida Public Service Commission in the above docket with regard to Truth-In-Billing and Billing Format.

Sincerely,

/ s /

Cindy B. Miller
Director

CBM:tf

cc: Honorable Michael K. Powell, Chairman
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
Brad Ramsay, NARUC
Best Copy and Printing, Inc.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Truth-in-Billing and)	
Billing Format)	WC Docket No. 98-170
)	
National Association of State Utility Consumer)	
Advocates' Petition for Declaratory Ruling Regarding)	
Monthly Line Items and Surcharges Imposed by)	
Telecommunications Carriers)	

**REPLY COMMENTS OF THE
FLORIDA PUBLIC SERVICE COMMISSION**

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Introduction

Although the Florida Public Service Commission has concerns, it takes no position at this time in opposition to or support of the petition filed by the National Association of State Utility Consumer Advocates (NASUCA) for a declaratory ruling. NASUCA seeks a ruling prohibiting the carriers from imposing monthly line-item charges, surcharges, or other fees on customers' bills unless such charges have been expressly mandated by a regulatory agency.

Over the past several years, the clear policy choice has been for more specificity, not less, on customer bills. The NASUCA approach could turn out to be burdensome to the companies (in terms of increased administrative burden, another shift in billing practices, increased costs) and, at the same time, not beneficial to consumers (possible increased costs associated with changes in billing practices and less specificity on bills). At this point, NASUCA has not provided much more than limited anecdotal evidence in support of their request for additional regulatory intervention. While the petition is well-intentioned, more information on the extent of the problems appears to be needed, and the proposed solution may not necessarily be the best approach.

More vs. Less Detail on Bills

Historically, there has been a concern that certain governmentally-mandated costs were embedded in customers' bills. In the 1996 Telecommunications Act, Congress enunciated a new direction that there should be express mechanisms on universal funding, not "hidden" mechanisms. In addition, after extensive input from states and consumer groups, in 1999 the FCC adopted "truth-in-billing" principles and guidelines that permitted but in some cases did not require companies to identify certain costs relating to such things as local number portability (LNP). Consequently, companies – both wireline and wireless – have invested in substantial revisions to consumer bills to

help consumers better understand how they are charged for various services and to separate out hidden costs and fees. In the instant petition, NASUCA now proposes an apparent change in policy direction – that there be less breakdown of charges on consumer bills – and that carriers should once again revamp their billing practices and formats.

Competitive Markets: More Carrier Discretion & More Customer Information

As a general principle, companies in a competitive marketplace should have the discretion and the flexibility to recover certain costs from their customers, provided they do not violate any applicable rules or regulations. Without question, government mandates and regulatory activities impose costs – often substantial costs – on telecommunications carriers. Some wireline and wireless telecommunications carriers impose separate monthly surcharges and fees that are not mandated by government but that may result, directly or indirectly, from government mandates and regulatory activities. These carriers have opted to specifically identify such charges.

Disclosure of such compliance costs to consumers through line items or surcharges would appear to provide consumers more information – not only about what they are being billed for – but also about the actions of their government in promoting certain social policies. On both counts, the disclosure of such information would be useful for consumers. As the telecommunications industry continues to become increasingly competitive, consumers should have access to more detailed information in order to make more informed choices about the services for which they are paying – a principle that supports breaking down costs on a consumer’s bill and disclosing the nature of those costs.¹

¹ Consistent with this principle, many wireline and wireless carriers have been providing detailed billing information and initiating other consumer-friendly practices, such as “Frequently Asked Questions” sections on their websites, to better assist consumers in making informed decisions. As but one example of an effective voluntary solution to properly inform customers of charges on their bills, see the “Understanding Your Bill” section of Cingular Wireless’ website at: http://www.cingular.com/customer_service/bill_totalSummary.

Enforcement Against Specific Carriers vs. Broad Prohibitions

Numerous avenues currently exist for consumer complaints regarding carrier billing to be heard and addressed. Certainly, the FCC will enforce its aforementioned “truth-in-billing” principles and guidelines when a carrier – a local exchange carrier, a long distance provider, or a wireless carrier – is found to have violated them. The Federal Trade Commission (FTC) currently also has enforcement authority to address claims of fraudulent billing. Additionally, the FPSC and many other state public utility commissions (if not all) have jurisdiction over the billing practices of local exchange companies. Finally, most (if not all) states Attorney General Offices have broad jurisdiction to enforce state deceptive billing practices laws. Exactly which allegedly improper billing practices could not be remedied in one of these forums is unclear.

Whether enforcement of existing federal and state legal requirements, as opposed to new legal requirements, could adequately address alleged improper billing practices, is an important determination to be made prior to wholesale reform of billing requirements. While we do not suggest that NASUCA’s positions are improperly offered for the FCC’s consideration, we believe that NASUCA should seek enforcement against specific carriers that have violated any consumer protection or billing laws, rules, or orders, instead of seeking new and broad prohibitions on all carriers. Companies that intend to improperly bill will likely always seek to circumvent laws and regulations for temporary monetary reward, no matter what those laws and regulations contain. Such flagrant behavior may be addressed by current consumer protection laws, and we encourage NASUCA to pursue swift and decisive enforcement against these “bad apples.” The extent to which current consumer protection laws do not address such behavior should be assessed prior to the articulation of a new regulatory paradigm.

Alternative Approach Suggested

The FPSC suggests an alternative rational approach to a declaratory ruling, an approach that would examine and document the claims presented in the NASUCA petition in a systematic, collaborative manner. This alternative approach would permit the FCC to examine the nature and extent of billing problems and determine what, if any, remedy is appropriate and whether it would be best handled through a generally applicable rulemaking or on a case-by-case basis at the state or federal level. This approach would determine whether the problems identified by NASUCA are widespread or merely the result of a few “bad apples.” As Verizon comments stated, the FCC should not punish ethical carriers for a few bad actors.

The FPSC believes an evidentiary record should be developed prior to consideration of any additional mandated billing requirements for carriers. The burden should be placed on the Petitioner to establish that the approach is good for the consumer. Such a proceeding would create an evidentiary record on which the FCC could base any conclusions and potential remedies.

We suggest that the FCC specifically explore the following:

- What specific charges are at issue? Which surcharges would be allowed pursuant to this petition and which would not?
- How many complaints on this topic have been filed at the FCC, individual state commissions, other state and federal agencies that receive and account for telecommunications billing complaints, and with carriers? What is the nature of the complaints?
- How would the petition resolve the complaints/problem?
- Which specific carriers, if any, are engaging in misleading or deceptive practices and surcharges? How can the FCC best address such alleged carrier misconduct?

- Does the petition conflict with the Truth-in-Billing Order? If so, how can the identified problems be addressed without conflicting with the order?
- What costs would be incurred by carriers if the petition were granted? What is the cost to the FCC? Would there be any costs to the states? What costs ultimately would be borne by consumers/taxpayers?
- Could there be an industry solution that does not include a mandate by the FCC—something similar to the voluntary Code of Conduct by the wireless industry?
- Should options that include customer education on how to understand charges for telephone service be pursued prior to additional rulemaking? Empowering consumers with the ability to truly compare offers from carriers would be much more effective than a regulatory, government-mandated solution.
- What additional cost would be imposed on the companies to restructure the bills to consumers? Would the marketplace provide a better approach?

Conclusion

In conclusion, the FPSC urges the FCC to take time to review the underlying problems that the NASUCA petition proposes to remedy. The extent to which a prohibition should apply against all telecommunications monthly line-item charges, surcharges, or other fees that do not meet the criteria in NASUCA's petition should ultimately be based on a careful balancing of a number of factors, including the nature and scope of any alleged improper billing, whether existing laws can address the issue, whether alternatives exist to NASUCA's proposal, and a determination of the monetary and other costs and benefits of the NASUCA proposal and of alternatives to that proposal. Only after a

thorough review of the extent and nature of the underlying problem can the appropriate remedy be developed and implemented.

To the extent the FCC conducts such a thorough review, addresses (at a minimum) the proposed questions above, and determines that certain carriers' charges violate any federal laws, rules, or orders of the FCC pertaining to telecommunications billing and/or consumer protection, the FCC should take the appropriate enforcement action against those individual carriers that are found to be in violation.

Absent such a review, policymakers cannot be sure that the solution proposed in the petition will not create a whole new host of issues, without providing a commensurate benefit to consumers. As BellSouth stated in its comments, competition is the great leveler. "[I]f consumers want bill formats different than what they are receiving today, the market will produce them."

Respectfully submitted,

CHAIRMAN BRAULIO L. BAEZ

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