

KAIROS *Partners*

September 10, 2018

Via Electronic ECFS Filing

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

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

Dear Ms. Dortch:

On August 28, 2018, on behalf of the Enterprise Users Commenters,¹ Josh Ullrich and I met with Kurt Schroeder, Nancy Stevenson (via teleconference), Daniel Margolis, and Rebecca Hirselj of the Consumer and Governmental Affairs Bureau.

During the meeting, we discussed the issues outlined in the attached *ex parte* letter filed on August 10, 2018 by the Enterprise Users Commenters.

Respectfully submitted,



David C. Wallden
Managing Partner

cc: Kurt Schroeder
Nancy Stevenson
Daniel Margolis
Rebecca Hirselj
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¹ 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.

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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 Commenters¹ 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 ruling² 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;³ 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;"⁴ and

¹ 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.

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, *Petition for Declaratory Ruling of ITTA – The Voice of America's Broadband Providers* (filed May 8, 2018) ("ITTA Petition").

³ *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").

⁴ *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.”⁵ 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)
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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*.⁶ This order is quoted, as follows:

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

⁵ *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”).

⁶ *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.*⁷

In its reply comments, AT&T claims *TRS I* is *ambiguous*⁸ 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.’”⁹ Verizon, likewise, asserts that *TRS I* means that “carriers cannot recover interstate TRS costs through charges imposed on only a limited subset of subscribers.”¹⁰ 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.”¹¹ 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”¹² completely out of context – suggesting that this comment by the Commission confirms its interpretation of *TRS I*.¹³

The Commission’s comment – “the record is not adequate to determine a specific cost recovery mechanism at this time”¹⁴ – 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).¹⁵ 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.”¹⁶ 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

⁷ *TRS I*, ¶ 34.

⁸ AT&T Reply Comments at 3.

⁹ *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”).

¹⁰ Verizon Reply Comments at 3.

¹¹ *TRS I*, ¶ 34.

¹² *Id.*

¹³ AT&T Comments at 5-6.

¹⁴ *TRS I*, ¶ 34.

¹⁵ *TRS I*, ¶ 35.

¹⁶ *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.**”¹⁷ 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.*¹⁸

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.¹⁹

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...*²⁰

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.

¹⁷ *Id.* (emphasis added).

¹⁸ *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).

¹⁹ *Id.*, ¶ 3.

²⁰ *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.*²¹

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.**”²²

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].*²³

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

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

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

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

²¹ *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).

²² *TRS II*, ¶ 19 (emphasis added).

²³ *TRS II*, ¶ 22 (emphasis added).

²⁴ *Id.* (emphasis added).

²⁵ *Id.* (emphasis added).

²⁶ *Id.* (emphasis added).

proposal was denied based solely on the second reason²⁷ (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*.²⁸ 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.²⁹ 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.”³⁰ 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.**”³¹

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.”³² 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.”³³ The Commission then concluded “**We believe that recovering interstate relay costs from all common carriers**

²⁷ 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.”).

²⁸ *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”).

²⁹ 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).

³⁰ *TRS II*, p. 1809.

³¹ *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).

³² *Id.*

³³ *Id.*

who provide interstate service on the basis of their interstate revenues will accomplish this goal.³⁴

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 customers³⁵ 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."³⁶ 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

³⁴ *Id.* (emphasis added).

³⁵ *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.'").

³⁶ *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.*³⁷

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.*³⁸

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.*³⁹

³⁷ *TRS IV*, ¶ 18.

³⁸ *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).

³⁹ *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.*⁴⁰

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.*⁴¹

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*"⁴² 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"⁴³ 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.

⁴⁰ *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).

⁴¹ *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).

⁴² *Id.* (emphasis added).

⁴³ *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.*⁴⁴
- *[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.*⁴⁵
- *[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.*⁴⁶
- *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.*⁴⁷

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.

⁴⁴ *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 COMPTTEL, p. 6 (filed Dec. 12, 2013) (this petition was pulled from Commission's physical archives) (emphasis added).

⁴⁵ *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, COMPTTEL's Comments on the Proposed Contribution Factor, p. 4-5 (filed June 4, 2015) (emphasis added).

⁴⁶ *Id.* at 6-7.

⁴⁷ *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.⁴⁸ 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.”⁴⁹ 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.*⁵⁰

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.⁵¹

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

⁴⁸ AT&T Comments at 7; AT&T Reply Comments at 1; Verizon Reply Comments at 4-5.

⁴⁹ 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).

⁵⁰ 2005 Truth-in-Billing Order, ¶ 24 (emphasis added).

⁵¹ 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."⁵² 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.⁵³ More recently, in its comments to ITTA's petition, Consumer Groups, representing five hearing disabled groups⁵⁴ voiced the same concern stating "Consumer Groups also remain concerned that singling out TRS fees will result in discrimination."⁵⁵

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.*⁵⁶

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

⁵² *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")

⁵³ *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).

⁵⁴ *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).

⁵⁵ Consumer Groups Comments at 2.

⁵⁶ Convo Reply Comments at 1.

of Truth-in-Billing rules.”⁵⁷ 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*.⁵⁸ 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.⁵⁹ 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.

⁵⁷ *Id.* at 2.

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

⁵⁹ 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.

Looking for Residential?
Visit Residential Support

Looking for Wireless?
Visit Wireless Support

Chat now

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...>

Search Support



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".

Tour of your CenturyLink Bill

Explore and learn about the different sections of your bill with this interactive tool.

Take the tour [➤ \(/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/tour-of-your-centurylink-bill.html\)](/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/tour-of-your-centurylink-bill.html)

Sign in to My CenturyLink

Manage your account preferences and billing information online.

My CenturyLink [➤ \(https://eam.centurylink.com\)](https://eam.centurylink.com)

CenturyLink Products



</home/help/internet.html>
Internet (</home/help/internet.html>)



</home/help/home-phone.html>
Home Phone (</home/help/home-phone.html>)



</home/help/television.html>
TV (</home/help/television.html>)



</home/help/verizon-wireless.html>
Verizon Wireless (</home/help/verizon-wireless.html>)



</home/help/home-security.html>
Home Security (</home/help/home-security.html>)



</home/help/account.html>
Account Questions (</home/help/account.html>)

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SEARCH



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