

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of

Telecommunications Relay Services and
Speech-to-Speech Services for Individuals
with Hearing and Speech Disabilities

Truth-in-Billing and Billing Format

ITTA Petition for Declaratory Ruling
Regarding TRS Line Item Descriptions

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CG Docket No. 03-123

CG Docket No. 98-170

REPLY COMMENTS OF VERIZON¹

The record in this proceeding confirms that the Commission should grant ITTA’s petition for declaratory ruling² and confirm that carriers may – and always have been able to – recover their contributions to the Telecommunications Relay Services (TRS) fund as one element of a composite line item or surcharge on customer invoices and may describe such surcharges as including TRS recovery (among other things). Verizon files these Reply Comments to emphasize briefly a few important points.

There is no dispute that carriers like Verizon are required to contribute to the TRS fund based on revenue from interstate services. Likewise, there is no dispute that carriers may recoup those TRS contributions from their customers for those interstate services. In particular, the Americans with Disabilities Act (ADA) permits carriers to recover TRS costs “from *all*

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Petition for Declaratory Ruling of ITTA, CG Docket Nos. 03-123 & 98-170 (filed May 8, 2018) (“ITTA Petition”).

*subscribers for every interstate service.”*³ Likewise, the Commission’s orders implementing the ADA confirm that, “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 . . .*”⁴ No commenter appears to contest these requirements.

The only issues before the Commission therefore concern *how* carriers recover those interstate costs from customers and, specifically, (1) whether carriers may recover these costs from “all subscribers” as part of line-item charges on their invoices and (2) whether the description of such line item charges may refer to the fact that they include TRS recovery, along with other elements.⁵ To answer these questions, the Commission should look not only to the ADA and its orders implementing those provisions, but also to its Truth-in-Billing Rules, which require, among other things, that charges “on telephone bills must be accompanied by a *brief, clear, non-misleading, plain language description* of the services or services rendered.”⁶

The Commission’s Orders Have Focused on Who Would Be Subject to Cost Recovery – and Did Not Prohibit Specific Cost Recovery Mechanisms. The Commission’s previous orders and rulings do not preclude carriers from recovering TRS fund contribution costs through line

³ 47 U.S.C. § 225(d)(3)(B) (emphasis added).

⁴ *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, 6 FCC Rcd 4657, ¶ 34 (1991) (“*TRS I Order*”) (emphasis added); *Telecommunications Relay 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, ¶ 2 (1993) (“*TRS II Order*”).

⁵ See ITTA Petition.

⁶ 47 CFR § 64.2401(b) (emphasis added).

item charges that include TRS recovery and other elements.⁷ While the Commission’s first orders implementing the ADA stated 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,”⁸ AT&T correctly observes that this language means that, under the ADA, carriers cannot recover interstate TRS costs through charges imposed on only a limited subset of subscribers.⁹ Indeed, the Commission’s focus in these early orders was on *who* would be subject to TRS recovery – ensuring that *all* interstate subscribers bear the interstate costs of TRS – not on specifying the methods by which carriers may recover those costs.

To that end, the original Notice of Proposed Rulemaking called for comments on how to implement cost-recovery for “interstate relay services [to] be supported by subscribers to *all* interstate services.”¹⁰ Moreover, the primary proposals before the Commission at the time did not concern whether or how TRS fund contribution charges should appear on customers’ invoices.¹¹ The Commission had no reason to address the permissibility of a TRS-specific line item charge, which explains why the orders contain no rationale or explanation concerning how TRS-fund recovery charges must appear on customers’ invoices. Indeed, the Commission

⁷ *Accord* Comments of AT&T, CG Docket Nos. 03-123 & 98-170, at 3-7 (June 18, 2018) (“AT&T Comments”).

⁸ *TRS I Order* ¶ 34; *TRS II Order* ¶ 22 (replacing the word “subscribers” with “end user’s”).

⁹ *See* AT&T Comments at 3-7.

¹⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Notice of Proposed Rulemaking, 5 FCC Rcd 7187, ¶ 21 (1990) (emphasis added).

¹¹ *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, ¶ 12 (1993).

expressly recognized that “the record is not adequate to determine *a specific cost recovery mechanism* at this time.”¹²

The only comments filed opposing the ITTA Petition were by Kairos Partners, a contingency fee telecommunications bill auditor. Kairos argues that the Commission’s subsequent statements reflect a *per se* prohibition on any use of a line item charge to recover TRS costs, even if TRS recovery is only one element of the charge.¹³ But, as noted, the rules adopted by the Commission in its initial orders implementing the ADA did not ban TRS line items, and nothing in later Commission statements suggests it intended to expand or alter its earlier rules.¹⁴ Indeed, in a 2011 order, the Commission confirmed that carriers could use a surcharge to pass on the costs of Video Relay Service to all consumers.¹⁵

¹² *TRS I Order* ¶ 34.

¹³ See Comments of Enterprise Users Commenters, CG Docket Nos. 03-123 & 98-170 (June 18, 2018) (“Enterprise Users Comments”).

¹⁴ Citing these subsequent Commission statements, the Enterprise Users Commenters also argue that the ITTA Petition is procedurally defective. Specifically, they contend that prior Commission statements articulate a clear rule barring line-item TRS cost-recovery and that any changes to that rule cannot be made absent a notice-and-comment rulemaking proceeding. See Enterprise Users Comments at 3. This is wrong for the simple reason that the Commission has never adopted a rule prohibiting the use of either a TRS-specific or a composite line item for recovering interstate TRS costs, so there is no need to modify such a (non-existent) rule through a new rulemaking proceeding. In any event, initiating a rulemaking to consider whether to prohibit line-item cost recovery would be ill advised, especially in light of the Truth-in-Billing Rules’ transparency requirements for customers’ telephone bills, see 47 C.F.R. § 2401, as well as the potential constitutional implications of prohibiting carriers from describing accurately the nature of their fees, see AT&T Comments at 10-11 (citing *BellSouth Telecomms., Inc. v. Farris*, 542 F.3d 499 (6th Cir. 2008)).

¹⁵ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367, ¶ 103 n.209 (2011) (“VRS users are not charged for use of the service. Rather, these costs are passed on to all consumers of telecommunications service by intrastate and interstate common carriers, either as *a surcharge on their monthly service bills* or as part of the rate base for the state’s intrastate telephone services.”) (emphasis added).

But, even if the Commission were to reverse course and conclude that it previously restricted the use of a standalone TRS charge, there clearly never has been any prohibition on carriers recovering TRS through a composite line-item charge that includes TRS along with other elements. By including TRS with multiple other components in the same line item, the TRS recovery could not, by definition, be interpreted as a “specifically identified [TRS] charge on subscribers’ lines.” Or, stated differently, because it includes other items rather than identifying TRS cost-recovery as the sole basis for the surcharge, using a composite line-item charge removes any argument that the TRS recovery portion is inconsistent with the Commission’s initial orders implementing the ADA. Not surprisingly, such composite line-item charges have become common throughout the industry, as ITTA and others have emphasized.¹⁶ And the Commission itself has recognized that this is an appropriate way to recover these interstate costs from customers, noting that “911, LNP, and TRS charges” are “typical charges” that may be included in fees consumers see on their telephone bills.¹⁷

Carriers May Describe Composite Charges as Including TRS Recovery Consistent with the Truth-in-Billing Rules. Not only are composite charges that include TRS permitted, but the fact that at least some carriers describe their composite charges as including TRS recovery (among other elements) does not somehow undo the validity of the charge. If anything, noting that composite line-item charges include TRS cost recovery arguably is more consistent with the

¹⁶ See ITTA Petition at 3-4; *see also* AT&T Comments at 9-10; Comments of CenturyLink, CG Docket Nos. 03-123 & 98-170, at 5 (June 18, 2018); Comments of CTIA, CG Docket Nos. 03-123 & 98-170, at 3-4 (June 18, 2018); Comments of USTelecom, CG Docket Nos. 03-123 & 98-170, at 3-4 (June 18, 2018).

¹⁷ FCC, *Understanding Your Telephone Bill: Understanding Typical Charges on Phone Bills*, <https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill#typical-charges> (last updated June 7, 2018).

Commission's Truth-in-Billing rules than would be a requirement to hide the cost recovery mechanism in the underlying rates. As the Commission has made clear, the "truth-in-billing rules require that charges contained on telephone bills be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered."¹⁸ To that end, if "carriers choose to offer descriptions of various charges in the form of line items," that "may be useful information to the consumer in better understanding the charges associated with their service and making informed cost comparisons between carriers."¹⁹ Thus, there should be no penalty for carriers that choose to accurately describe an otherwise permissible surcharge as including a TRS component to "aid customers in understanding their telecommunications bills" and the nature of charges invoiced.²⁰

For the reasons discussed above, the Commission should grant the ITTA Petition and issue a declaratory ruling that carriers may recover the costs of their TRS contributions as part of line item charges on their bills.

¹⁸ *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6488, ¶ 23 (2005), *rev'd on other grounds sub nom., NASUCA v. FCC*, 457 F.3d 1238 (11th Cir. 2006).

¹⁹ *Id.* Although this statement was attached to a footnote in which the Commission noted that it had "prohibited line items for interstate Telephone Relay Service (TRS) costs," *id.* ¶ 23 n.64, the Commission cited only to its initial TRS orders. And those orders never adopted any rule prohibiting the use of TRS line items. *See* AT&T Comments at 6.

²⁰ *See* 47 CFR § 64.2400(a).

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