

ORIGINAL

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

In the Matter of )  
Federal-State Joint Board on Universal Service )

CC Docket No. 96-45  
DA 98-2410  
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To: Common Carrier Bureau

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF DOBSON COMMUNICATIONS CORPORATION**

Dobson Communications Corporation ("DCC")<sup>1</sup> hereby submits its comments on the Second Recommended Decision issued by the Federal-State Joint Board on Universal Service ("Joint Board") in the above-captioned proceeding.<sup>2</sup> As discussed below, the additional bill content and format restrictions recommended by the Joint Board would be intrusive, unnecessary, and raise profound constitutional and jurisdictional obstacles if applied to Commercial Mobile Radio Service ("CMRS") providers.

**I. INTRODUCTION**

On November 25, 1998, in a divided decision, the Joint Board released the *Recommendation* which, among other things, urged the Commission to adopt additional regulations governing universal service contributions and related billing issues. Of particular concern to DCC, the Joint Board stated that the Commission should *prohibit* carriers from

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<sup>1</sup> DCC, through its various subsidiaries, is a Cellular Radiotelephone Service provider in the states of Arizona, California, Kansas, Maryland, Missouri, Ohio, Oklahoma, Pennsylvania and Texas, and holds nine "F" Block broadband PCS licenses.

<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service, Second Recommended Decision*, CC Docket No. 96-45, FCC 98J-7 (rel. November 25, 1998) ("*Recommendation*").

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describing universal service cost recovery as a “tax,” or as “mandated by the Commission or the federal government,” or from “incorrectly” describing such cost recovery as “federally-approved.”<sup>3</sup> In addition, the Joint Board recommended that a carrier’s universal service line item charge be “no greater than the carrier’s universal service assessment rate.”<sup>4</sup> Further, the Joint Board recommended the adoption of standard nomenclature (*i.e.*, “Federal Carrier Universal Service Contribution”) to describe any universal service line item on consumer bills, which would be “accompanied by an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business . . . .”<sup>5</sup>

DCC does not dispute that it is a carrier’s responsibility to ensure that its bills are accurate and that “customers are not misled as to the nature of charges on bills.”<sup>6</sup> Nevertheless, these important principles do not justify additional regulations governing CMRS bill content or format.<sup>7</sup> Indeed, the *Recommendation* is devoid of substantive legal or factual justification for recommending that the Commission adopt such additional regulations for CMRS carriers.

In that regard, DCC notes that the *Recommendation* has direct bearing on the pending *Truth-in-Billing NPRM* in which the Commission has proposed restricting the language

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<sup>3</sup> *Recommendation* at ¶ 70.

<sup>4</sup> *Id.* at ¶ 69.

<sup>5</sup> *Id.* at ¶ 72. Unfortunately, the Joint Board failed to state whether such standard language would be voluntary or mandatory. However, the Joint Board did acknowledge that “it may also engender more confusion to use standard billing language where carriers have significant freedom in deciding how to set their own charges to customers.” *Id.* at ¶ 72 n.91.

<sup>6</sup> *Recommendation* at ¶ 70.

<sup>7</sup> *Id.* at ¶ 68 (emphasis supplied).

carriers may use on customer bills.<sup>8</sup> Numerous comments filed in that proceeding demonstrate that additional Commission regulation of competitive CMRS carriers' billing practices would be unnecessary, counterproductive, and fraught with jurisdictional and constitutional obstacles.<sup>9</sup> Simply put, mandatory universal service billing language would be costly and administratively burdensome with little or no countervailing public interest benefit.<sup>10</sup> In addition, strict CMRS bill content and format regulations would raise significant issues under the First Amendment to the Constitution of the United States and may conflict with the states' residual authority under Section 332(c)(3) of the Communications Act to regulate CMRS terms and conditions.<sup>11</sup> For these reasons, and as discussed below, DCC urges the Commission to reject the Joint Board's proposed bill content and format restrictions.

## **II. THE COMMISSION SHOULD REFRAIN FROM ADDITIONAL BILL CONTENT AND FORMAT REGULATION OF COMPETITIVE CMRS PROVIDERS**

As a preliminary matter, DCC submits that the Commission should not adopt any new bill content and format regulations governing the recovery of universal service contribu-

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<sup>8</sup> See *Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking*, CC Docket No. 98-170, FCC 98-232, 63 Fed. Reg. 55077 (Oct. 14, 1998) ("*Truth-in-Billing NPRM*").

<sup>9</sup> See generally PrimeCo Comments; Bell Atlantic Mobile Comments; AirTouch Comments; USCC Comments; Nextel Comments; see also CTIA Comments; PCIA Comments; CommNet Cellular Comments.

<sup>10</sup> See PrimeCo Comments at 10-11; PCIA Comments at 13-14; AirTouch Comments at 9-10; CTIA Comments at 8.

<sup>11</sup> See PrimeCo Comments at 14-16 (citing 47 U.S.C. § 332(c)(3)(A) and H.R. Rep. No. 103-111, at 261 (1993)); AirTouch Comments at 8-10; USCC Comments at 3-4; CTIA Comments at 8-11.

tions. In its *Universal Service Report and Order*, the Commission concluded that, if carriers contributing to the universal service funds:

choose to pass through part of their contributions and to specify that fact on customers' bills, contributors must be careful to convey information in a manner that does not mislead by omitting important information that indicates that the contributor has chosen to pass through the contribution or part of the contribution to its customers and that accurately describes the nature of the charge.<sup>12</sup>

The Commission clarified further that carriers should not characterize the mechanism as a "surcharge."<sup>13</sup>

In DCC's view, this approach protects consumer interests while affording CMRS carriers sufficient flexibility to recover their reasonable universal service contribution costs in a manner that best suits their business needs. DCC therefore urges the Commission to refrain from adopting any additional bill content and format regulations for CMRS providers. In this regard, DCC concurs with Commissioner Furchtgott-Roth's dissenting statement:

No carrier should have its billing information restricted or limited by the Commission. The Commission has explicitly provided carriers with the flexibility to decide how to recover their payments, including as charges on consumers' bills, and I am concerned by implications that such charges are fraudulent or misrepresentations. In this regard, I am concerned that the proposals discussed here not be used to pressure carriers, even indirectly, to remove or alter any current line items or charges; neither should these proposal[s] be interpreted as suggesting that carriers have misrepresented any facts.<sup>14</sup>

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<sup>12</sup> *Federal and State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776, 9211-12 ¶ 855 (1997) ("*Universal Service Report and Order*").

<sup>13</sup> *Id.*

<sup>14</sup> *Recommendation*, Dissenting Statement of Commissioner Harold Furchtgott-Roth at 16.

Additional CMRS bill content and format regulation would be intrusive and unnecessary, because the industry is highly competitive — a fact repeatedly acknowledged by the Commission.<sup>15</sup> Consequently, consumers are free to select their wireless providers on the basis of price and service quality. Indeed, it is broadly recognized that customers routinely switch wireless service providers in search of better rates, services, and convenience. Given the cost of attracting new customers and the customers' ability to migrate to other carriers, the rigorous discipline of the marketplace simply denies CMRS carriers the opportunity or incentive to engage in fraudulent or misleading billing practices.<sup>16</sup>

Moreover, any effort to expand the Commission's regulation of universal service billing language beyond the requirements that a carrier's bill be accurate and truthful would fly in the face of the Commission's general deregulatory approach to the CMRS industry<sup>17</sup> and would run afoul of the First Amendment. Carriers unquestionably have a First Amendment right to inform their customers — whether on the bill itself or elsewhere in the billing envelope — of

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<sup>15</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Third Report*, FCC 98-91 (rel. June 11, 1998) at 18-21.

<sup>16</sup> In this regard, DCC notes that the *Recommendation* points to no instance of improper billing practices on the part of CMRS carriers to support imposing bill content regulations upon CMRS carriers.

<sup>17</sup> Traditionally, billing and collection for a carrier's *own* service offerings has been treated as “an incidental part of a communication service.” *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150, ¶ 31 (1986) (emphasis supplied). As such, a common carrier's billing of its own customers was traditionally governed primarily by tariff. *See AT&T Communications Tariff F.C.C. Nos. 9 and 11*, 9 FCC Rcd 4480, ¶¶ 8-12 (CCB 1994) (discussing LEC billing practices in context of access tariffs). In 1994, however, the Commission detariffed CMRS services leaving CMRS providers' rates, terms and conditions largely unregulated. *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, ¶¶ 173-182 (1994).

what portion of their bill is attributable to recovery of universal service costs.<sup>18</sup> Even the Commission has admitted that “restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product *cannot withstand scrutiny under the First Amendment.*”<sup>19</sup> Efforts to prescribe specific bill language would clearly risk banning other truthful and not misleading language in violation of the First Amendment. Moreover, for the Commission to essay to mandate permissible commercial speech involves matters outside of its expertise and which are more appropriately addressed on a case-by-case basis by courts and other federal and state agencies.<sup>20</sup>

Further, any Commission authority in this regard is narrowly constrained by the states’ residual regulatory authority over CMRS terms and conditions. In its 1993 amendments to Section 332(c)(3) of the Act, Congress expressly preserved states’ authority to regulate the “other terms and conditions of commercial mobile services.”<sup>21</sup> The phrase “other terms and conditions” includes “such matters *as customer billing information and practices and billing disputes* and other consumer protection matters.”<sup>22</sup> Thus, Commission billing regulation would necessarily parallel and could easily conflict with state authority and the Commission must therefore exercise extraordinary caution before adopting any such new regulations.

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<sup>18</sup> See *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1979).

<sup>19</sup> *Truth-in-Billing NPRM* at ¶ 15 (citing *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996)).

<sup>20</sup> See 17 Am. Jr. 2d CONSUMER PROTECTION §§ 280-283.

<sup>21</sup> 47 U.S.C. § 332(c)(3)(A).

<sup>22</sup> H.R. Rep. No. 103-111, at 261 (1993) (emphasis added).

In sum, DCC submits that additional bill content regulation would be burdensome, unnecessary and wholly unjustified for competitive CMRS carriers. Instead, carriers should be free to recover such costs with any bill language that is accurate and not misleading.

### **III. THE JOINT BOARD'S TRUTH-IN-BILLING RECOMMENDATIONS ARE UNWARRANTED**

The Joint Board, however, proposed a number of new bill content and format regulations to govern the recovery of universal service contributions as a line item on carriers' bills. DCC submits that these "truth-in-billing" proposals are wholly unjustified in law and fact. DCC therefore urges the Commission to reject the additional bill content and format regulations proposed by the Joint Board.

First, the Joint Board urged the Commission to adopt the designation "Federal Carrier Universal Service Contribution" as standard nomenclature for describing a universal service contribution line item, *together with* "an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business, and to display the contribution as a line item on the consumer's bill."<sup>23</sup> As discussed above, such billing regulation is unnecessary for CMRS providers. Indeed, DCC works to ensure that its bills are accurate, not misleading, and contain all the information necessary for the consumer to understand the nature of the costs reflected on each bill. DCC undertakes such efforts *not* because of regulatory fiat, but rather to prevent customer confusion and retain customers in the intensely competitive wireless marketplace.

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<sup>23</sup> *Recommendation* at ¶ 72.

In addition, Commission-mandated changes to DCC's bill content and format will be tremendously costly and difficult to implement.<sup>24</sup> For example, in comments on the *Truth-in-Billing NPRM*, PrimeCo Personal Communications, L.P. stated that even minor cosmetic changes in billing format, relating to font and changes in title, can cost in excess of \$100,000.<sup>25</sup> Changes such as the new nomenclature and additional language proposed by the Joint Board are far more substantial than these minor cosmetic changes and will likely require additional pages, inserts or substantive textual changes to CMRS carriers' bills. Consequently, the costs associated with implementing such changes will be significantly greater and will include added transaction costs (e.g., services of billing service providers, attorneys' fees), and costs for materials and mailing. These new, substantial costs will be incurred all with — in DCC's view — no countervailing public interest benefit.

Second, the Board recommended that the Commission prohibit carriers from describing universal service contribution recovery as a "tax," or as "mandated by the Commission or the federal government."<sup>26</sup> Similarly, the Joint Board urges the Commission to prohibit carriers from "incorrectly" describing as "*federally-approved*" any universal service line items on bills.<sup>27</sup> However, and as discussed above, the Commission already prohibits carriers from omitting from their bills "important information that indicates that the contributor has chosen to

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<sup>24</sup> Indeed, there is evidence indicating that certain carrier's billing systems may not be able to accommodate billing changes such as those proposed in the *Truth-in-Billing NPRM* and in the *Recommendation*. See PrimeCo Comments at 6 n.16.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Recommendation* at ¶¶ 70-71.

<sup>27</sup> *Id.*

pass through the contribution or part of the contribution to its customers *and that accurately describes the nature of the charge*.<sup>28</sup> Thus, the Joint Board's recommended action is redundant and no further Commission regulation is necessary in this regard.

Finally, the Joint Board recommended that the Commission require that a carrier's universal service line item be "no greater than the carrier's universal service assessment rate."<sup>29</sup> The Personal Communications Industry Association demonstrated in its comments in the *Truth-in-Billing NPRM*, that under- and over-recovery of universal service contributions "are inevitable and therefore are neither unreasonable nor misleading."<sup>30</sup> In essence, the Commission's universal service funding scheme makes it impossible for a carrier to recoup from its customers the exact amount paid to the universal service administrator on a month-to-month basis. However, any over- or under-recovery can be resolved through an appropriate "true-up" mechanism. Further, Sections 201, 202 and 208 of the Communications Act give the Commission ample authority to remedy any genuine inequity or improper over-recovery of universal service contributions.<sup>31</sup> Moreover, as discussed above, to the extent that over-recovery is a "problem" for CMRS customers, it is self-correcting — customers will simply migrate to other carriers based on the aggregate price of service.

In sum, DCC submits that the Joint Board's recommendations for additional bill content regulation of CMRS carriers are unwarranted and should be rejected.

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<sup>28</sup> *Universal Service Report and Order*, 12 FCC Rcd. at 9212 (1997) (emphasis supplied).

<sup>29</sup> *Recommendation* at ¶ 69.

<sup>30</sup> PCIA Comments at 15-16; CTIA Comments at 5-6; USCC Comments at 8; Omnipoint Comments at 14; AirTouch Comments at 9; *see also* Excel Comments at 13.

<sup>31</sup> 47 U.S.C. §§ 201, 202, 208.

**IV. CONCLUSION**

For the foregoing reasons, the Commission should reject the Joint Board's truth-in-billing recommendations and should refrain from further regulation of CMRS carriers' billing practices.

Respectfully submitted,

**DOBSON COMMUNICATIONS CORPORATION**

By:   
Ronald L. Ripley, Vice President and  
Senior Corporate Counsel

13439 North Broadway Extension  
Oklahoma City, OK 73114  
(405) 391-8500

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