

# KAIROS *Partners*

May 29, 2019

## **Ex Parte Communication**

### FILED ELECTRONICALLY VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Petition for Declaratory Ruling of ITTA, CG Docket Nos. 03-123 & 98-170 (filed May 8, 2018)

Dear Ms. Dortch:

On May 23, 2019, on behalf of the Enterprise Users Commenters,<sup>1</sup> Josh Ullrich of Kairos Partners and the undersigned of Kairos Partners met with Commissioner Michael O’Rielly and Arielle Roth, Legal Advisor, Wireline Office of Commissioner Michael O’Rielly regarding ITTA’s petition for declaratory ruling in the above referenced proceedings.<sup>2</sup>

During the meeting, we discussed the issues outlined in the attached documents:

1. Memorandum to the FCC from Dave Wallden, dated May 23, 2019
2. Comments from Consumer Groups, dated March 28, 2019
3. Letter from Neil Romano (Chairman, National Council on Disability) to Chairman Pai, dated March 18, 2019

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<sup>1</sup> Enterprise Users Commenters: 3M Company, Cabela's Incorporated, Coca-Cola Company, Clearwater Paper Corporation, Covenant Care California, LLC, MasterCard Technologies, LLC, MediaNews Group, Inc., OceanX, LLC, Office Depot, Inc., O’Neal Steel, Inc., O’Reilly Automotive, Inc., Ratner Companies, L.C., Reynolds Services, Inc., Sears Holdings Management Corporation, Terex Corporation, Universal Data Consultants, Young’s Holdings, Inc.

<sup>2</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, *Petition for Declaratory Ruling of ITTA – The Voice of America’s Broadband Providers* (filed May 8, 2018) (“*Petition*”).

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4. Letter from Senator Edward Markey and Congressman Mike Doyle to Chairman Pai, dated May 1, 2019
5. Ex Parte letter from Enterprise Users Commenters, filed on August 10, 2018
6. Ex Parte letter from Michael Jacobs of ITTA, filed on May 6, 2019

More specifically, the following issues were discussed in greater detail:

### **Corporate Opposition to ITTA's Petition**

Although the Enterprise Users Commenters consists of seventeen companies, Kairos Partners represents over 100 additional Fortune 2000 companies that oppose ITTA's petition. Our clients take their corporate citizenship, governance, and responsibility very seriously. In particular, since the passage of the Americans with Disabilities Act (ADA) in 1990, these companies have been a significant provider of ADA services not only to their employees but to millions of their customers across the United States.

The ADA guarantees equal opportunity and prohibits discrimination against individuals with disabilities. These companies recognize it would be an egregious violation of the ADA to stigmatize disabled individuals as a "cost burden" to society by identifying or referencing the cost of any ADA service on consumers' bills. As a result, these companies stand as a vanguard in opposition to any threat to this foundation of the ADA. Therefore, they urge the FCC to uphold its longstanding rule prohibiting the recovery of TRS through any type of line item on consumers' bills.

### **Truth-in-Billing**

In his May 2, 2019 letter, Mr. Jacobs attempts to shore up ITTA's position by disingenuously suggesting his arguments are justifiable under the Commission's Truth-in-Billing rules.<sup>3</sup> In particular, ITTA cites § 64.2401(b) of the Commission's Truth-in-Billing rules that "requires that a consumer's monthly bill contain descriptions of all billed charges, so consumers are fully informed about the basis for the charges."<sup>4</sup> Although ITTA correctly quotes § 64.2401(b), it glosses over the fact that Truth-in-Billing rules only apply to **legal** telecom charges - they do not apply to **unlawful** charges.

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<sup>3</sup> Letter from Michael Jacobs, Vice President Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 98-170 (May 6, 2019) ("ITTA May 6, 2109 Ex Parte Communication")

<sup>4</sup> *Id.*, n.6 (quoting *Gregory Manasher et al. Petition for Declaratory Ruling*, Declaratory Ruling, 33 FCC Rcd 2737, 2741, para.13 (2018)).



### **Mr. Jacobs claims ITTA's petition has been mischaracterized.**

In his May 2, 2019 letter, Mr. Jacobs also contends that several “recent submissions to the record opposing the petition” have “mischaracterized the Petition.”<sup>5</sup> The only recent submissions to the record opposing ITTA's petition were from (1) Consumer Groups; (2) National Council on Disability; (3) Senator Ed Markey; and (4) Congressman Mike Doyle. It seems clear to the Enterprise Users Commenters that all four of these submitters fully understand what ITTA is requesting in its petition. Specifically, ITTA's petition is asking permission for carriers to “include TRS, among other references, in the line item description”<sup>6</sup> on consumers' bills. These submitters have not mischaracterized ITTA's petition. Rather, these submitters have simply pointed out the extreme argument that ITTA advances in its petition – that it is somehow appropriate to “reference” or “describe” an *unlawful* charge on consumers' bills.

### **Non-Specific Line Items**

In his letter, Mr. Jacobs asserts that carriers should be permitted to recover their TRS costs through *non-specific* line items.<sup>7</sup> ITTA disingenuously invented the term *non-specific*<sup>8</sup> line item, suggesting that its meaning is different than that of a *specific* line item, as it relates to the Commission's prohibition of the use of line items to recover TRS Fund contributions.<sup>9</sup> The Commission, however, has never differentiated between *specific* and *non-specific* line items.

For example, in its 2005 Report and Order<sup>10</sup>, the Commission reiterated its long-standing position that carriers are prohibited from using line items to recover TRS costs, as noted in the following excerpt:

**2005 Order:** *[W]e [FCC] reiterate that carriers are not prohibited per se under our existing Truth-in-Billing rules or the Act from including non-misleading line-items on telephone bills. We note that this finding does not alter the role of any other specific*

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<sup>5</sup> *Id.*, p. 1 (“We also briefly addressed recent submissions to the record opposing the Petition. Some mischaracterize the Petition...”).

<sup>6</sup> Petition at 4.

<sup>7</sup> ITTA May 6, 2109 Ex Parte Communication, P. 1 (“Carriers should be permitted, however, to continue to recover their TRS costs through both rates and non-specific line items as needed to fully recover those costs. In other words, a carrier could recover some of its TRS costs through rates and some of its TRS costs through a non-specific line item to result in full recovery of those costs.”).

<sup>8</sup> Other Commenters have used the term “composite” line items interchangeably with “non-specific” line items.

<sup>9</sup> See Petition at 6 (“Thus, it is clear under the statute and Commission guidelines that carriers are free to recover TRS costs from their customers either as part of their rates or via a non-specifically identified charge on their customers' bills.”)

<sup>10</sup> *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, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6448, ¶ 23, n.64 (“2005 Truth-in-Billing Order”).

*prohibition or restriction on the use of line-items. For example, this Commission has prohibited line-items for Interstate Telephone Relay Service (TRS) costs.*<sup>11</sup>

Thus, in this Order, the FCC categorically prohibited carriers from using line-items to recover TRS Fund contributions on customers' bills.

To avoid the consequences of various carriers' violations of the Commission's rules, ITTA argues that there are actually two types of line items: (1) *specific*; and (2) *non-specific*. ITTA then asserts that the Commission's TRS line item prohibition only prohibits the use of *specific* line items and not *non-specific* line items. Therefore, if carriers charge TRS as a *non-specific* line item, it escapes the TRS line item prohibition set forth in the Commission's 2005 Truth-in-Billing Order.

This argument fails in light of the Commission's standard definition of the term "line item." Specifically, in its orders, the Commission does not differentiate between *specific* and *non-specific* line items – they are both considered line items. If this were not the case, many of the Commission's rules addressing line items could simply be evaded by combining charges into a *non-specific* line item. The following Commission order, also referencing a separate (i.e., *specific*) line item, illustrates this point:

*"Consistent with the Commission's prior findings, we reiterate that it is a misleading practice for carriers to state or imply that a charge is required by the government when it is the carriers' business decision as to whether and how much of such costs they choose to recover directly from consumers through a separate line item charge."*<sup>12</sup>

In this example, if a "separate" line item was defined solely as a *specific* line item and not a *non-specific* line item, carriers could simply combine charges into a *non-specific* line item, then portray them as required by the government, and elude the Commission's rule.

It defies logic to suggest that the Commission's use of the term "separate" line item excludes *non-specific* line items. If this were the case, carriers could circumvent the Commission's rules that refer to *separate* or *specific* line items by simply combining charges into a *non-specific* (i.e., composite) line item. This is precisely ITTA's argument. ITTA is suggesting that the Commission's TRS rules that prohibit the recovery of TRS via a line item do not apply because TRS charges are billed by some carriers as a *non-specific* line item and, therefore, fall outside of the Commission's definition of a line item.

Given CenturyLink's blatant use of a *specific* line item to recover TRS costs prior to January 2018 and its subsequent use of a *non-specific* line item to recover TRS costs after January 2018,<sup>13</sup>

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<sup>11</sup> *Id.* (emphasis added).

<sup>12</sup> *Id.*, ¶ 27 (emphasis added).

<sup>13</sup> CenturyLink recovers TRS costs using a composite line item called Federal Regulatory Recovery Fee which contains several different charges, including TRS. Since TRS is one component of CenturyLink's Federal Regulatory Recovery Fee line item, CenturyLink deems the TRS component a "non-specific" line item.



Mr. Jacobs and Mr. Alexander are effectively asking the Commission to retroactively rewrite history to protect CenturyLink, and perhaps other carriers, from the consequences of their illegal activity. Furthermore, given Mr. Alexander's position as Associate General Counsel of Federal Affairs at CenturyLink and Mr. Jacobs' past relationship with the FCC,<sup>14</sup> it appears that CenturyLink is using ITTA as a shield to advance its economic interests.

**Some Commenters deceptively argue that a denial of ITTA's Petition would violate carriers' First Amendment rights.**

In particular, AT&T asserts that "Interpreting Commission orders in a manner which prohibits an explanation that a composite line-item surcharge includes interstate TRS costs would violate carriers' First Amendment rights,"<sup>15</sup> citing *BellSouth Telecommunications, Inc. v. Farris*.<sup>16</sup> However, AT&T incorrectly applied the Sixth Circuit Court's decision to ITTA's petition.

Specifically, in *Farris*, "[K]entucky imposed a 1.3% tax on the gross revenues of telecommunications providers. In connection with the new tax, the legislature banned providers from 'collecting the tax directly' from consumers and from 'separately stating the tax on the bill.'"<sup>17</sup>

The Sixth Circuit held that it was **not** a violation of BellSouth's commercial speech rights to prohibit a charge from appearing on customers' bills. In particular, the prohibition on "collecting the tax directly from consumers" was not a violation of BellSouth's First Amendment rights because "[t]he terms of the clause [prohibiting carriers from collecting the tax directly from consumers] refer to non-expressive conduct, not speech, and as a result lie beyond the protection of the First Amendment."<sup>18</sup> Thus, the *Farris* court's decision stands for the proposition that just as the State of Kentucky can regulate commercial conduct (as opposed to commercial speech) by prohibiting carriers from collecting a state tax directly from their customers, the FCC can regulate commercial conduct by allowing carriers to recover TRS contributions in their service rates but prohibiting them from recovering TRS contributions as a specifically identified charge or line item on customers' bills.

AT&T also misrepresented the court's decision as it applies to the description of TRS charges on customers' bills. In *Farris*, Kentucky disallowed carriers from stating that the 1.3% tax was embedded in the carriers' service rates. Since carriers' service rates are a "legal" charge

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<sup>14</sup> Mr. Jacobs served as Legal Advisor to the Chief of the Consumer and Governmental Affairs Bureau (FCC) from August 2006 thru September 2012 and served as Legal Advisor to the Chief of the Wireline Competition Bureau (FCC) from September 2012 thru June 2016.

<sup>15</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, *ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, AT&T Comments, p. 10 (filed June 18, 2018) ("AT&T Comments").

<sup>16</sup> 542 F.3d 499 (6<sup>th</sup> Cir. 2008) ("*Farris*").

<sup>17</sup> *Id.* at 500.

<sup>18</sup> *Id.* at 510.



on customers' bills, the Court deemed it a violation of BellSouth's First Amendment rights when Kentucky disallowed it from stating the tax was incorporated into the carrier's service rates. Similarly, as it relates to the recovery of TRS, if carriers were prevented from stating that there is a TRS charge incorporated into their service rates, this would be a violation of their commercial speech rights.

However, as it relates to the recovery of TRS, ITTA is not asking the Commission permission for carriers to reference TRS in the description of a "service rate" (i.e., a legal charge). Rather, ITTA is asking the commission permission for carriers to reference TRS in the description of a "line item" (i.e., an illegal charge). Therefore, unlike in *Farris*, there is no First Amendment violation by the Commission. AT&T is, in effect, arguing that it is a violation of a carrier's commercial speech rights to disallow the description of an "illegal" charge on customers' bills (i.e., a TRS line item). However, because it is well-settled that "the First Amendment does not protect commercial speech about unlawful activities,"<sup>19</sup> the Commission should reject AT&T's argument.

**Some Commenters disingenuously argue that the Commission's rules prohibiting the recovery of TRS as a line item are ambiguous.**

AT&T, in particular, has asserted that the Commission's rules pertaining to the recovery of TRS as a line item are ambiguous.<sup>20</sup> The Commission first established its TRS rules in 1991 and has continually reiterated them ever since. These orders are not ambiguous and they clearly prohibit the use of a line item (i.e. specific, non-specific, or composite) to recover TRS costs – the Commission's rules plainly speak for themselves in arriving at this conclusion.

The Commission could not have been clearer in its TRS II order – the Commission prohibited the recovery of TRS via a surcharge.<sup>21</sup> Ironically, the only carriers who provided comments in response to ITTA's petition (i.e., AT&T, Verizon, and CenturyLink) are the very carriers who have and are currently recovering TRS costs via a *surcharge* on their customers' bills. Verizon and CenturyLink literally use the term *surcharge* in describing the line item in which TRS is recovered.<sup>22</sup> In full light of the truthful historical account of the Commissions *TRS*

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<sup>19</sup> 44 *Liquormart Inc. v. Rhode Island*, 517 U.S. 484, 497 n.7 (1996) (citing *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376 (1973)).

<sup>20</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, *ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Reply Comments of AT&T, p. 3 (filed July 3, 2018) ("AT&T Reply Comments").

<sup>21</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, ¶ 19 (1993) ("In its comments, MCI proposes a specifically identified charge [surcharge] on end users..."); *Id.*, ¶ 22 ("Thus, MCI's proposal to assess such a charge [surcharge] is not feasible").

<sup>22</sup> Verizon, <http://www.verizon.com/support/smallbusiness/billing/understanding-your-bill.htm> (last visited August 5, 2018); CenturyLink, <http://www.centurylink.com/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/carrier-property-tax-and-federal-regulatory-recovery-fee-explained.html> (last visited August 5, 2018).

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orders, from 1991 to the present, the Commission should conclude that its orders are **not** ambiguous.

If you have additional questions or concerns, regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David C. Wallden". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David C. Wallden  
Managing Partner

cc: Michael O'Rielly  
Arielle Roth



**To:** Federal Communications Commission  
**From:** Dave Wallden, Managing Partner - Kairos Partners, LLC  
**Date:** May 23, 2019  
**Re:** ITTA's (The Voice of America's Broadband Providers) Petition for Declaratory Ruling

## Issue

The Federal Communications Commission (FCC) could soon rule on a Petition for Declaratory Ruling that could alter the Americans with Disabilities Act (ADA) and, thus, the civil rights of all disabled individuals, including the civil rights of the deaf, hard of hearing, and speech impaired communities. Specifically, ITTA, AT&T, Verizon, and CenturyLink are pressuring the FCC to overturn its longstanding rule that prohibits carriers from identifying the cost of Telecommunications Relay Services (a Title IV, ADA service) as a fee, surcharge or line-item on customer invoices.

The Petition before the FCC could allow carriers to identify the cost of Telecommunications Relay Services on consumers' bills. The ADA guarantees equal opportunity and prohibits discrimination against individuals with disabilities. Thus, it would be a violation of the ADA to stigmatize disabled individuals as a "cost burden" by identifying the cost of providing an ADA service on any consumer invoice.

## Americans with Disabilities Act (ADA) of 1990

The ADA prohibits discrimination against people with disabilities in several areas including employment, transportation, public accommodations, and **telecommunications**. Title IV of the ADA amended the Communications Act of 1934 and requires telecommunications companies to make telecommunications relay services available for people with hearing loss and/or speech disabilities.

## Telecommunications Relay Service (TRS)

A Telecommunications Relay Service is an operator service that allows people who are deaf, hard of hearing or have a speech disorder to place and receive telephone calls via different devices, designed to accommodate a number of types of hearing loss and/or speech disabilities.

The Telecommunications Relay Service program was initiated by Congress through Title IV of the Americans with Disabilities Act of 1990 and has been fully operational since July 26, 1993. The program is funded by common carriers' contributions to the Telecommunications Relay Service Fund, which are based on carriers' interstate telecommunications service revenues.

## Cost of Providing ADA Services

The ADA requires companies and governments to provide a variety of ADA services. The cost of these ADA services, such as building ramps or providing Telecommunications Relay Services, to disabled individuals, has always been considered a “cost” of doing business. To specifically identify the cost of an ADA service on a consumer bill in the form of a fee, surcharge or line item ostracizes disabled people and eviscerates the Americans with Disabilities Act.

Convo Communications, a deaf-owned TRS provider, soberly addressed this issue in its Reply Comments to ITTA’s Petition for Declaratory Ruling, when it stated:

*“ITTA’s request [for the FCC] to single out a class of telecommunications users as a cost burden is as egregious as a hotel or restaurant identifying in its bill a line item claiming a surcharge of the cost of providing accommodations generally, such as a ramp, braille signage or captioned television sets; such line items do not exist in other ADA requirements for accessible programs and services because doing so would violate the public’s understanding that it is a civil right which extends to all in society, not a special service for certain people.”*

When the ADA was enacted, Congress recognized and stated, “historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination continue to be a serious and pervasive social problem.” (42 U.S.C. §12101(a)(2))

In essence, when unchecked, humanity often strays towards a selfish condition...people don’t like to pay for things they don’t need or use. This is precisely why it has never been an acceptable practice to identify the costs of ADA services on consumer bills. Highlighting such costs ostracizes individuals who are disabled and creates an unacceptable environment where disabled individuals are seen as a “cost burden” to society.

## FCC Rules and Orders

Since 1991, the FCC has issued eight rulings prohibiting common carriers from recovering the cost of TRS as a fee, surcharge, or line item on their customers’ bills. The following are three examples of the FCC’s Rules and Orders from 1991 to the present:

- **July 26, 1991 Order:** *In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on the subscribers’ lines.*
- **June 10, 2004 Order:** *Carriers obligated to contribute to the Interstate TRS Fund (e.g., carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers’ bill as one for relay services.*



- **June 30, 2015 Order:** The Commission has long prohibited carriers from specifically identifying charges for TRS Fund contribution costs in customer bills, and there is no basis for the Bureau to depart in this Order from the Commission's prior decisions on this point.

## Recommendations

The ADA guarantees equal opportunity and prohibits discrimination against individuals with disabilities. It would be an egregious violation of the ADA to stigmatize disabled individuals as a “cost burden” by identifying the cost of any ADA service, including Telecommunications Relay Services, on any consumer invoice. Therefore, the Federal Communications Commission should reject ITTA's Petition for Declaratory Ruling, and it should stand firm in its previous rules that prohibit carriers from identifying the cost of Telecommunications Relay Services (a Title IV, ADA Service) on telecom invoices.

## Federal Communications Commission Action

Congress took a courageous stand on behalf of over 40 million disabled Americans when it passed the Americans with Disabilities Act of 1990. We are asking the FCC to continue to defend the rights of the disabled by upholding its rules that prohibit telecom carriers from identifying the cost of Telecommunications Relay Services as line-items (both “separate” and “composite”) on telecom invoices.



**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Doc CG Docket No. 03-123
Speech-to-Speech Services for Individuals	)	
with Hearing and Speech Disabilities	)	
	)	
Truth-in-Billing and Billing Format	)	CG Docket No. 98-170

**Comments of  
National Association of the Deaf (NAD)  
American Deafness and Rehabilitation Association (ADARA)  
Deaf Seniors of America (DSA)  
Hearing Loss Association of America (HLAA)  
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.  
(CCASDHH)  
Telecommunications of the Deaf and Hard of Hearing, Inc. (TDI)  
Cerebral Palsy and Deaf Organization (CPADO)  
Association of Late-Deafened Adults (ALDA)  
American Association of the Deaf-Blind (AADB)  
Gallaudet University Alumni Association (GUAA)  
Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC)  
Registry of Interpreters for the Deaf, Inc. (RID)  
National Association of State Agencies of the Deaf and Hard of Hearing (NASADHH)**

*via electronic filing*  
March 18, 2019

Zainab Alkebsi, Esq.  
*Policy Counsel*  
National Association of the Deaf  
[zainab.alkebsi@nad.org](mailto:zainab.alkebsi@nad.org)



## Discussion

The National Association of the Deaf (NAD), American Deafness and Rehabilitation Association (ADARA), Deaf Seniors of America, Hearing Loss Association of America (HLAA), California Coalition of State Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Telecommunications of the Deaf and Hard of Hearing, Inc. (TDI), Cerebral Palsy and Deaf Organization (CPADO), Association of Late-Deafened Adults (ALDA), American Association of the Deaf-Blind (AADB), Gallaudet University Alumni Association (GUAA), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Registry of Interpreters for the Deaf, Inc., and National Association of State Agencies of the Deaf and Hard of Hearing (NASADHH) (collectively “Consumer Groups”) respectfully submit these comments in response to comments filed with the Federal Communications Commission's ("FCC" or "Commission") concerning the petition filed by ITTA - The Voice of America's Broadband Providers seeking a declaratory ruling that carriers can list Telecommunications Relay Services (TRS) along with other regulatory fees in a line item on customer bills.<sup>1</sup> The Consumer Groups oppose ITTA's proposal and urge the FCC to deny the petition.

The undersigned member organizations of Consumer Groups represent 48 million deaf and hard of hearing Americans<sup>2</sup> in promoting equal access to telecommunications so that we can fully experience all informational, educational, cultural and societal opportunities. In its July 3, 2018 comments, Consumer Groups took no affirmative position.<sup>3</sup> However, as other commenters have highlighted, some of the undersigned organizations have historically

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<sup>1</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, CG Docket No. 98-170, Petition for Declaratory Ruling of ITTA - The Voice of America's Broadband Providers (filed May 8, 2018) ("ITTA Petition").

<sup>2</sup> The use of the term “deaf and hard of hearing” is intended to encompass all deaf, hard-of-hearing, late-deafened, and DeafBlind individuals, including those with additional disabilities.

<sup>3</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions, CG Docket No. 98-170, Comments of Consumer Groups, p. 1 (filed July 3, 2018) (“Consumer Groups Comments”).

opposed allowing carriers to list TRS fees on customer bills in any manner.<sup>4</sup> Since filing those Comments, the undersigned organizations have further reviewed the proposed petition and its impact on the deaf and hard of hearing community; consequently, the coalition affirms its historical stance.

As Consumer Groups have previously pointed out, TRS is an equal access service that, like other equal access services, should not be singled out as an extra cost. We remain concerned that "singling out TRS fees will result in further discrimination against deaf and hard of hearing individuals and customer complaints that could only serve to undermine the TRS program."<sup>5</sup> Undue attention should not be drawn to our community by labeling TRS charges on customers' bills.

Identifying the cost of TRS on consumer bills in the form of a fee, surcharge, or line item will lead to unwarranted backlash towards our community. When consumers see these line items, they are likely to erroneously think they are paying for something "extra" and become irritated. It will cause unnecessary anger and blame against our community as unaware consumers will assume the cost are for services they are not using but that they are "subsidizing" for deaf and hard of hearing people. In reality, costs for access are mandated by the Americans with Disabilities Act (ADA) as part of business operations for everyone, just like the cost of building curb cuts on city sidewalks or providing TRS for everyone to be able to call each other. The ADA has many provisions mandating funding of certain access, and at no time are those access services ever itemized on anyone's bills in any industry.<sup>6</sup>

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<sup>4</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format, ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Comments of Kairos Partners, p. 11-14 (filed July 3, 2018) ("Kairos Partners Comments").

<sup>5</sup> Consumer Groups Comments at 1.

<sup>6</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format, ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Reply Comments of Convo Communications, LLC, p. 1 (filed July 3, 2018) ("Convo Reply Comments") [comparing ITTA's TRS line item request to a hotel or restaurant listing various accommodations on all consumers' bills.]



Allowing carriers to place TRS charges on customer bills could be a slippery slope for how other ADA services are billed to customers. Congress has already noted its disapproval of labels on customer telephone bills that would suggest otherwise.<sup>7</sup>

Many of the commenters to ITTA's petition have misapplied the Commission's truth-in-billing rules. Such rules apply exclusively to legal charges in customers' bills and not prohibited charges. Identifying TRS charges in the description of a line item would be unlawful and contrary to the mandate of the ADA. The Commission has the legal authority to prohibit carriers from recovering a cost as a line item on customers' bills as ruled by the Sixth Circuit in *BellSouth Telecommunications, Inc. v. Farris*.<sup>8</sup> In its 2005 Report and Order, the Commission already addressed the application of the Truth-in Billing rules to TRS charges and noted that it has prohibited line items for TRS costs.<sup>9</sup> The Consumer Groups agrees with the Commission that Truth-in-Billing rules are inapplicable to services that are provided pursuant to federal mandate under the ADA, especially as the whole rationale for Truth-in-Billing is to prevent deceptive practices by corporations as opposed to promoting a backlash against deaf and hard of hearing individuals who only seek to have equal access to telecommunications services. While unaware consumers will mistake TRS line items as being solely for deaf and hard of hearing individuals, the reality is that TRS serves everyone including the businesses that benefit from sales made over the telephone with deaf and hard of hearing consumers.

ITTA asserts that the current rules require Commission interpretation but the Commission has been unambiguous. Since 1991, the FCC has issued eight rulings prohibiting common carriers from recovering the cost of TRS as a fee, surcharge, or line item on their customers' bills.<sup>10</sup> We applaud the Commission for its clarity and consistency.

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<sup>7</sup> Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, The Americans with Disabilities Act of 1990, CC Docket No. 90-571, Comments of The National Center for Law and the Deaf, p. 42 (filed January 15, 1991).

<sup>8</sup> 542 F.3d 499 (6th Cir. 2008).

<sup>9</sup> 2005 Report and Order, ¶ 23, n.64

<sup>10</sup> See e.g. July 26, 1991 Order ("In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone

For the reasons stated in this letter, we urge the Commission to take decisive action consistent with past rulings and deny ITTA's petition.

Respectfully submitted,

**National Association of the Deaf (NAD)**

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services and not as a specifically identified charge on the subscribers' lines."); June 10, 2004 Order ("Carriers obligated to contribute to the Interstate TRS Fund [e.g. carriers providing interstate telecommunications services] may not specifically identify a charge on their consumers' bill as one for relay services."; June 30, 2015 ("The Commission has long prohibited carriers from specifically identifying charges for TRS Fund contribution costs in customer bills, and there is no basis for the Bureau to depart in this Order from the Commission's prior decisions on this point.")

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# National Council on Disability

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## NCD Letter to FCC Regarding ITTA Petition

March 18, 2019

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Pai:

On behalf of the National Council on Disability (NCD), an independent federal agency charged with advising the President, Congress, and other federal agencies on policy matters affecting the lives of Americans with disabilities, I write to request that you and your fellow Commissioners soundly reject ITTA's Petition for Declaratory Ruling, which was submitted to the Federal Communications Commission (FCC) on May 8, 2018.<sup>[1]</sup>

A Declaratory Ruling allowing telecommunications companies to identify the cost of Telecommunications Relay Services (TRS) on telecom invoices would be a violation of the Americans with Disabilities Act (ADA) and would stigmatize people with disabilities as a "cost burden" to society. The ADA, a law with which NCD has an inextricably connected history, guarantees equal opportunity and prohibits discrimination against people with disabilities in several areas including employment, transportation, public accommodations, and telecommunications.

Title IV of the ADA amended the Communications Act of 1934 and requires telecommunications companies to make Telecommunications Relay Services (TRS) available for people with hearing loss and/or speech disabilities. In fact, the ADA requires companies and governments to provide a variety of other accommodations as well. The costs of those legally mandated accommodations, such as building accessible ramps, widening doorways, providing written information in alternative formats like Braille or large print, providing sign language interpreters to facilitate effective communication, etc., are a cost of doing business and have been since the ADA's passage. The same is true for provision of legally mandated TRS. To specifically identify the cost of an ADA accommodation, which TRS is, on a consumer invoice as a line-item fee or surcharge may serve to chasten persons requiring the accommodation and is antithetical to the purpose of the ADA.

Jeff Rosen (former NCD Chairperson), now General Counsel at Convo Communications (a deaf-owned TRS provider) effectively addressed the seriousness of this issue in his Reply Comments to ITTA's Petition for

Declaratory Ruling, when he stated:

*“ITTA’s request [for the FCC] to single out a class of telecommunications users as a cost burden is as egregious as a hotel or restaurant identifying in its bill a line item claiming a surcharge of the cost of providing accommodations generally, such as a ramp, braille signage or captioned television sets; such line items do not exist in other ADA requirements for accessible programs and services because doing so would violate the public’s understanding that it is a civil right which extends to all in society, not a special service for certain people.”* [2]

NCD agrees with Convo Communication’s assessment - to specifically identify the cost of an ADA service on a consumer bill singles out groups of people as a financial burden and violates the very essence of the ADA. As the government agency responsible for providing recommendations to other government agencies regarding the implications of policy actions on the welfare of Americans with disabilities, NCD strongly recommends that ITTA’s Petition be denied.

Moreover, NCD is aware that since 1991, the FCC has issued the following Orders prohibiting common carriers from recovering the cost of TRS as a fee, surcharge, or line-item on their customers’ invoices:

1. *In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on the subscribers’ lines.* [3]
2. *In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on end user’s lines.* [4]
3. *We take this opportunity to reiterate that carriers obligated to contribute to the Interstate TRS Fund (e.g., carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers’ bill as one for relay services.* [5]
4. *We reiterate that carriers are not prohibited per se under our existing Truth-in-Billing rules or the Act from including non-misleading line-items on telephone bills. We note that this finding does not alter the role of any other specific prohibition or restriction on the use of line-items. For example, this Commission has prohibited line-items for Interstate Telephone Relay Service (TRS) costs.* [6]
5. *We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users’ lines.* [7]
6. *The Commission has long prohibited carriers from specifically identifying charges for TRS Fund contribution costs in customer bills, and there is no basis for the Bureau to depart in this Order from the Commission’s prior decisions on this point.* [8]

For the reasons stated above, we strongly advise the FCC to reaffirm and further solidify its longstanding rule prohibiting telecommunications carriers from identifying the cost of Telecommunications Relay Services (a Title IV, ADA Service) on telecom invoices, as a fee, surcharge, or line-item (both “separate” and “composite”) on customer invoices.

If you have any questions or if you would like to discuss our position on this matter, please contact, Joan Durocher, General Counsel, National Council on Disability at [jdurocher@ncd.gov](mailto:jdurocher@ncd.gov).

Respectfully,

Neil Romano  
Chairman

cc: Michael O’Rielly, FCC Commissioner



Brendan Carr, FCC Commissioner

Jessica Rosenworcel, FCC Commissioner

Goeffrey Starks, FCC Commissioner

Patrick Webre, FCC Bureau Chief, Consumer & Governmental Affairs Bureau

Kurt Schroeder, FCC Chief, Consumer Policy Division & Information Access & Privacy Office

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[1] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Petition for Declaratory Ruling of ITTA – The Voice of America’s Broadband Providers (filed May 8, 2018).

[2] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format, ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Reply Comments of Convo Communications, LLC, p. 1 (filed July 3, 2018).

[3] *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991).

[4] *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, ¶ 22 (1993).

[5] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571, 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, ¶ 8, n.33 (2004).

[6] *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, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6448, ¶ 23, n.64.

[7] *Universal Service Contribution Methodology, A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, ¶ 394, n.617 (2012).

[8] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket No. 03-123, CG Docket No. 10-51, Order, 30 FCC Rcd 7063, ¶ 14 (2015).

**Congress of the United States**  
**Washington, DC 20515**

May 1, 2019

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW Washington, DC 20554

Dear Chairman Pai:

We write to request that the Federal Communications Commission (FCC) deny ITTA-The Voice of America's Broadband Providers' (ITTA) petition for a declaratory ruling that would permit a carrier to recover Telecommunications Relay Service (TRS) Fund contributions by including line item charges on a customer's bill. Such billing practices have not and should not be permissible and would constitute a direct assault on the landmark Americans with Disabilities Act (ADA) of 1990. Congress passed the ADA to guarantee equal opportunity and to prohibit discrimination against individuals with disabilities, and granting this petition would instead encourage such discrimination.

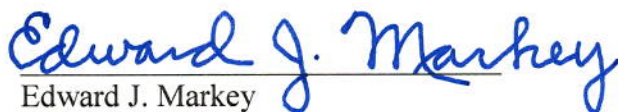
The TRS program was initiated by Congress through Title IV of the ADA, to ensure that persons with hearing or speech disabilities would be able to use necessary telephone services at no additional cost to the individual consumer. To specifically identify the cost of any ADA service (whether it be for a handicap accessible ramp or TRS) on any consumer or corporate bill in the form of a surcharge, fee, or any other form of a line-item discriminates against and ostracizes people with disabilities. Highlighting such costs creates an unacceptable environment where individuals with disabilities are seen as a "cost burden" to society.

This is exactly what the passage of the ADA attempted to prevent. The FCC has long acted in this regard, upholding rules that prohibit common carriers from identifying the cost of TRS (a Title IV, ADA service) as a fee, surcharge or any form of a line-item on customer invoices.

When the ADA was passed into law, Congress acknowledged the isolation and segregation that many individuals with disabilities experience and the pervasive problem this can present in society as a whole. We have made great strides since 1990 in eliminating this discrimination. We oppose any steps backwards that jeopardize the civil rights of Americans with disabilities.

We ask that the FCC uphold its longstanding rules and uphold the mandates of the ADA. Thank you for your prompt attention to this matter.

Sincerely,

  
Edward J. Markey  
United States Senator

  
Mike Doyle  
Member of Congress



# KAIROS*Partners*

August 10, 2018

## **Ex Parte Communication**

FILED ELECTRONICALLY VIA ECFS, AND SENT VIA FEDEX

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Petition for Declaratory Ruling of ITTA, CG Docket Nos. 03-123 & 98-170 (filed May 8, 2018)

Dear Ms. Dortch:

Enterprise Users Commenters<sup>1</sup> are responding, in particular, to the comments and reply comments by AT&T, Verizon and CenturyLink which urge the Commission to grant ITTA's petition for declaratory ruling<sup>2</sup> confirming that carriers may recover TRS Fund contributions as part of line item charges on customers' invoices.

AT&T, Verizon and CenturyLink are asking the Commission to rewrite history – to retroactively reverse the Commission's long standing prohibition against the use of line items to recover TRS Fund contributions – in order to insulate them from the consequences of their current and past unlawful actions.

After more than 25 years, since the Commission's first order prohibiting the recovery of TRS as a specifically identified charge on customers' bills, AT&T now claims the Commission's orders are ambiguous;<sup>3</sup> Verizon claims the Commission "never adopted a rule prohibiting the use of either a TRS-specific or a composite line item for recovering interstate TRS costs;"<sup>4</sup> and

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<sup>1</sup> The following enterprise users join in these reply comments: 3M Company, Cabela's Incorporated, Coca-Cola Company, Clearwater Paper Corporation, Covenant Care California, LLC, Mastercard Technologies, LLC, MediaNews Group, Inc., OceanX, LLC, Office Depot, Inc., O'Neal Steel, Inc., O'Reilly Automotive, Inc., Ratner Companies, L.C., Reynolds Services, Inc., Sears Holdings Management Corporation, Terex Corporation, Universal Data Consultants, Young's Holdings, Inc.

<sup>2</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, *Petition for Declaratory Ruling of ITTA – The Voice of America's Broadband Providers* (filed May 8, 2018) ("ITTA Petition").

<sup>3</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format, ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Reply Comments of AT&T, p. 3 (filed July 3, 2018) ("AT&T Reply Comments").

<sup>4</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format, ITTA Petition for Declaratory*



CenturyLink claims that a “non-specific line item charge that includes interstate TRS cost recovery is and always has been consistent with Commission requirements.”<sup>5</sup> In light of the Commission’s public record regarding its TRS recovery orders, AT&T, Verizon and CenturyLink’s claims are unequivocally false and without merit.

The Commission first established its TRS orders in 1991 and has continually reiterated them ever since. These orders are **not** ambiguous and they clearly prohibit the use of a line item (i.e., specific, non-specific or composite) to recover TRS costs – the Commission’s orders plainly speak for themselves in arriving at this conclusion.

Since many of the commenters have purposefully misrepresented the Commission’s orders, the Enterprise Users Commenters provide the following review of the Commission’s TRS orders and related topics, to put things back in perspective. For ease of reference, this letter will address the following matters:

- I. Commission’s TRS Orders Prior to 1994 (p. 2)
  - a. TRS I Order - July 26, 1991 (p. 2-4)
  - b. TRS II Order - February 25, 1993 (p. 4-6)
  - c. TRS III Order - July 20, 1993 (p. 6-7)
  - d. TRS IV Order - September 29, 1993 (p. 7-8)
- II. Commission’s TRS Orders After 1994 (p. 8-9)
- III. Carriers’ Historical Interpretation of Commission’s TRS Orders (p. 9-10)
- IV. Commission has Prohibited Composite Line Items to Recover TRS Costs (p. 11)
- V. Prohibition of TRS Line Items is Supported by Hard-of-Hearing Organizations (p. 12)
- VI. Carriers have Misapplied Commission’s Truth-in-Billing Rules (p. 12-13)
- VII. Carriers have Misapplied First Amendment/Constitutional Laws (p. 13-14)
- VIII. Conclusion (p. 14)
  - Appendix A (p. 15)
  - Appendix B (p. 16)

## **I. Commission’s TRS Orders Prior to 1994**

### **a. TRS I Order (July 26, 1991)**

In order to fulfill the ADA’s mandate that telecommunications relay services be made available to individuals with hearing and speech disabilities, the Commission adopted its first TRS order on July 26, 1991, which is commonly referred to as *TRS I*.<sup>6</sup> This order is quoted, as follows:

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*Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Reply Comments of Verizon, n.14 (filed July 3, 2018) (“Verizon Reply Comments”).

<sup>5</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, CenturyLink Comments, p. 1 (filed June 18, 2018) (“CenturyLink Comments”).

<sup>6</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991) (“*TRS I*”).

*In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on the subscribers' lines.*<sup>7</sup>

In its reply comments, AT&T claims *TRS I* is *ambiguous*<sup>8</sup> and that its meaning is best read “that carriers cannot recover the costs of interstate TRS through charges imposed on a limited subset of their customers, rather than ‘all subscribers for every interstate service.’”<sup>9</sup> Verizon, likewise, asserts that *TRS I* means that “carriers cannot recover interstate TRS costs through charges imposed on only a limited subset of subscribers.”<sup>10</sup> These interpretations are disingenuously contrived and ignore the plain meaning of the words contained in the order. Like the King who was hoodwinked by his weavers in the Emperor’s New Clothes fable, AT&T and Verizon attempt to espouse their deceptive reading of *TRS I* to the Commission.

AT&T and Verizon turn a deaf ear to the plain reading of *TRS I* – that carriers are prohibited from recovering TRS “as a specifically identified charge on subscribers’ lines.”<sup>11</sup> AT&T then doubles down and further advances its contrived interpretation of *TRS I* by taking the Commission’s comment “the record is not adequate to determine a specific cost recovery mechanism at this time”<sup>12</sup> completely out of context – suggesting that this comment by the Commission confirms its interpretation of *TRS I*.<sup>13</sup>

The Commission’s comment – “the record is not adequate to determine a specific cost recovery mechanism at this time”<sup>14</sup> – did not affect the meaning of *TRS I*. Rather, the Commission was simply acknowledging that it had not yet selected a specific recovery mechanism at the time *TRS I* was passed (e.g., the Commission was still considering a variety of cost recovery mechanisms, including a shared-funding and a self-funding mechanism).<sup>15</sup> In fact, in its *TRS I* order, the Commission was very transparent about many unanswered questions, acknowledging “it is not clear from the record how TRS ultimately will be provided by various carriers, what state programs will seek certification, what the costs of TRS will be and how these costs could best be recovered.”<sup>16</sup> However, these unanswered questions did not affect the meaning of *TRS I*.

Putting aside AT&T’s conjured reading of *TRS I*, the plain reading of *TRS I* is very clear and contains the following three elements: (1) the ADA required that universal telephone service be provided to TRS users; (2) carriers are required to recover interstate TRS costs as part of the

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<sup>7</sup> *TRS I*, ¶ 34.

<sup>8</sup> AT&T Reply Comments at 3.

<sup>9</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, *ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Comments of AT&T, p. 3-4 (filed June 18, 2018) (“AT&T Comments”)

<sup>10</sup> Verizon Reply Comments at 3.

<sup>11</sup> *TRS I*, ¶ 34.

<sup>12</sup> *Id.*

<sup>13</sup> AT&T Comments at 5-6.

<sup>14</sup> *TRS I*, ¶ 34.

<sup>15</sup> *TRS I*, ¶ 35.

<sup>16</sup> *Id.*, ¶ 34.

cost of interstate telephone services; and (3) carriers are not allowed to recover TRS costs as a specifically identified charge on subscribers' lines.

The Commission plainly states carriers are not allowed to recover TRS costs “**as a specifically defined charge on subscribers' lines.**”<sup>17</sup> Even if AT&T's tortured interpretation of this order is correct – which it clearly is not – the Commission provides additional, explicit clarity in its *TRS II* order.

**b. TRS II Order (February 25, 1993)**

On February 19, 1993, in what is commonly known as the Commission's *TRS II* order, the Commission simply restated its *TRS I* order. In fact, the only difference between *TRS I* and *TRS II* is one word – the Commission replaced the word **subscribers'** in the last sentence of *TRS I* with the words **end user's** [sic] in *TRS II*. The Commission's *TRS II* order is quoted, as follows:

*In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on **end user's** [sic] lines.*<sup>18</sup>

A full 19 months elapsed between the time the Commission passed *TRS I* on July 26, 1991 and when it passed *TRS II* on February 25, 1993. Although there were many open questions when the Commission released *TRS I*, the Commission received comments from twenty-seven organizations that provided suggestions and proposals to address these open issues.<sup>19</sup>

In particular, MCI proposed that TRS costs be recovered by assessing a *surcharge* on all subscribers of local exchange carriers and cellular carriers, as exemplified by the following comments made by MCI to the Commission:

*MCI continues to support a shared approach for funding interstate TRS where the costs are recovered through an assessment on all subscribers of local exchange carriers (LECs) and cellular carriers. The surcharge would be collected by LECs (and cellular carriers) and remitted to a fund administrator...*<sup>20</sup>

*As we have described in earlier pleadings, the surcharge would be collected by all local exchange carriers and cellular carriers and would be remitted to a fund administrator who would disburse the funds to TRS providers based on actual minutes of TRS traffic carried.*

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<sup>17</sup> *Id.* (emphasis added).

<sup>18</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, ¶ 22 (1993) (“*TRS II*”) (emphasis added).

<sup>19</sup> *Id.*, ¶ 3.

<sup>20</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Comments, p. 1-2 (filed March 16, 1992) (“MCI Comments 1992”) (emphasis added).

*MCI supports the **surcharge** approach because it would be the most efficient funding mechanism and the easiest to implement.*<sup>21</sup>

In its comments, MCI plainly proposed the use of a **surcharge** to recover TRS costs. In fact the Commission, itself, specifically points this out in *TRS II* when it stated “**In its comments, MCI proposes a specifically identified charge on end users.**”<sup>22</sup>

Of all twenty-seven commenters, the Commission focused on MCI’s proposal in its *TRS II* order. In *TRS II*, the Commission rejected MCI’s *surcharge* proposal for the following two distinct reasons:

**Reason 1:** MCI’s proposed *surcharge* is considered a “specifically identified charge” which was prohibited under *TRS I* and *TRS II*; and

**Reason 2:** MCI’s proposed *surcharge* on subscribers of LECs and cellular carriers fell short of meeting the ADA’s mandate that TRS costs should be recovered from *all* users of interstate services.

In fact, the sole reason the Commission restated its *TRS I* order – in its *TRS II* order – was to provide an explanation as to *why* it denied MCI’s TRS cost recovery proposal. As shown in the following passage, before denying MCI’s proposal, the Commission first restates *TRS I*, then immediately describes its two reasons for denying MCI’s proposal:

*In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on end user’s [sic] lines [TRS II].*<sup>23</sup>

*Thus, MCI’s proposal to assess such a **charge** [surcharge] is not feasible [Reason 1].*<sup>24</sup>

*Further, the ADA requires interstate costs to be recovered from all subscribers of every interstate service [Reason 2].*<sup>25</sup>

*Therefore, we [Commission] reject MCI’s proposal... [MCI’s Proposal is Denied].*<sup>26</sup>

In its comments, AT&T completely ignores the Commission’s first reason for denying MCI’s proposal (i.e., see Reason 1 above). Instead, AT&T disingenuously concluded that MCI’s

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<sup>21</sup> *Telecommunications Services for Persons with Hearing and Speech Impairments*, CC Docket No. 90-571, Comments of MCI Telecommunications Corporation, p. 2 (filed April 5, 1993) (“MCI Comments 1993”) (emphasis added).

<sup>22</sup> *TRS II*, ¶ 19 (emphasis added).

<sup>23</sup> *TRS II*, ¶ 22 (emphasis added).

<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> *Id.* (emphasis added).

<sup>26</sup> *Id.* (emphasis added).



proposal was denied based solely on the second reason<sup>27</sup> (i.e., see Reason 2 above). This is not surprising. AT&T's arguments simply fall apart if it acknowledges the Commission's first reason for rejecting MCI's proposal – a *surcharge* is considered a “specifically identified charge” which was prohibited under the Commission's *TRS I* and *TRS II* orders.

The Commission could not have been more clear in its *TRS II* order – the Commission prohibited the recovery of TRS via a *surcharge*.<sup>28</sup> Ironically, the only carriers who provided comments in response to ITTA's petition (i.e., AT&T, Verizon, and CenturyLink) are the very carriers who have and are currently recovering TRS costs via a *surcharge* on their customers' bills. AT&T and Verizon literally use the term *surcharge* in describing the line item in which TRS is recovered.<sup>29</sup> In full light of the truthful historical account of the Commissions *TRS I* and *TRS II* orders, the Commission should conclude that its orders are **not** ambiguous and deny ITTA's petition.

**c. *TRS III* Order (July 20, 1993)**

On July 20, 1993, in what is commonly known as the Commission's *TRS III* order, the Commission further clarified an element of its *TRS II* order which stipulated that “costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.”<sup>30</sup> This clarification was prompted by requests from commenters, following *TRS II*, that the Commission “**clarify and define with specificity the persons who would be required to contribute to the TRS Fund.**”<sup>31</sup>

In the Commission's clarifying response, it acknowledged that “Congress ordered the Commission to prescribe regulations providing generally that costs caused by interstate telecommunications relay services should be recovered from all subscribers to every interstate service.”<sup>32</sup> Mindful of this Congressional order, the Commission declared “we believe that we can accomplish the goals of the Act by having NECA [National Exchange Carrier Association] recover these costs from all common carriers that provide interstate service.”<sup>33</sup> The Commission then concluded “**We believe that recovering interstate relay costs from all common carriers**

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<sup>27</sup> AT&T Comments at 5 (“Thus, when the Commission in both the TRS I Order and the TRS II Order remarked that ‘carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on subscribers’ lines,’ it was merely holding that relying on a SLC-like charge was not consistent with the ADA, and that carriers would have to recover costs from all subscribers of their interstate services.”).

<sup>28</sup> *TRS II*, ¶ 19 (“In its comments, MCI proposes a specifically identified charge [surcharge] on end users...”); *TRS II*, ¶ 22 (“Thus, MCI's proposal to assess such a charge [surcharge] is not feasible”).

<sup>29</sup> Verizon, <http://www.verizon.com/support/smallbusiness/billing/understanding-your-bill.htm> (last visited August 5, 2018) (*See also Id.* Appendix A) (emphasis added); CenturyLink, <http://www.centurylink.com/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/carrier-property-tax-and-federal-regulatory-recovery-fee-explained.html> (last visited August 5, 2018) (*See also Id.* Appendix B) (emphasis added).

<sup>30</sup> *TRS II*, p. 1809.

<sup>31</sup> *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, ¶ 12 (1993) (“*TRS III*”) (emphasis added).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

**who provide interstate service on the basis of their interstate revenues will accomplish this goal.**<sup>34</sup>

Thus, the Commission plainly concludes that it met the ADA’s goal of “recovering TRS costs from all subscribers to every interstate service” by recovering TRS costs from carriers rather than directly from end users. Therefore, ITTA’s assertion that the Commissions *TRS I* and *TRS II* orders statutorily require carriers to recover TRS costs directly from their customers<sup>35</sup> is patently false. The Commission has made its position very clear – carriers are **not** required to recover TRS contributions from their customers.

Notably, the Commission’s clarifying orders in *TRS III* clear up any conceivable misunderstanding about the meaning of the Commission’s *TRS I* and *TRS II* orders pertaining to language that “carriers are required to recover interstate TRS costs as part of the cost of interstate services.” *TRS I* and *TRS II* do not require carriers to recover TRS costs **directly** from their customers. Rather, these orders mandate that the cost of the TRS program be recovered from carriers through a shared-funding mechanism – TRS costs are recovered by assessing common carriers a charge based on their relative share of nationwide interstate revenues.

The Commission should ignore ITTA’s assertion that carriers are statutorily required to recover TRS costs directly from their customers and deny its petition.

**d. *TRS IV* Order (September 29, 1993)**

On September 29, 1993, in what is commonly known as the Commission’s *TRS IV* order, the Commission further clarified its *TRS III* order by ruling that “TRS Fund contributions may be treated as exogenous costs under price cap regulation.”<sup>36</sup> This clarification provides further evidence that carriers are *only* allowed to recover TRS Fund contributions via their service rates – if they choose to do so – but are prohibited from recovering TRS Fund contributions via a line item or any specifically identified charge on customers’ bills.

The Local Exchange Carriers (“LECs”) were well aware that: (1) the Commission prohibited the recovery of TRS via a line item or a specifically identified charge on customers’ bills; and (2) TRS costs could only be recovered through service rates. Therefore, since LECs are subject to price cap regulations, they were forced to request permission from the Commission to increase their service rates in order to recover TRS Fund contributions from their customers. Thus, the LECs petitioned the Commission to treat the recovery of TRS Fund contributions as exogenous

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<sup>34</sup> *Id.* (emphasis added).

<sup>35</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, *ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Reply Comments of ITTA – The Voice of America’s Broadband Providers, p. 7-8 (filed July 3, 2018) (“ITTA Reply Comments”) (“the fact remains that Section 225 (d)(3)(B) of the Act requires that interstate TRS costs ‘shall be recovered from all subscribers for every interstate service.’”).

<sup>36</sup> *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Second Order on Reconsideration and Fourth Report and Order, 9 FCC Rcd 1637, ¶ 2 (1993) (“*TRS IV*”).

costs under the price cap regulations. The Commission agreed with the LECs petition and issued the following order:

*We are persuaded by petitioners to clarify that for TRS fund contributors regulated under price cap regulation, contributions may be treated as exogenous costs for the purposes of calculating the price cap index.*<sup>37</sup>

If the Commission permitted carriers to recover TRS costs via a line item – which they do not – the LECs could have easily recovered their TRS contributions using a line item charge on their customers’ bills. However, the LECs clearly understood the Commission’s orders – carriers are prohibited from using line items to recover TRS costs. Therefore, in order to adhere to price cap regulations, the LECs had to get permission to incorporate TRS costs into their service rates.

Hence, *TRS IV* provides one more conclusive piece of evidence – notwithstanding the indisputable evidence in *TRS I, II, and III* – that the Commission’s TRS orders are patently unambiguous and prohibit the recovery of TRS Fund contributions via any form of line item, including composite line items. Accordingly, the Commission should deny ITTA’s petition.

## **II. Commission’s TRS Orders After 1994**

Although the Commission patently established its TRS recovery orders in *TRS I, II, III* and *IV*, the Commission, for various reasons, has reiterated these order many times over the past 25+ years. Often times, the Commission reiterated its orders in response to industry petitions and other times to simply re-emphasize its orders to eliminate any misunderstanding. The following is a sampling of the Commission’s rules and orders since its initial four TRS orders:

**2004 Order:** *We take this opportunity to reiterate that carriers obligated to contribute to the Interstate TRS Fund (e.g., carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers’ bill as one for relay services.*<sup>38</sup>

**2005 Order:** *[W]e [FCC] reiterate that carriers are not prohibited per se under our existing Truth-in-Billing rules or the Act from including non-misleading line-items on telephone bills. We note that this finding does not alter the role of any other specific prohibition or restriction on the use of line-items. For example, this Commission has prohibited line-items for Interstate Telephone Relay Service (TRS) costs.*<sup>39</sup>

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<sup>37</sup> *TRS IV*, ¶ 18.

<sup>38</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571, 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, ¶ 8, n.33 (2004) (emphasis added).

<sup>39</sup> *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, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6448, ¶ 23, n.64 (“2005 Truth-in-Billing Order”) (emphasis added).

**2012 Order:** *We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users' lines.*<sup>40</sup>

**2015 Order:** *COMPTEL also asks for clarification that carriers are not prohibited from recovering TRS contributions through line items [plural, meaning any and all line items] on customer bills [...]. The Commission has long prohibited carriers from specifically identifying charges for TRS Fund contribution costs in customer bills, and there is no basis for the Bureau to depart in this Order from the Commission's prior decisions on this point.*<sup>41</sup>

The Commission's orders from 2004 thru 2015 restate what the Commission had already ordered in its *TRS I, II, III, and IV* orders. In fact, in its 2015 order, the Commission goes out of its way to quote COMPTEL's request for "clarification that carriers are not prohibited from recovering TRS contributions through *line items*"<sup>42</sup> on customer bills. In this passage, COMPTEL refers to line items in the plural form (i.e., COMPTEL is asking if the Commission prohibits the recovery of TRS through any type of line item).

When the Commission responded by stating it "has long prohibited carriers from specifically identifying charges for TRS Fund contribution costs in customer bills"<sup>43</sup> the Commission was making it clear that it has always prohibited the recovery of TRS through **any** type of a *line item* (e.g., specific, separate, or composite).

The Commission has never wavered on its orders from 1991 through the present. The Commission's historical record pertaining to the recovery of TRS Fund contributions is clear and speaks for itself. Simply put, the Commission, from 1991 thru the present, has patently prohibited carriers from recovering TRS Fund contributions by means of any type of a *line item* (i.e., specific, separate, or composite) on customers' bills. Consequently, the Commission should deny ITTA's petition.

### **III. Carriers' Historical Interpretation of Commission's TRS Orders**

In light of the Commission's historical record, there is no need for parole evidence that further supports the position that carriers are prohibited from using line items to recover TRS Fund contributions. However, since some of the commenters have taken an adamant position that the telecom industry has a different interpretation of the Commission's orders – claiming that the Commission has not prohibited the use of line items to recover TRS Fund contributions – the Enterprise Users Commenters feel it is necessary to set the record straight.

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<sup>40</sup> *Universal Service Contribution Methodology, A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, ¶ 394, n.617 (2012) (emphasis added).

<sup>41</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket No. 03-123, CG Docket No. 10-51, Order, 30 FCC Rcd 7063, ¶ 14 (2015) (emphasis added).

<sup>42</sup> *Id.* (emphasis added).

<sup>43</sup> *Id.*



Prior to ITTA's petition, the telecom industry espoused a very different interpretation of the Commission's TRS Fund recovery orders. Their comments to the Commission clearly asserted that: (1) carriers are prohibited from recovering TRS Fund contributions via line items; and (2) carriers may only recover TRS Fund contributions via their service rates. The following is a sampling of the comments published by several industry groups that speak for themselves in arriving at this conclusion:

- *They [carriers] must either pass through increases in the contribution amount [TRS contribution] via a general rate hike, or they must absorb the increases where contracts or other billing arrangements with customers restrict their ability to raise their rates.*<sup>44</sup>
- *[T]he Commission has stated on several occasions that providers are not permitted to identify TRS contributions as separate line items on subscriber bills but instead are required to incorporate TRS contributions into the prices of their interstate telecommunications services.*<sup>45</sup>
- *[T]he Commission permits providers to separately identify assessments for universal service and the federal excise tax as line items on subscriber bills. Such is not the case, however, for TRS contributions which the Commission prohibits providers from separately identifying in line items on customer bills.*<sup>46</sup>
- *Carriers contribute to the TRS Fund based on their previous year revenues and are not allowed to seek reimbursement of this fee through a separate line item charge to customers, but instead must integrate the additional cost into their rates.*<sup>47</sup>

Ironically, AT&T, Verizon and CenturyLink are members of the organizations that asserted these comments. Just a few short years ago, through these organizations, AT&T, Verizon and CenturyLink were espousing interpretations of the Commission's orders that are in direct conflict with their current interpretations. Given the backdrop of their historical interpretation of the Commission's orders, it appears, at best, the carriers' current interpretations are self-serving and disingenuous.

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<sup>44</sup> *Petition for Forbearance Pursuant to 47 U.S.C. § 160 From Enforcement of The TRS Line Item Prohibition*, WC Docket No. 13-, Petition for Forbearance of COMPTel, p. 6 (filed Dec. 12, 2013) (this petition was pulled from Commission's physical archives) (emphasis added).

<sup>45</sup> *Telecommunications Relay Services and Speech-to-Speech for Individuals With Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, COMPTel's Comments on the Proposed Contribution Factor, p. 4-5 (filed June 4, 2015) (emphasis added).

<sup>46</sup> *Id.* at 6-7.

<sup>47</sup> *Telecommunications Relay Services and Speech-to-Speech for Individuals With Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, Comments, p. 8 (filed May 31, 2013) (emphasis added).

#### IV. Commission has Prohibited Composite Line Items to Recover TRS Costs

AT&T and Verizon have invented the term “composite” line item, suggesting that its meaning is different than that of a “specific” line item as it relates to the Commission’s prohibition of line items to recover TRS Fund contributions.<sup>48</sup> Through crafty semantics, AT&T and Verizon attempt to bring confusion to the TRS line item prohibition issue. The Commission has never differentiated between “specific” and “composite” line items. Rather, a *line item* is a *line item* regardless if there is one charge or multiple charges within a given line item.

The Commission has always asserted that there are only two mechanisms for carriers to recover their costs – “through rates or other line item charges.”<sup>49</sup> In fact, in its 2005 Truth-in-Billing Order, the Commission voiced its concern that carriers may be unlawfully placing charges in *line items* in order to keep their *rates* artificially low:

*In particular, we [Commission] are concerned that some carriers may be disguising **rate increases** in the form of **separate line item charges** and implying that such charges are necessitated by government actions.*<sup>50</sup>

If one was to follow AT&T and Verizon’s line of reasoning, carriers could have simply put their unlawful charges in a “composite” line item, instead of a “separate” line item, and, thereby, circumvented the Commission’s reprimand. Of course, this is nonsense. In the above passage, the Commission is plainly stating that it was concerned that carriers were putting charges in *line items* (i.e., separate or composite) in lieu of their *service rates*.

As the Enterprise Users Commenters asserted in its reply comments, it would defy logic to suggest that *composite* and *separate* line items are treated differently under the Commission’s orders. If this were the case, most of the Commission’s rules pertaining to line items would be annulled – carriers could simply bypass the Commission’s rules by combining charges into a composite line item.<sup>51</sup>

Against this backdrop, the Commission should summarily dismiss the irrational “composite” line arguments that have been put forth and deny ITTA’s petition.

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<sup>48</sup> AT&T Comments at 7; AT&T Reply Comments at 1; Verizon Reply Comments at 4-5.

<sup>49</sup> 2005 Truth-in-Billing Order, ¶ 28; Federal-State Joint Board on Universal Service, Order, CC Docket No. 96-45, DA02-1419, ¶ 6 (2002) (In referencing the recovery of USF contributions, the Commission stated “Some [carriers] elect to recover their contributions from their customers through line-item charges, while others elect to collect their contribution requirement through their rates.” While the Commission allows carriers to recover USF contributions via lines items, it prohibits carriers from recovering TRS Fund contributions via line items, thereby, leaving service rates as the only option for recovery of TRS Fund contributions).

<sup>50</sup> 2005 Truth-in-Billing Order, ¶ 24 (emphasis added).

<sup>51</sup> Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Truth-in-Billing and Billing Format, ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions, CG Docket No. 98-170, Reply Comments of the Enterprise Users Commenters, p. 10-12 (filed July 3, 2018) (“Enterprise Users Commenters Reply Comments”).

## **V. Prohibition of TRS Line Items is Supported by Hard-of-Hearing Organizations**

The Enterprise Users Commenters agree with Convo Communications, LLC's ("Convo") reply comments that "ITTA's request to identify TRS as a line item description in customer bills subverts the Americans with Disabilities Act's (ADA) mandate of telecommunications as a universally available service and consequentially would segregate and stigmatize TRS as a 'special' need."<sup>52</sup> Similarly, in 1991, the Telecommunications for the Deaf, Inc. also reminded the Commission of this very same issue – that identifying TRS costs on customers' bills would be considered discriminatory and offensive to the deaf community.<sup>53</sup> More recently, in its comments to ITTA's petition, Consumer Groups, representing five hearing disabled groups<sup>54</sup> voiced the same concern stating "Consumer Groups also remain concerned that singling out TRS fees will result in discrimination."<sup>55</sup>

In its reply comments, Convo provides a telling example of why ITTA's petition is so discriminatory in nature:

*ITTA's request to single out a class of telecommunications users as a cost burden is as egregious as a hotel or restaurant identifying in its bill a line item claiming a surcharge of the cost of providing accommodations generally, such as a ramp, brailled signage or captioned television sets; such line items do not exist in other ADA requirements for accessible programs and services because doing so would violate the public's understanding that it is a civil right which extends to all in society, not a special service for certain people.*<sup>56</sup>

Against this backdrop, the Commission should continue to prohibit carriers from recovering TRS Fund contributions via line items on customers' bills and should deny ITTA's petition to allow carriers to describe this unlawful line item on customers' bills.

## **VI. Carriers have Misapplied Commission's Truth-In-Billing Rules**

The Enterprise Users Commenters concur with Convo's reply comment that "ITTA should not be permitted to game the civil right of accessible telecommunications under the cloak

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<sup>52</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, *ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Reply Comments of Convo Communications, LLC, p. 1 (filed July 3, 2018) ("Convo Reply Comments")

<sup>53</sup> *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals*, *The Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Comments of Telecommunications for the Deaf, Inc., p. 3 (filed September 26, 1991).

<sup>54</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Truth-in-Billing and Billing Format*, *ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions*, CG Docket No. 98-170, Comments of Consumer Groups, p. 1 (filed July 3, 2018) ("Consumer Groups Comments") (Consumer Groups represents the following five organizations: Telecommunications for the Deaf and Hard of Hearing, Inc. (TD), Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), and Hearing Loss Association of America (HLAA).

<sup>55</sup> Consumer Groups Comments at 2.

<sup>56</sup> Convo Reply Comments at 1.

of Truth-in-Billing rules.”<sup>57</sup> Many of the commenters to ITTA’s petition have deceitfully, and with impunity, cloaked their TRS recovery arguments under the guise of compliance with the Commission’s Truth-in-Billing rules.

As the Enterprise Users Commenters have previously argued, the Commission’s Truth-in-Billing rules apply exclusively to *legal* charges in customers’ bills. Simply put, unlawful charges on customers’ bills are not subject to the authority of the Commission’s Truth-in-Billing rules. It should go without saying, unlawful charges should not appear on customers’ bills. Thus, the Commission’s Truth-in-Billing rules were not intended to be used to legitimize unlawful charges (i.e., by requiring such charges to be described on customers’ bills).

Further, the Commission has the legal authority to prohibit carriers from recovering a cost as a line item on customers’ bills as ruled by the Sixth Circuit in *BellSouth Telecommunications, Inc. v. Farris*.<sup>58</sup> In addition, it should go without saying, when the Commission dictates an order that prohibits a line item charge from appearing on customers’ bills, it is implicit, in the order, that a description of the charge is also prohibited from appearing on customers’ bills.

Against this backdrop, the Commission should dismiss the contrived arguments that have been put forth to support a carrier’s obligation, under Truth-in-Billing rules, to describe an unlawful charge on customers’ bills and deny ITTA’s petition.

## **VII. Carriers have Misapplied First Amendment/Constitutional Laws**

The Enterprise Users Commenters respectfully remind the Commission that many commenters to ITTA’s petition have falsely proffered a First Amendment/Constitutional argument as a scare tactic in urging the Commission to issue a ruling in favor of ITTA’s petition. As noted in the Enterprise Users Commenters reply comments, contrary to AT&T’s assertion, the Sixth Circuit held that it was not a violation of BellSouth’s commercial speech rights to prohibit a charge from appearing on customers’ bills.<sup>59</sup> As such, it is also not a violation of the carriers’ commercial speech rights for the Commission to prohibit carriers from recovering TRS Fund contributions as a line item on customers’ bills.

In addition, AT&T misrepresented the court’s decision as it applies to commercial speech rights in describing TRS charges in customers’ bills. In the *Farris* case, the court ruled that BellSouth’s First Amendment rights were violated because Kentucky disallowed BellSouth from describing a tax that was incorporated into the BellSouth’s service rates. Similarly, if carriers were prevented from describing a TRS charge that is incorporated into their service rates, this would be a violation of their commercial speech rights. However, carriers are **not** prevented from describing a TRS charge that is incorporated into their service rates – the Commission has never prevented carriers from stating their service rates include the recovery of TRS Fund contributions.

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<sup>57</sup> *Id.* at 2.

<sup>58</sup> 542 F.3d 499 (6<sup>th</sup> Cir. 2008) (“*Farris*”).

<sup>59</sup> Enterprise Users Commenters Reply Comments at 8-10.



However, as it relates to the recovery of TRS, ITTA is not asking the Commission to allow carriers to reference TRS in the description of a *service rate* (i.e., a legal charge). Rather, ITTA is asking the commission permission for carriers to reference TRS in the description of a *line item* (i.e., an illegal charge). Therefore, unlike in *Farris*, there is no First Amendment violation by the Commission.

Against this backdrop, the Commission should summarily dismiss the false First Amendment/Constitutional arguments that have been put forth and deny ITTA's petition.

### **VIII. Conclusion**

If the Commission chooses to *prospectively* change its rules regarding how carriers are permitted to recover TRS Fund contributions from customers, the Enterprise Users Commenters recognize it has the authority to do so. However, we urge the Commission to refrain from rewriting history – by changing its rules *retroactively* – in order to protect the carriers from the consequences of their current and past unlawful actions. For the reasons stated in this letter, as well as the reasons stated in the Enterprise Users Commenters' comments and reply comments, the Commission should reject ITTA's petition.

Respectfully submitted,

/S/ David C. Wallden

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On Behalf of the Enterprise Users Commenters

Filed: August 10, 2018

## Appendix A

<http://www.verizon.com/support/smallbusiness/billing/understanding-your-bill.htm>

Explanation of Taxes and Charges on Your Bill - Small Business Support... <http://www.verizon.com/support/smallbusiness/billing/understanding-yo...>

Wireless

Residential

Business

I am looking for

My Business Account

verizon

Products My Business Support

Sales: 1-866-680-7266

Request Quote

Search

Sign in for personalized support

Support > Billing & Account > Understanding Your Bill

Topics

General support

My Business Account

Traditional Phone calling features

Calling plans

Understanding Your Bill

Explanation of Taxes and Charges on Your Bill

Taxes may differ by state and each person may select different features; therefore, you might find some variation of the following taxes on your bill.

Additional State Taxes

Each state has the power to levy Additional State Taxes based upon Public Utility Commission (PUC) Guidance. If you have a question about a charge on your bill that appears to be state initiated, contact your state PUC for explanation of the charge and why it was instituted. In many cases, these charges are similar to those levied at the interstate level.

Carrier Cost Recovery Charge

The Carrier Cost Recovery Charge is a monthly surcharge telecommunications carriers, such as Verizon Long Distance and Verizon Enterprise Solutions, are permitted to assess in order to defray a portion of the costs to terminate calls on other networks, fees paid to support government programs such as Telecommunications Relay Service and Local Number Portability, along with other charges assessed by the FCC, and additional indirect costs associated with administering and complying with government programs. This surcharge is not a customer tax or fee assessed by a government agency.

City Tax

A tax collected for City Governments from purchasers of products and users of telecommunication services, which may include equipment, installation, maintenance as well as local and long distance service.

Emergency Service Fee for 911

The 911 Emergency Service Fee is a fee to cover the costs of local jurisdictions providing 911 emergency response services to its citizens. The fee is generally either an amount per telephone access line or a percentage of revenue. State law mandates the fee. Verizon is collecting this fee as a billing agent on behalf of the appropriate 911 jurisdictions within the state. A few states authorized Verizon to collect the fee as a cost recovery where the state designates Verizon as the provider of the 911 emergency phone service.

Federal Excise Tax

The Federal excise tax is a tax on local telephone service that includes services and facilities sold in connection with local service.

This tax is a percentage of the cost of your services and appears on the local phone portion of your bill. The percentage used to calculate the amount of the tax appears with the charge. For example, "Federal excise tax at 3%."

Verizon acts as a billing agent and collects these fees on behalf of the Internal Revenue Service (IRS). All monies collected for the Federal excise tax are paid directly to the IRS.

Interstate Access Charge

The FCC has mandated an access charge (known as the FCC Line Charge) to partially reimburse telephone service providers for the cost of routing long distance calls made by local customers. This charge is applied to all customers who have telephone lines in their home or business, whether they make long distance calls or not. This is also known as the Federal Subscriber Line Charge and the Federal Line Cost Charge.

Intrastate Access Charge

State assessed surcharges to partially reimburse telephone service providers for the cost of routing long distance calls made by local customers. This charge is applied to all customers who have telephone lines in their home or business, whether they make long distance charges or not.

Federal Universal Service Fund (USF) charge

A monthly, per-line surcharge paid by the customer to recover local companies' contribution to the Federal Universal Service Fund. This fund supports telecommunications and information services in schools, public libraries, and rural health-care facilities. The fund also subsidizes local service to high-cost areas and low-income customers. The FCC regulates this charge.

The Federal Universal Service Fund (FUSF) rate is reviewed quarterly. This fee helps to keep local telephone rates affordable for all customers and gives a discount to schools, libraries and low-income families. This charge will not be applied to Lifeline customers. Please visit the Lifeline web site to find out if you are eligible, or contact Verizon support.

Metropolitan Transit Authority (MTA)

Generated funds are reserved for mass transit systems.

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## Appendix B

<http://www.centurylink.com/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/carrier-property-tax-and-federal-regulatory-recovery-fee-explained.html>

Carrier Property Tax and Federal Regulatory Recovery Fee | CenturyLink <http://www.centurylink.com/home/help/account/billing/taxes-fees-and-su...>

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### Carrier Property Tax and Federal Regulatory Recovery Fee

This fee is a combined **surcharge** meant to cover both Property Tax Allocation (</home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/understanding-the-property-tax-allocation.html>) and the Federal Regulatory Recovery Fee (</home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/federal-regulatory-recovery-fee-explained.html>).

The Carrier Property Tax is applied to interstate and international services, fixed monthly charges and variable usage fees. CenturyLink recovers a portion of the property taxes it must pay to provide telecommunications services to businesses and homes around the country by applying an allocation charge to customers' monthly bills.

The Federal Regulatory Recovery fee is a percentage of interstate and international usage. It recovers amount paid to the federal government for regulatory costs and telecommunication services for the hearing-impaired.

#### Other ways it may appear on the bill

This surcharge may appear on the bill as "Prop TX/Reg Fees/USF Admn".

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May 6, 2019

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: *Ex Parte* Communication: CG Docket Nos. 03-123, 98-170**

Dear Ms. Dortch:

On May 2, 2019, Nick Alexander of CenturyLink and the undersigned of ITTA met with Lisa Hone, Gil Strobel, Victoria Goldberg, Doug Slotten, and Dick Kwiatkowski of the Wireline Competition Bureau, and Mark Stone, Kurt Schroeder, Erica McMahon, and Richard Smith of the Consumer and Governmental Affairs Bureau,<sup>1</sup> regarding ITTA's petition for declaratory ruling in the above-referenced proceedings.<sup>2</sup>

The bulk of the meeting was spent discussing how various carriers recover their costs of contributing to the TRS Fund. Some recover such costs via an exogenous adjustment in their annual access filing. Others recover them via a non-specific "regulatory charge" (or the like) line item.<sup>3</sup> And still others recover such costs via a combination of rates and a non-specific line item, depending on the particular services for which they are billing. We suggested that an order granting the Petition could make clear that carriers should not double recover their TRS costs through full recoveries via both rates and non-specific line items. Carriers should be permitted, however, to continue to recover their TRS costs through both rates and non-specific line items as needed to fully recover those costs. In other words, a carrier could recover some of its TRS costs through rates and some of its TRS costs through a non-specific line item to result in full recovery of those costs.

We also briefly addressed recent submissions to the record opposing the Petition. Some mischaracterize the Petition, failing to recognize that the Petition requests a declaratory ruling that it is and always has been permissible for a carrier recovering TRS Fund contributions via an end user cost recovery fee line item (or the like) on customers' bills to include TRS, *among other*

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<sup>1</sup> Messrs. Slotten, Kwiatkowski, and Smith participated by telephone.

<sup>2</sup> See ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions, CG Docket Nos. 03-123 and 98-170 (filed May 8, 2018) (Petition).

<sup>3</sup> Carriers in multi-year, fixed service rate contracts may find recovery as part of a general line item attractive because it is easier for billing systems to adjust a fee line item that is applicable to a variety of services where charges may be variable – such as is the case with TRS, which changes annually pursuant to changes in the TRS contribution factor – than it is to change service rates annually, and some contracts prohibit any service rate increases regardless of their source.



*references*, in the line item description. This is fully consistent with the Commission’s proscription of a “specifically identified charge” for TRS costs.<sup>4</sup> The Petition does not seek sanction to specifically identify on consumers’ bills costs attributable to TRS. While ITTA understands the earnestness underlying some recent submissions to the record, the fact is that neither the ADA nor Commission precedent says what these filers would like them to, nor do they preclude in any way the Commission issuing ITTA’s requested ruling.<sup>5</sup> The Commission’s Truth-in-Billing rules protect all consumers, by “clearly requir[ing] that a consumer’s monthly bill contain descriptions of all billed charges so consumers are fully informed about the basis of the charges.”<sup>6</sup> ITTA’s requested ruling balances the consumer protections fostered by the Truth-in-Billing rules with whatever reason the Commission had nearly three decades ago for prohibiting a “specifically identified charge” for TRS costs.<sup>7</sup>

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs  
Vice President, Regulatory Affairs

cc: Mark Stone  
Lisa Hone  
Gil Strobel  
Kurt Schroeder  
Victoria Goldberg  
Doug Slotten  
Richard Smith  
Erica McMahon  
Richard Kwiatkowski

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<sup>4</sup> See Petition at 4.

<sup>5</sup> See *id.*; see also Reply Comments of ITTA, CG Docket Nos. 03-123 and 98-170, at 2 (filed July 3, 2018).

<sup>6</sup> Petition at 5 (quoting *Gregory Manasher et al. Petition for Declaratory Ruling*, Declaratory Ruling, 33 FCC Rcd 2737, 2741, para. 13 (2018)).

<sup>7</sup> The Commission never elaborated upon this unexplained prohibition. See *id.* at 4.