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

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| In the Matter of | ) | |
| | ) | |
| Truth-in-Billing | ) | CC Docket No. 98-170 |
| and | ) | |
| Billing Format | ) | |

To: The Commission

**COMMENTS OF PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo") hereby submits comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.[1] The record already submitted in this proceeding conclusively demonstrates that Commission regulation of competitive CMRS carriers' billing practices is unnecessary, counterproductive and contrary to law.[2]

## INTRODUCTION/BACKGROUND

New Section 64.2000(b) of the Commission's rules provides generally that the new rules "shall apply to all telecommunications common carriers . . . ." The Commission

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[1] *Truth-in-Billing and Billing Format, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, FCC 99-72 (rel. May 11, 1999), *Erratum,* (rel. May 24, 1999), 64 Fed. Reg. 34488, 64 Fed. Reg. 34499 (June 25, 1999) ("*Report and Order*" or "*FNPRM,*" as applicable).

[2] *See generally* PrimeCo Comments; Bell Atlantic Mobile Comments; AirTouch Comments; USCC Comments; Nextel Comments; *see also* CTIA Comments; PCIA Comments; CommNet Cellular Comments.

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determined, however, that "unless [it] determines otherwise in [this] further rulemaking" the following requirements *will not* apply to CMRS providers:

- the requirement that carriers identify new service providers on the bill (Section 64.2001(a)(2));
- requirements regarding the descriptions of billed charges (Section 64.2001(b)); and
- requirements that carriers spell out deniable and non-deniable charges (Section 64.2001(c)).[3]

In the *FNPRM*, the Commission seeks comment on whether these rules should apply to CMRS carriers, stating that "absent evidence that there is a problem with wireless bills, it might not be necessary to apply the remaining rules in the CMRS context."[4] PrimeCo still believes that the Commission's rules restricting the content of bills and billing descriptions in general raise serious First Amendment issues.[5] In any event, given the highly competitive, rapidly growing and evolving wireless market, the Commission should heed Chairman Kennard's recent advice in the context of the competitive broadband market -- "first, do no harm."[6] Additional regulation is unnecessary in this instance and, given the dearth of record support for such regulation, the Commission should terminate this proceeding in respect to the *FNPRM*.

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[3] *See Report and Order* ¶¶ 13-19; 64 Fed. Reg. at 34497-98 (to be codified at 47 C.F.R. §§ 642001(a)(2), (b), (c)).

[4] *FNPRM* ¶ 68.

[5] *See* PrimeCo Comments in CC Docket No 98-170, filed Nov. 13, 1998, at 14-15; CTIA Comments in CC Docket No 98-170, filed July 9, 1999.

[6] *See* Remarks by FCC Chairman William E. Kennard Before the Federal Communications Bar Northern California Chapter, San Francisco, CA, July 20, 1999, available at <http://www.fcc.gov/Speeches/Kennard/spwek924.html>.

## DISCUSSION

### I. SECTION 10 FORBEARANCE PROHIBITS REGULATION OF CMRS CARRIERS' BILLING PRACTICES

Section 10(a) of the Communications Act provides that "the Commission *shall* forbear from applying any regulation . . . [to a] class of telecommunications carriers or telecommunications services" if specific criteria are met.[7] The record in this proceeding, as the Commission all but acknowledges, demonstrates that these criteria are met.

First, enforcement of the wireline truth-in-billing rules is "not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with" CMRS carriers and their services "are just and reasonable and are not unjustly or unreasonably discriminatory" or "for the protection of consumers."[8] In June 1999, the Commission acknowledged in the *Fourth CMRS Competition Report* that "BTAs containing approximately 74 percent of the population have at least five mobile telephone operators providing coverage in some portion of their area, up from 54 percent" at this time last year, and that it is "clear that the average price for mobile telephony has continued to fall substantially since [this time] last year,

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[7] These criteria are:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
(3) forbearance from applying such provision or regulation is consistent with the public interest . . . consider[ing] whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.

47 U.S.C. §§ 160(a)(1)-(3), (b).

[8] *See* 47 U.S.C. § 160(a)(1)-(2).

continuing the trend of the last several years."[9] Churn rates are even more telling; the Commission reported that monthly churn levels in 1998 were higher in than in 1997, with some broadband PCS operators averaging rates as high as 5.5 percent.[10] It is clear that the highly competitive market is directly "relevant to consumers' ability to protect themselves from the harms" addressed in this proceeding. Sections 201, 202 and 208 of the Act are sufficient to ensure the reasonableness of CMRS carriers' billing practices, and additional regulation is unnecessary.[11]

The fact that CMRS providers use clear and nonmisleading billing practices as a means of obtaining and retaining customers is reflected in the low number of customer complaints about such practices. As discussed in previous comments, PrimeCo itself receives very few complaints about its billing format and language. Indeed, the Commission, "after considering an extensive record on both the nature and volume of customer complaints" determined in the *Report and Order* that:

> The record does not . . . reflect the same high volume of customer complaints in the CMRS context, nor does the record indicate that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices. [12]

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[9] *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, Fourth Report*, FCC 99-136, at 20-21 (rel. June 24 1999) ("*Fourth CMRS Competition Report*").

[10] *Id.* at 24.

[11] *See FNPRM* ¶ 69 (seeking comment on how to implement the principle that "consumers are entitled to fair, clear, and reasonable practices"); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, [] ¶¶ 173-75 (1994).

[12] *Report and Order* ¶ 16.

Further, it is clear that if a CMRS carrier's billing practices are not clear and non-misleading to its subscribers, there is nothing to prevent a customer from switching carriers. Indeed, PrimeCo and other carriers use clear, simple billing practices, as a pro-competitive tool -- otherwise, customers would be lost to competitors.[13]

Forbearance from applying the wireline provisions on CMRS carriers is consistent with the public interest.[14] As discussed below, enforcing these provisions on CMRS would not promote competitive market conditions among CMRS providers, if for no other reason than problems such as slamming and cramming, and customer confusion over "deniable" versus "nondeniable" charges, are irrelevant to CMRS providers. As for consumers substituting wireless for wireline service, this "phenomenon" should not affect the Commission's non-application of the wireline guidelines to CMRS providers.[15] Furthermore, the Commission has acknowledged that wireless local loop in the cellular and broadband PCS bands "is still in an early stage of development, is currently targeted at low-use/residential subscribers, and is secondary to the mobile products of service providers."[16] Imposing wireline-type requirements on CMRS carriers would be tantamount to regulation in search of a problem, and the

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[13] PrimeCo has already described in detail the terminology and format included in customers' bills. *See* PrimeCo Comments in CC Docket No. 98-170, filed Nov. 13, 1998, at 7-8. As also noted in earlier comments, PrimeCo maintains easily accessible information concerning billing and customer queries on the Internet. *See id.* at 7 (citing <http://www.primeco.com/primeco/support/c_index.html>).

[14] 47 U.S.C. §§ 160(a)(3), (b).

[15] *FNPRM* ¶ 69.

[16] *Fourth CMRS Competition Report* at F-2.

Commission should, as it suggests in the *Report and Order*, simply not "apply them in the first instance."[17]

## II. REQUIREMENTS FOR IDENTIFYING NEW SERVICE PROVIDERS AND DENIABLE CHARGES ARE NOT APPLICABLE TO CMRS BILLING PRACTICES AND WILL IMPOSE UNNECESSARY AND SUBSTANTIAL COSTS

The Commission separately requests comment on "whether identifying new service providers and 'deniable' charges makes sense in the wireless context."[18] As noted above, problems such as slamming and cramming, and customer confusion over "deniable" versus "nondeniable" charges, are irrelevant to CMRS providers. CMRS carriers have no equal access obligations at this time and PrimeCo, like other CMRS carriers, does not at this time include charges for services rendered by third party entities and does not provide carriers equal access for competing long distance providers.[19] Nor does PrimeCo believe that such practices are pervasive in the industry. As Commissioner Powell has noted, the record clearly lacks substantial evidence that there are problems that need correcting in the CMRS context, and that CMRS providers "generally bill directly and only for their own services."[20] In short, there is no record basis for imposing these requirements on CMRS providers.

Furthermore, as numerous commenting parties noted in this proceeding, any substantial modification in a carrier's billing format and content will entail costs and may not be

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[17] *Report and Order* ¶ 16.

[18] *See FNPRM* ¶ 70.

[19] *See* 47 U.S.C. § 332(c)(8).

[20] *See Report and Order and FNPRM*, Separate Statement of Commissioner Powell, notes 10-12 and accompanying text.

technically feasible under many billing systems. The Commission already has determined, notwithstanding the significant First Amendment issues involved, that standardized labels should apply to competitive CMRS providers.[21] These mandated changes in the content and format alone -- if upheld on appeal -- will invariably impose costs on CMRS carriers.[22] (Indeed, for wireline carriers subject to these rules, it appears that the "new service provider" notification requirement alone will entail considerable costs.[23]) Imposing yet *additional* requirements on CMRS providers, in the absence of any record evidence or public interest benefit supporting such a step, would be particularly inappropriate and should be rejected.

Indeed, the *only* basis on which the Commission appears to "hang its hat" to impose additional requirements on CMRS providers is the possibility "that billing for CMRS may change or evolve from current practices."[24] Billing practices *are* evolving in the telecommunications industry -- to consumers' benefit. Notably, the growing availability of on-line billing will significantly change the relationship between carriers and subscribers.[25] It is

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[21] *Report and Order* ¶ 18; *see* CTIA Comments in CC Docket No 98-170, filed July 9, 1999, at 5-6.

[22] *See* AT&T Comments in CC Docket No. 98-170, filed July 9, 1999, at 6-7; U S WEST Comments in CC Docket No. 98-170, filed July 9, 1999, at 2-3.

[23] *See* Petition by USTA for an Expedited Waiver or Stay, filed July 16, 1999 in CC Docket No. 98-170, at 5-7 (compliance by ILECs will entail "hundreds of thousands of hours of systems development work" and millions of dollars).

[24] *See FNPRM* ¶ 70 n.197. Chairman Kennard's recent statement in support of a hands-off regulatory approach to broadband technology is, again, equally applicable here: "We need an intentional restraint born of humility. Humility that we can't predict where this market is going. Indeed, who among us could have predicted the incredible advances of the past few years?" *See* Kennard Speech, *supra* note 6.

[25] *See Telcos to Save $23 Billion In Billing/Customer Care Costs By Migrating Customers' Bills to the Internet*, BUSINESS WIRE, July 12, 1999; Steve Rosenbush, *More phone customers*

(continued...)

anticipated that consumers and carriers will benefit from lower costs associated with such billing arrangements, and that "customers will be able to sort calls by time of day or city called, or by the dollar value or duration" thereby creating a convenient source of particularized information for customers.[26] Thus, while CMRS providers' billing practices in fact "may change or evolve," there is certainly no record basis in this proceeding supporting the conclusion that such changes will be to customers' detriment. Should problems arise in the future, the Commission can consider anew whether to impose additional requirements on CMRS providers.

**CONCLUSION**

For the reasons discussed herein, the record in this proceeding does not support and, indeed, strongly counsels against imposing wireline-based truth-in-billing requirements on competitive CMRS providers. Section 10 further prohibits the Commission from taking such

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[25] (...continued)
*paying bills online*, USA TODAY, Feb. 25, 1999, at <www.usatoday.com/life/cyber/tech/cte489.htm>.

[26] Rosenbush, *supra* note 22 (quoting Wayne Irwin, assistant vice president for Web services at GTE).

action, and the Commission should simply not impose these requirements on CMRS providers in the first instance.

Respectfully submitted,

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