

RECEIVED

JUL 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of
Truth-in-Billing
and
Billing Format

)
)
)
)

CC Docket No. 98-170

**THE UNITED STATES TELEPHONE ASSOCIATION'S
PETITION FOR RECONSIDERATION**

UNITED STATES TELEPHONE ASSOCIATION

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John Hunter
Julie E. Rones

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7254

July 26, 1999

No. of Copies rec'd 049
List A B C D E

TABLE OF CONTENTS

Executive Summary i

I. INTRODUCTION 1

II. ARGUMENT 2

 A. The Commission Should Reconsider Rule 64.2001(a)(2) 2

 1. USTA Believes the FCC Lacks Authority to Adopt this Rule. 2

 2. The Rule, As Written, Would Confuse Customers. 4

 3. The Rule, As Written, Can not Be Complied With Without Major Expense. 4

 4. The Rule, As Written, Can Not Be Complied With For More Than a Year at Most. 5

 5. If the FCC Still Wants The New Service Provider Information on the Bill, Then It Needs to Re-write the Rule 6

 II. B. USTA Urges the FCC to Reconsider the Entire TIB Order as It Regards Small and Mid-size LECs. 7

 1. The TIB Order Places An Undue Burden On Small and Mid-size LECs in Having to Comply With the Entire Order. 7

 2. The FCC Incorrectly Applied Relevant Laws Affecting Small and Mid-size LECs in the TIB Order. 8

 a. The FCC Should Reconsider that Small LECs constitute Small Businesses Under the United States Small Business Administration’s Definition 8

 b. The FCC Must Comply With The Paperwork Reduction Act of 1995. 9

 3. At Minimum, The FCC Should Not Apply Either Section 64.2001(a)(2)(ii) or 64.2001(c) to Small and Mid-size LECs. 9

 a. Section 64.2001(a)(2)(ii) Should Not Apply to Small or Mid-size LECs. 10

 b. Section 64.2001(c) Should Not Apply to Small and Mid-size LECs. 11

 (1) The FCC Lacks Authority to Adopt Section 64.2001(c) with regard to Small and Mid-size LECs. 11

 (2) The FCC Should Reconsider the Undue Burden the FCC Placed on Small and Mid-size LECs in Having to Comply with Rule 64.2001(c). 12

III. CONCLUSION 15

IV. APPENDIX 16

EXECUTIVE SUMMARY

- The Commission should reconsider Rule 64.2001(a)(2).
 - USTA Believes the FCC Lacks Authority to Adopt this Rule.
 - The Rule, as Written, Would Confuse Customers.
 - The Rule, As Written, Can not Be Complied With Without Major Expense.
 - The Rule, As Written, Can Not Be Complied With For More Than a Year at Most.
 - If the FCC Still Wants The New Service Provider Information on the Bill, Then It Needs to Re-write the Rule.
- USTA Urges the FCC to Reconsider the Entire TIB Order as It Regards Small and Mid-size B&C LECs.
 - The TIB Order Places An Undue Burden On Small and Mid-size LECs in Having to Comply With the Entire Order.
 - The FCC Incorrectly Applied Relevant Laws Affecting Small and Mid-size LECs in the TIB Order.
 - The FCC Should Reconsider that Small ILECs Constitute Small Businesses Under the United States Small Business Administration's Definition.
 - The FCC Must Comply With The Paperwork Reduction Act of 1995.
 - At Minimum, The FCC Should Not Apply Either Section 64.2001(a)(2)(ii) or 64.2001(c) to Small or Mid-size LECs.
 - Section 64.2001(a)(2) Should Not Apply to Small and Mid-size LECs.
 - Section 64.2001(c) Should Not Apply to Small and Mid-size LECs.
 - The FCC Lacks Authority to Adopt Section 64.2001(c) on Small and Mid-size LECs.
 - The FCC Should Reconsider the Undue Burden the FCC Placed on Small and Mid-size LECs in Having to Comply with Rule 64.2001(c).

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

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

**THE UNITED STATES TELEPHONE ASSOCIATION'S
PETITION FOR RECONSIDERATION**

I. INTRODUCTION

Pursuant to 47 C.F.R. §1.429, the United States Telephone Association ("USTA"), through counsel, seeks reconsideration of the Federal Communications Commission's ("FCC" or "Commission") decision concerning the above-captioned First Report and Order and Further Notice of Proposed Rulemaking ("TIB Order"). USTA is the principal trade association for the local exchange carrier industry ("LECs"). USTA represents more than 1,200 small, mid-size and large communications companies worldwide, the majority of which provide products and services in the United States. USTA members are facilities-based carriers that endorse the concepts of universal telephone service and clear, understandable billing for telecommunications services.

USTA specifically requests reconsideration of two rules adopted in this proceeding: (A) the "monthly-service-provider" rule, Section 64.2001(a)(2); and (B) the "Deniable/Non-deniable" rule, Section 64.2001(c).¹

¹USTA has also filed a number of pleadings before the FCC in this docket. *See* Comments of the United States Telephone Association, "In the Matter of Truth-in-Billing and

II. ARGUMENT

A. The Commission Should Reconsider Rule 64.2001(a)(2).

Rule 64.2001(a)(2) requires that the telephone bill must provide “[c]lear and conspicuous notification” to a consumer that would be apparent to a reasonable consumer. 47 C.F.R. § 64.2001(a)(2)(i). The Rule, also, defines “service provider” as follows:

“New service provider” is any provider that did not bill for services on the previous billing statement. The notification should describe the nature of the relationship with the customer, including a description of whether the new service provider is the presubscribed local exchange or interexchange carrier.

47 C.F.R. § 64.2001(a)(2)(ii).

However, LECs can not identify the “new service provider.”

1. The FCC Lacks Authority to Adopt this Rule.

The Commission lacks statutory authority to adopt Section 64.2001(a)(2)(ii). The TIB Order indicates that the Commission found its authority to adopt its new rules in section 258 of the Communications Act of 1996 (the “Act”), the section that requires the Commission to adopt

Billing Format”, CC Docket No. 98-170 (filed Nov. 13, 1998); the United States Telephone Association’s Comments on the FCC’s Initial Regulatory Flexibility Analysis; and Initial Paperwork Reduction Act of 1995 Analysis from the *First Report and Order and Further Notice of Proposed Rulemaking*” (filed Jul. 9, 1999); and “Petition by USTA for an Expedited Waiver or Stay” (filed Jul. 16, 1999). USTA respectfully requests that the Commission take action consistent with all pending USTA pleadings in this docket. Nothing in this petition is to be construed as inconsistent with any USTA filing made in this matter.

carrier change verification procedures to combat slamming,² as well as section 201(b).³ Slamming is the unauthorized change in a customer's presubscribed carrier, and the anti-slamming provisions of the Act cannot provide the basis for the Commission to adopt rules having to do with non-presubscribed carriers and other non-carrier service providers. Nor does Section 201(b) give the Commission authority to impose any obligation on local exchange carrier billing services, as those services are not communications services subject to Title II of the Act.⁴

The rule also raises serious First Amendment questions. The notification requirements amount to compelled speech, with the Commission dictating every aspect of the content of that speech. As such, they are subject, at a minimum, to heightened constitutional scrutiny.⁵ And where, as here, there are numerous less burdensome and more closely tailored alternatives to address any legitimate concerns — alternatives that include imposing the disclosure requirement directly on the entities whose conduct gives rise to the concerns — the rule simply cannot survive that heightened scrutiny.

Assuming *arguendo* that the FCC had authority to adopt this rule, it is not supported by the record in this proceeding. The Commission's conclusion that the rule it adopted "will be

²"[T]he truth-in-billing principles and guidelines adopted herein are justified as slamming verification requirements pursuant to section 258." TIB Order ¶¶ 22-28.

³See TIB Order ¶ 28.

⁴*Detariffing of Billing and Collection Services*, Report and Order, CC Docket No. 85-88, 102 F.C.C. 2d 1150 ¶ 31 (1986) ("we believe that carrier billing or collection for the offering of another unaffiliated carrier is not a communication service for purposes of Title II of the Communications Act").

⁵See, e.g., *Pacific Gas & Electric v. Public Utilities Commission of California*, 475 U.S. 1 (1986).

considerably more economical to implement” than the alternatives it rejected is without support in the record and is not correct.

Therefore, the FCC should repeal Section 64.2001(a)(2)(ii). Doing so will spare carriers and the public of needless and protracted expense, confusion and litigation.

2. The Rule, as Written, Would Confuse Customers.

The rule, as written, would require petitioners to “highlight” the presence of a “new provider” where there was no such provider in at least two instances. First, at least one major carrier has petitioners bill customers on a bi-monthly basis. Because there would never be a charge from this carrier on the customer’s “previous billing statement,” from month-to-month this provider would always be identified as “new,” even where the customer had been using the provider for years. Second, many people do not make long distance calls every month. The next time such a person made a long distance call, even using the carrier to which she had been presubscribed for years. the Commission’s rules would require petitioners to notify her that she had used a “new provider.” Customers getting these bills would be justifiably confused and would blame billing and collection (“B&C”) LECs for what they would view as a billing mistake.

3. The Rule, As Written, Can not Be Complied With Without Major Expense.

LECs can not provide this sort of notification. Section 64.2001(a)(2)(ii) would require the billing entity to compare every new bill with the customer’s previous month’s bill and then “highlight” new providers in some way. However, B&C LECs have no systems to do such a comparison. New databases would have to be developed to contain the latest month’s billing

information for all their customers. As new bills are being prepared, the systems that do that work would have to stop the processing to check with these new databases to identify any new providers. The billing systems would also have to be modified to receive this information, process it and print it on the bill.

One large USTA company member estimates that it would take in the neighborhood of 200,000 person-hours to make these modifications to its six customer billing systems. To the degree that small and mid-size B&C LECs have to implement this rule, they would certainly entail major expenses, as well.

The most logical way to satisfy this rule would be to require the service provider to notify the billing entity if it is "new." This is presumably what the Commission had in mind, because it said, "The guidelines adopted here apply to the carrier providing service to customers, not to those carriers' billing agents."⁶

USTA therefore submits, that because compliance with the rule is impractical, the Commission should repeal it.

4. The Rule, As Written Can Not Be Complied With For More Than a Year at Most.

Given the current status of the industry in not having the systems/software in place to implement this rule, it would be extraordinarily costly and could not be accomplished by the

⁶TIB Order ¶25.

effective date or anytime soon thereafter.⁷ If the Commission demands that B&C LECs implement the rule, it should allow such carriers the ability to make the changes in a period that would be reasonable in light of the underlying factors.

The FCC should consider that for B&C LECs to make such major system/software changes in the midst of the Year 2000 computer remediation period would be unreasonable. Therefore, USTA urges the FCC to take a more rational approach to establishing a time for implementing this rule.

5. If the FCC Still Wants The New Service Provider Information on the Bill, Then It Needs to Re-write the Rule.

USTA members have no problem notifying customers about changes in the customers' presubscribed carriers, and they already do so. A service provider has no way of knowing exactly when its charges are included on a customer's bill — it could be the day after it sends B&C LECs billing information or three weeks later. Therefore, a service provider will not know when it submits additional charges whether it "billed for services on the previous billing statement" or on some other billing statement. However, a slight change in the definition of a "new service provider" would permit a service provider to know when it is "new."

Instead of basing "newness" on when a charge last appeared on an end user's bill, the rule could define it in terms of when the service provider last submitted charges to be billed. To accomplish this, the Commission would have to change at least one sentence in section

⁷See FCC *Public Notice*, DA 99-1423 (rel. Jul. 20, 1999), "Enforcement Division of the Common Carrier Bureau Announces Delayed Effective Date of Truth-in-Billing Order Shall Become Effective Upon OMB Approval": stating, "The Commission will publish a document in the *Federal Register* announcing the effective date of the rules, which shall be no sooner than September 6, 1999."

64.2001(a)(2)(ii), for example:

“New service provider” is any provider that has not submitted any charges to be billed to the customer in the last six months.

For the service providers to reconfigure their systems/software in order to notify the billing entity it is new would require a change to the industry exchange message interface (“EMI”) billing record standard. It typically takes the industry months of consultation to agree to and implement such changes.⁸ But, more importantly, a service provider will not necessarily know whether it is “new” as that term is defined in the rules — as “any provider that did not bill for services on the previous billing statement.”

If the rule is so changed, the industry could, with adequate notice and implementation time, modify its billing records standard to accommodate it, and service providers and billing entities could implement those changes. After all that is done, service providers could pass this information to billing entities for inclusion on customer bills.

II. B. USTA Urges the FCC to Reconsider the Entire TIB Order as It Regards Small and Mid-size B&C LECs.

1. The Entire TIB Order Places An Undue Burden On Small and Mid-size LECs.

For small and mid-size LECs that perform billing and collection services, implementing the

⁸Some carriers may not be able to accomplish the related task *at all*. See, e.g., “Comments of GVNW Inc./Management in Response to the Commission’s Notice of Proposed Rulemaking (NPRM) in CC Docket No. 98-170 (filed Nov. 12, 1998)(GVNW Comments) at 4 & n.4: “For [call detail record fields], the industry follows non-binding ‘Bellcore’ guidelines with respect to exchange message interface (EMI) records. Modifications to the EMI standards are proposed to and approved by an industry group, the Message Processing Committee of the Ordering and Billing Forum (OBF) of the Alliance for Telecommunications Industry Solutions (ATIS). With respect to small ILECs, [for economic reasons]. . . smaller companies typically do not program for the full array of new EMI ‘standards’ adopted by the OBF.” (Emphasis added.)

entire TIB Order will be unduly burdensome. USTA urges the FCC to reconsider its decision to apply the TIB Order to these LECs.

In this proceeding, the Commission acknowledges that “[the Office of Management and Budget] recommends that [the FCC] not impose undue burdens on wireless providers and small wireline services, and urges that flexibility be given to small companies that may experience significant cost and managerial issues related to implementation of billing requirements.” See TIB Order at ¶76. However, the Commission ignored this recommendation. USTA urges the FCC to revisit this decision.

In a July 2, 1999 action where OMB rejected the FCC’s request for its approval of the TIB Order, OMB’s rejection largely concerned the FCC’s failure to address issues pertaining to small and mid-size LECs.¹¹ Additionally, OMB urged the Commission to make a concerted effort to work with industry to resolve differences concerning the burdens that were placed on small and mid-size LECs in the TIB Order. USTA believes it is appropriate for the FCC to exclude small and mid-size LECs from the TIB Order.

- 2. The FCC Incorrectly Applied Relevant Laws Affecting Small and Mid-size LECs in the TIB Order.**
 - a. The FCC Should Reconsider that Small ILECs constitute Small Businesses Under the United States Small Business Administration’s Definition.**

With respect to the Regulatory Flexibility Act of 1980 (RFA) and related laws,¹² USTA urges

¹¹Citation omitted (*but see*, OMB denial of FCC emergency Paperwork Reduction Act approval request, dated July 2, 1999).

¹²The RFA, [Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. Section 601 et. seq.)] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996

the FCC to reconsider its definition of “small businesses” to include small ILECs, consistent with the U.S. Small Business Administration’s *ex parte* Letter to the FCC, clarifying its definition of small business to include small ILECs, as filed with the FCC on May 27, 1999 (that letter is also included in the attachment to USTA’s July 9, 1999 filing in this proceeding). Because of the undue burden that the TIB Order places on these LECs, it should not apply to them.

The RFA was designed to enable regulatory agencies to recognize any undue burdens placed on small businesses in having to comply with certain regulations. The FCC failed to recognize and adjust its approach to the relevant affected LECs in this matter. Consequently, it must do so.

b. The FCC Must Comply With The Paperwork Reduction Act of 1995.

Had the FCC complied with the Paperwork Reduction Act (“PRA”), it could have avoided an OMB denial of its request for emergency approval thereunder. The FCC must either resubmit its request to OMB for approval or take other exceptional action. Given the FCC’s initial miscalculation of compliance with the PRA and the nature of the matters at hand of large concern to the small and mid-size B&C LECs, USTA urges the FCC to seek to meet both the letter of the law and the spirit of the PRA by working more closely with the affected industry segment to avoid the imposition of onerous regulations on these LECs. Consistently, OMB had recommended to the FCC that it work with industry to resolve the industry’s complaints (as noted in the OMB’s July 2, 1999 denial). Therefore, USTA urges the FCC to work with its members to resolve the issues OMB had raised.

(SBREFA), Subtitle II of the Contract with America Advancement Act [Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. Section 612(a))].

3. At Minimum, The FCC Should Not Apply Either Section 64.2001(a)(2) or 64.2001(c) to Small or Mid-size B&C LECs.

Notwithstanding the jurisdictional flaws in the Commission's application of sections 64.2001(a)(2) and 64.2001(c) to small and mid-size LECs, as a practical matter, the increased costs of billing associated with implementation of these sections of the TIB rules must be recovered. Ultimately, these costs will be reflected in toll, local or other services that appear on the customer's telephone bill. This will generally be true whether a small and mid-size or large ILEC uses a billing contractor (whether another ILEC or not) or performs billing for its own services. These costs can not simply be assumed away. They are costs that will be incurred. The Commission failed to provide a cost-benefit analysis in this matter, but merely assumed that the benefit would outweigh the cost.

However, as the number of bills an small or mid-size B&C LEC prepares decreases, because of the lack of economies of scale, the cost per customer bill increases, thereby disadvantaging these LECs compared to larger entities. Such an outcome is not consistent with the Act's intent to foster competition. For such small and mid-size LECs, application of these two rules, could reduce these LECs' ability to compete in providing billing and collection services or services period, since customer's could simply elect to take a cheaper local exchange service option.

Consequently, the FCC must not apply sections 64.2001(a)(2) and 64.2001(c) to small and mid-size LECs.

a. Section 64.2001(a)(2)(ii) Should Not Apply to Small or Mid-size B&C LECs.

USTA has already demonstrated above that section 64.2001(a)(2) is fundamentally flawed. It should not apply to any LEC, including any small or mid-sized LEC.

b. Section 64.2001(c) Should Not Apply to Small and Mid-size B&C LECs.

Section 64.2001(c) of the Rules provides:

“Deniable” and “Non-Deniable” Charges. Where a bill contains charges for basic local service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic, local service, and charges for which non-payment will not result in such disconnection. The carrier must explain this distinction to the customer, and must clearly and conspicuously identify on the bill those charges for which non-payment will not result in disconnection of basic, local service. Carriers may also elect to devise other methods of informing consumers on the bill that they may contest charges prior to payment.

47 C.F.R. § 64.2001(c).

(1) The FCC Lacks Authority to Apply Section 64.2001(c) on LECs.

The FCC lacks jurisdiction to impose rule 64.2001(c) notice requirements on LECs. As US West Communications, Inc. (“US West”) notes, the Commission attempted to assert section 201(b) of the Telecommunications Act of 1996 jurisdiction in adopting section 64.2001(c).¹³ US West correctly argues that section 201(b) of the Act can not be extended over local services and the billing for those services by LECs. Further, Section 201(b) jurisdiction is limited to interstate and international telecommunications services; therefore, the Commission lacks jurisdiction over LEC billing for its own intrastate services. Neither does section 201(b) give the Commission authority to impose any obligation on LEC billing services, as those services are not communications services

¹³See “Petition for Relief From Two Truth-in-Billing Mandates Pending Conclusion of Reconsideration Process”, filed by US West Communications, Inc. in this docket on July 19, 1999; and associated petition for reconsideration expected to be filed on July 26, 1999 (as stated in the petition for relief).

subject to Title II of the Act. Nor can the Commission lawfully claim such services are “incidental” to telecommunications services and thereby subject to Title I jurisdiction.

Thus to the extent that US West has already made the relevant legal arguments challenging the FCC’s legal basis for imposing this rule in this proceeding, USTA incorporates by reference those arguments herein.

Accordingly, USTA urges the Commission to repeal Rule 64.2001(c) as applied to LECs.

(2) The FCC Should Recognize the Undue Burden Placed on Small and Mid-size B&C LECs in Having to Comply with Rule 64.2001(c).

Even if the Commission has authority to impose Section 64.2001(c), which it does not, this rule should not apply to small and mid-size B&C LECs. Small and mid-size B&C LECs lack the economies of scale and scope to make these kinds of changes.¹⁴ To implement the requirements of this rule may even drive some small and mid-size LECs from providing billing and collection services altogether.

The cost per customer bill to implement this rule is excessive relative to any value added to customer benefit. The cost per customer bill to make the changes the TIB Order requirements under this section, as estimated by one small B&C LEC, could approximate as much as \$149 per access line. This represents the initial outlay for systems development and does not include the cost of additional ongoing operational or maintenance costs that could result from such major additions as the rule requires.¹⁵

¹⁴See *gen.*, *GVNW Comments*; *cited supra at n.8.*

¹⁵Further, because the process of obtaining cost estimates for small and mid-size LECs is in itself a costly and resource intensive process, many are still evaluating the impacts of TIB

The Commission made no cost-burden assessment as to the impact of this rule on small and mid-size LECs.¹⁶ While USTA is particularly concerned that the rule would pose an undue burden on small and mid-size carriers, it also believes the burden is not limited to small and mid-size carriers but extends to large carriers, as well.¹⁷

Further, in addition to the direct and operational increases in expenses, many small and mid-size ILECs are concerned about any consequent increases in uncollectables stemming from alerting customers of portions of the bill the customer does not have to pay in order to maintain local exchange service. If this occurred and the carrier experienced a high percentage of uncollectables, customers of the carrier ultimately may have to subsidize those who do not pay their bills, especially where the B&C LEC may have purchased the customer's debt owed to toll carriers for which they provide B&C. Such toll debt purchased by the B&C LEC may be non-recoursable to the toll carrier and may not be recoverable. In such an instance, these B&C non-price cap LECs may have to rely on the relevant state commission for rate making approval in order to be made whole. For small and mid-size carriers, this could mean the difference between life and death.

Clearly, the intent of the Act was to promote competition, increase service options for

implementation. Overall, preliminary reports have been consistent in their order of magnitude. First the cost will be excessive and the time to implement the changes (over and above Y2K efforts) may go well into the second quarter of the year 2000.

¹⁶See e.g., FCC emergency request submittal to the Office of Management and Budget (OMB) for OMB approval of the TIB Order under the Paperwork Reduction Act of 1995 (as submitted on Jun. 24, 1999)(this matter appears as "Appendix No. 1" of this pleading).

¹⁷See, e.g., "Petition for Relief From Two Truth-in-Billing Mandates Pending Conclusion of Reconsideration Process", as filed by US West Communications, Inc. in this instant docket on July 19, 1999. That pleading also challenges the FCC's legal authority to implement rule 64.2001(c). USTA, herein, supports the legal challenge raised therein by that company.

consumers and enable current companies to be able to survive in the market. Requiring small and mid-size LECs to encounter the potential cost burdens of having to implement this rule and then potentially be subject to non-payment abuse by some customers is unfair and contrary to the Act's intent. Moreover, it would be patently unfair and unduly burdensome to this industry segment.

Because the FCC did not adequately recognize the large burdens associated with compliance of this rule, USTA urges the Commission to reconsider its decision about imposing the requirement on all carriers, particularly the small and mid-size LECs. The FCC should give carriers flexibility through non-mandatory guidelines to address the concerns the Commission intends to reach with respect to this rule provision.

Therefore, USTA requests reconsideration of applying rule 64.2001(c) to small and mid-size LECs.

III. CONCLUSION

Wherefore, USTA urges the Commission to reconsider the TIB Order in light of the arguments raised herein.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By: Julie E. Rones

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John Hunter
Julie E. Rones

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7254

July 26, 1999

USTA Petition for Reconsideration filed in CC Docket 98-170 (July 26, 1999)

APPENDIX

(Nine pages of text with annotations not attributable to USTA)

OMB NUMBER : 3060-0854
REVIEW TYPE: Emergency
I.C. TYPE : Revision

RECEIVED: 06/24/1999 APPENDIX
DUE DATE: 07/02/1999
DESK OFFICER: Timothy Fain

AGENCY : Federal Communications Commission

TITLE: Truth-In-Billing Format - - CC Docket No. 98-170 (Final Rule)

AGENCY FORM NUMBER(S):

KEYWORDS: TELECOMMUNICATIONS CARRIERS
COMPETITION
CONSUMERS
CRAMMING
SLAMMING
THIRD-PARTY DISCLOSURE
BILLS
TELECOMMUNICATIONS ACT OF 1996

ABSTRACT: The Commission has adopted rules to make consumers' telephone bills easier to read and understand. Telephone bills do not provide necessary information in a user-friendly format. As a result, consumers are experiencing difficulty in understanding their bills, in detecting fraud, in resolving billing disputes, and in comparing carrier rates to get the best value for themselves.

OBLIGATION TO RESP: P Required for benefits SMALL ENTITIES: Yes
STATISTICAL METHODS: No

AFF PUB: P Business or other for-profit PURPOSE: P Reg or compliance

REQUIREMENTS: Third party disclosure

EXPIRATION DATE:	CURRENT RECORD 12/31/2001	REQUEST 12/31/1999
ANNUAL HOUR BURDEN:		
Number of respondents	1,800	3,099
Total annual responses	1,800	3,099
% Collected electronically	0 %	0 %
Burden Hours	185,400	195,996
Difference		10,596
Explanation of Difference		
1. Program Change		0
2. Adjustment		10,596

ANNUAL COST BURDEN:	CURRENT RECORD	REQUEST
Capital/Startup Costs	9,000	9,000
Annual Costs (O&M)	0	0
Total Annualized Cost	9,000	9,000
Difference		
Explanation of difference		
1. Program change		
2. Adjustment		0

EXISTING TERMS OF CLEARANCE:

OMB received a large number of comments from various sectors of the telecommunications industry and several state regulatory agencies. This is a very contentious issue with parties offering a number of valid criticisms and supporting views related to the FCC NPRM. After reviewing the comments submitted to OMB, it is apparent that, because this is a rulemaking and given the preliminary nature of the proposals contained in this item, OMB must review this collection upon release of the Report and Order related to CC Docket 98-170. OMB strongly encourages the FCC not to adopt an approach that imposes undue burden on wireless providers and small wireline services -- and urges flexibility be given to small companies that may experience significant cost and managerial issues related to implementation of any billing requirements. The FCC should also allow companies sufficient time to address their Year 2000 efforts as well as modifying their billing systems to meet any new requirements. OMB recommends that the FCC make a concerted effort to work with industry to establish voluntary guidelines in lieu of mandatory requirements that restrict the ability of firms to tailor their billing to meet the needs of customers. The FCC and states should cooperate to minimize conflicting or duplicative billing requirements. Comments indicate a general agreement that: a) new charges or services need to be easily identifiable on bill; b) definitions of services and other terms are difficult to reach and could be counterproductive; c) more information, including point of contact toll free numbers, for service providers or billing agents needs to be included in billing materials; d) materials should be clear, concise, and relatively simple; e) the FCC must account for costs of any changes to bills that will be passed on to consumers in making decisions; f) CMRS and other wireless firms that provide services only to businesses should be exempt from most new requirements that would be imposed on wireline carriers; g) every effort should be made so that billing standards are uniform across the nation; h) reseller information should be included (in a same format as service provider information); and i) where possible, market-based solutions should be adopted unless there is conclusive evidence that there is either a failure or the FCC cannot adequately enforce its current rules and therefore must enact regulations that affect billing practices. OMB believes these are reasonable recommendations that should be included in this rulemaking. The FCC shall submit this collection to OMB again following release of the Report and Order, prior to requiring compliance with any new billing format regulations.

REQUEST FOR EMERGENCY PROCESSING INFORMATION COLLECTION 3060-0854, TRUTH-IN-BILLING FORMAT

The Federal Communications Commission requests emergency approval of information collection 3060-0854, Truth-in-Billing Format so that the Commission's rules may take effect 30 days after publication in the Federal Register. The third party disclosure requirements encompassed by the Truth-in-Billing collection are essential to ensure that telephone bills contain the information necessary for consumers to review the charges assessed, pursue any disputes with respect to such charges, and detect telecommunications fraud. The Commission receives a large number of complaints arising out of consumers' confusion concerning charges on telephone bills; emergency approval will ensure that this significant problem is addressed at the earliest possible time. The Commission has considered both the large body of public comment filed in this proceeding and recommendations from OMB to craft rules that minimize information collection burdens while ensuring that consumers receive clear and non-misleading telephone bills.

In September 1998, the Commission adopted a Notice of Proposed Rulemaking (Notice) in this proceeding and sought OMB approval of the information collection encompassed therein. OMB approved the collection in December 1998, conditioned upon a requirement that the Commission resubmit the collection to OMB following release of the Truth-in-Billing Report and Order. Based upon comments filed by various sectors of the telecommunications industry in response to the Notice, OMB recommended that the Commission make a concerted effort to work with industry to establish voluntary guidelines rather than mandatory rules. Alternatively, OMB urged the Commission to explore means of reducing the information collection burden associated with the Notice proposals. Although the Commission has concluded that voluntary guidelines do not protect consumers adequately from the harms caused by confusing or misleading billing practices, the Commission has modified the Notice proposals to adopt several of the burden reduction suggestions offered by OMB and commenters to the Notice. In particular, Commercial Mobile Radio Service (CMRS) carriers are not subject to several information collection requirements pending final action on a Further Notice of Proposed Rulemaking to determine whether the public interest supports this exemption. The Commission also has eliminated or modified several Notice proposals that commenters identified as particularly burdensome. For instance, rather than requiring that telephone bills contain a summary page listing each new service billed to a consumer, the Commission has required only that new service providers be highlighted. Carriers are afforded discretion to determine the most effective and economical means to highlight this information and other types of required disclosures. In addition, some of the information collection requirements already are part of standard billing practices for large segments of the telecommunications industry (e.g., separating charges by service provider, inclusion of a toll-free customer service number). The Commission does not believe that emergency approval would adversely affect the parties subject to the information collection requirements.

The Commission's final burden estimate is slightly higher than the estimate provided to OMB in connection with the Truth-in-Billing Notice of Proposed Rulemaking due to an inadvertent undercount of respondents. The final rules, nonetheless, reflect the substantial burden-reducing modifications described above. In addition, it is important to recognize that all

burden hours are associated with one-time-only, rather than recurring, obligations. Although common carriers must comply with the Commission's truth-in-billing requirements on a continuing basis, the associated information collection burden is imposed only once in order to modify billing systems to permit compliance.

The Commission's truth-in-billing rules are broad principles of basic fairness that afford affected entities wide latitude to choose the most efficient means of compliance. Accordingly, the Commission does not believe that the truth-in-billing information collection will impose significant information collection burdens or affect carriers' Year 2000 readiness efforts. The Commission believes that emergency approval of the truth-in-billing information collection will enhance consumer protection without causing an undue burden on affected entities. As discussed above, the Commission has made significant modifications to its Notice proposals to reduce information collection burdens. The Commission requests that OMB respond to this request for emergency authorization by July 2, 1999.

- b. Separation of charges by service provider and highlighting new service provider information.

Number of respondents: 2295

Frequency of response: Third party disclosure. On occasion.

Estimated time per respondent: 80 hours

Total annual burden: 183,600

Total estimate of annualized cost to respondents for collection of information: We estimate that this requirement will take approximately 80 hours and will occur one for approximately 2295 respondents. 2295 (number of respondents) \times 80 (number of hours) \times $\$40$ per hour (include administrative staff time and overhead) = $\$7,344,000$.

- c. Full and non-misleading billed charges.

Number of respondents: 3099

Frequency of response: Third party disclosure. On occasion.

Estimated time per respondent: 2 hours

Total annual burden: 6198 hours

Total estimate of annualized cost to respondents for collection of information: We estimate that this requirement will take approximately 2 hours and will occur once for approximately 3099 respondents. 3099 (number of respondents) \times 2 (number of hours) \times $\$40$ per hour (includes administrative staff time and overhead) = $\$247,920$.

- d. Clear and conspicuous disclosure of inquiry contacts.

Number of respondents: 3099

Frequency of response: Third party disclosure. On occasion.

Estimated time per respondent: 1 hour

Total annual burden: 3099 hours

Total estimate of annualized cost to respondents for collection of information: We estimate that this requirement will take approximately 1 hours and will occur once for approximately 3099 respondents. 3099 (number of respondents) \times 1 (number of hours) \times $\$40$ per hour (includes administrative staff time and overhead) = $\$123,960$.

13. (1) Total capital start-up costs component annualized over its expected useful life: $\$1,800,000$ - $\$9,000,000$. There may be start-up costs for telecommunications carriers that need to purchase new software or other equipment to organize their telephone bills in accordance with our proposals. The start-up costs will vary widely depending upon the carrier's current billing system. We estimate that start-up costs may range from $\$1,000$ to $\$5,000$ to purchase new software.

(2) Total operation, maintenance, and purchase of services component: $\$0$. The collections will not result in additional operating or maintenance expenses.

14. The information collections are third party disclosure requirements and thus do not impose any costs on the federal government.

15. The information collections will increase the public burden to 195,966 hours. They will increase the burden on a one-time basis by 195,996 annual hours. This burden estimate is greater

than the figure approved by OMB in connection with the Commission's Notice proposals (185,400 annual hours), because the initial submission inadvertently undercounted the number of respondents. The Commission actually has reduced some burden hour estimates from what was submitted in connection with the Notice proposals. As explained above in response #5, the Commission did not adopt a number of the Notice proposals that commenters identified as particularly burdensome in terms of information collection requirements. In addition, it is important to recognize that all burden hours are associated with one-time-only, rather than recurring, obligations. Although common carriers must comply with the Commission's truth-in-billing requirements on a continuing basis, the associated information collection burden is imposed only once in order to modify billing systems to permit compliance.

16. Not applicable. There will be no publication of these information collections.

17. Not applicable. The Commission does not intend to seek approval not to display the expiration date for OMB approval of the information collections.

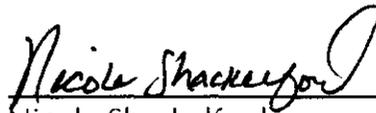
18. This is an emergency request. We ask waiver of the notice requirements. The public will be given another opportunity to comment on the collections as required by 5 CFR 1320 prior to our submission for the maximum three year clearance period.

Part B. Collections of Information Employing Statistical Methods

Not applicable. The Commission does not anticipate that the collection of information will employ statistical methods.

CERTIFICATE OF SERVICE

I, Nicole Shackelford, do certify that on July 26, 1999, Petitions for Reconsideration of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



Nicole Shackelford

Charles Carbone
Michael Shames
Utility Consumer Action Network
1717 Kettner Blvd. - Suite 105
San Diego, CA 92101

Walter Steimel, Jr.
Hunton & Williams
(Pilgrim Telephone, Inc.)
1900 K Street, NW
Washington, DC 20006

Mark C. Rosenblum
Richard H. Rubin
AT&T
295 North Maple Avenue
Room 325213
Basking Ridge, NJ 07920

Pamela J. Riley
AirTouch Communications, Inc.
1818 N Street, NW
Suite 800
Washington, DC 20036

Albert H. Kramer
Robert F. Aldrich
Valerie M. Furman
Dickstein Shapiro Morin & Oshinsky, LLP (APCCI)
2101 L Street, NW
Washington, DC 20037

Larry A. Peck
John Gockley
Bruce Becker
Ameritech
2000 West Ameritech Center Drive-Room 4H86
Hoffman Estates, IL 60196

John T. Scott, III
Crowell & Moring, LLP
(Bell Atlantic Mobile)
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Jim Hurt
Jeannette Mellinger
Consumers' Utility Counsel Division
Two Martin Luther King, Jr. Drive
Plaza Level East
Atlanta, GA 30334

Emily M. Williams
ALTS
888-17th Street, NW
Suite 900
Washington, DC 20036

Douglas D. Leeds
AirTouch Communications, Inc.
One California Street
29th Floor
San Francisco, CA 94111

Robert M. McDowell
ACTA
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Judith L. Harris
Brenda K. Pennington
Reed Smith Shaw & McClay, LLP (AmericaTel Corp.)
1301 K Street, NW
Suite 1100-East Tower
Washington, DC 20005

Mary Liz Hepburn
Bell Atlantic
1300 Eye Street, NW
Suite 400W
Washington, DC 20005

M. Robert Sutherland
Richard M. Sbaratta
Helen A. Schockey
BellSouth
1155 Peachtree Street, NE - Suite 1700
Atlanta, GA 30309

Edwin N. Lavergne
Shook, Hardy and Bacon, LLP
(The Billing Reform Task Force)
1850 Connecticut Avenue, NW
Suite 900
Washington, DC 20006

Rachel J. Rothstein
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Eliot J. Greenwald
Swidler Berlin Shereff Friedman, LLP
(CenturyTel)
3000 K Street, NW
Suite 300
Washington, DC 20007

John Prendergast
Susan J. Bahr
Blooston, Mordkofsky, Jackson & Dickens
(CommNet Cellular, Inc.)
2120 L Street, NW - Suite 300
Washington, DC 20037

Genevieve Morelli
Competitive Telecommunications Assn.
1900 M Street, NW
Suite 800
Washington, DC 20036

Matthew C. Ames
Miller & Van Eaton, PLLC
(Education and Library...)
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

Michel J. Shortley, III
Frontier
180 South Clinton Avenue
Rochester, NY 14646

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications Industry Assn.
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

Peter Arth, Jr.
Lionel Wilson
Gretchen Therese Dumas
Public Utilities Commission - State of California
505 Van Ness Avenue
San Francisco, CA 94102

Gary D. Slaiman
Kristine DeBry
Swidler Berlin Shereff Friedman, LLP
(Coalition to Ensure Responsible Billing)
3000 K Street, NW - Suite 300
Washington, DC 20007

Russell M. Blau
Eliot J. Greenwald
Swidler Berlin Shereff Friedman, LLP
(Commonwealth Telco.)
3000 K Street, NW - Suite 300
Washington, DC 20007

Robert J. Aamoth
Kelley Drye & Warren, LLP
(CompTel)
1200-19th Street, NW
Suite 500
Washington, DC 20036

Garret C. Rasmussen
Patton Boggs, LLP
(Electronic Commerce Assn.)
2550 M Street, NW
Washington, DC 20037

Barry Pineles
GST Telecom, Inc.
4001 Main Street
Vancouver, WA 98663

John F. Raposa, **HQE03J27**
GTE
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75015

Kenneth T. Burchett
GVNW
P.O. Box 2330
8050 S.W. Warm Springs Street
Suite 200
Tualatin, OR 97062

David W. Zesiger
Donn T. Wonnell
Independent Telephone & Telecommunications Alliance
1300 Connecticut Ave
Suite 600
Washington, DC 20036

Mary L. Brown
MCI
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Hubert H. Humphrey, III
Garth M. Morrisette
Amy Brendmoen
Minnesota Office of Attorney General
1200 NCL Tower - 445 Minnesota Street
St. Paul, MN 55101

Elisabeth H. Ross
Birch, Horton, Bittner and Cherot
(Missouri PUC)
1155 Connecticut Avenue, NW
Suite 1200
Washington, DC 20036

Susan Grant
National Consumers League
1701 K Street, NW
Suite 1200
Washington, DC 20006

Andre J. Lachance
GTE
1850 M Street, NW
Suite 1200
Washington, DC 20036

Charles H. Helein
Helein & Associates, PC
(Global Telecompetition...)
8180 Greensboro Drive
Suite 700
McLean, VA 22102

David L. Nace
B. Lynn F. Ratnavale
Lukas, Nace, Gutierrez & Sachs, Chtd.
(Liberty Cellular, Inc.)
1111-19th Street, NW - Suite 1200
Washington, DC 20036

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Avenue, NW
Suite 610
Washington, DC 20006

George M. Fleming
Mississippi PSC
P.O. Box 1174
Jackson, MS 39215

Kenneth V. Reif
NASUCA
1580 Loga Street
Suite 610
Denver, CO 80203

Glenn S. Richards
David S. Konczal
Fisher, Wayland, Cooper, Leader and Zaragoza, LLP
(NevadaCom, Inc.)
2001 Pennsylvania Avenue, NW - Suite 400
Washington, DC 20006

Bruce A. Kushnick
New Networks Institute
826 Broadway
Suite 900
New York, NY 10003

Timothy S. Carey
Ann Kutter
Michael P. Sasso
State Consumer Protection Board
Five Empire State Plaza - Suite 2101
Albany, NY 12223

Anne F. Curtin
Douglas W. Elfner
State Consumer Protection Board
Five Empire State Plaza - Suite 2101
Albany, NY 12223

Robert S. Foosner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
1450 G Street, NW - Suite 425
Washington, DC 20005

Jodi J. Bair
Ohio PUC
30 East Broad Street
Columbus, OH 43215

Teresa S. Werner
Piper & Marbury, LLP
(Omnipoint Comms.)
1200-19th Street, NW
Seventh Floor
Washington, DC 20036

Terrence J. Buda
Frank B. Wilmarth
Bohdan R. Pankiw
Pennsylvania PUC
P.O. Box 3265
Harrisburg, PA 17105

Katherine M. Harris
Stephen J. Rosn
John P. Stanley
Wiley, Rein & Fielding (PCIA)
1776 K Street, NW
Washington, DC 20006

Mary McDermott
Todd B. Lantor
PCIA
500 Montgomery Street
Suite 700
Alexandria, VA 22314

Richard S. Myers
William R. Layton
Myers Keller Communications Law Group
(Petroleum Comms.)
1522 K Street, NW - Suite 1100
Washington, DC 20005

Marjorie K. Conner
Francine Matthews
Michelle Walsh
Hunton & Williams (Pilgrim Telephone)
1900 K Street, NW
Washington, DC 20006

Luisa L. Lancetti
Wilkinson, Barker, Knauer & Quinn, LLP
(PrimeCo)
2300 N Street, NW
Washington, DC 20037

Tiki Gaugler
Qwest
4250 North Fairfax Drive
Arlington, VA 22203

Sylvia Lesse
Marci Greenstein
Kraskin, Lesse & Cosson, LLP
(Rural Cellular Assn.)
2120 L Street, NW - Suite 520
Washington, DC 20037

Michael R. Bennet
Edward D. Kania
Bennet & Bennet, PLLC
(Rural Telecommunications)
1019-19th Street, NW - Suite 500
Washington, DC 20036

L. Marie Guillory
R. Scott Reiter
NTCA
(Rural Telephone Coalition)
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Robert M. Lynch
Durward D. Dupre
Barbara R. Hunt
SBC Comms.
One Bell Plaza - Room 3026
Dallas, TX 75202

Carl K. Oshiro
Small Business Alliance for Fair Utility Regulation
100 First Street
Suite 2540
San Francisco, CA 94105

Leon M. Kestenbaum
Jay C. Keithley
Norina T. Moy
Sprint
1850 M Street, NW - Suite 1110
Washington, DC 20036

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group (T RA)
1620 Eye Street, NW
Suite 701
Washington, DC 20006

Philip L. Verveer
Gunnar D. Halley
Willkie Farr & Gallagher (Teligent)
Three Lafayette Centre
1155-21st Street, NW
Washington, DC 20036

Margot Smiley Humphrey
Koteen & Naftalin, LLP
(Rural Telephone Coalition)
1150 Connecticut Avenue, NW
Washington, DC 20036

Stuart Polikoff
Stephen Pastorkovich
OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

Irene A. Etzkorn
Siegel & Gale
Ten Rockefeller Plaza
New York, NY 10020

Carole C. Harris
Christine M. Gill
Anne L. Fruehauf
McDermott, Will & Emery (Southern Communications Services)
600-13th Street, NW
Washington, DC 20005

Jonathan M. Chambers
Sprint
1801 K Street, NW
Suite M112
Washington, DC 20006

Laurence E. Harris
David S. Turetsky
Stuart H. Kupinsky
Teligent, Inc.
8065 Leesburg Pike - Suite 400
Vienna, VA 22182

Texas Citizen Action
P.O. Box 10231
Austin, TX 78756

Kenan Ogelman
Texas Office of Public Utility Counsel
1701 N. Congress
Suite 9-180
P.O. Box 12397
Austin, TX 78711

Rick Guzman
Texas Office of Public Utility Counsel
1701 N. Congress
Suite 9-180
P.O. Box 12397
Austin, TX 78711

Mitchell F. Brecher
Fleischman and Walsh, LLP
(Time Warner Telecom)
1400-16th Street, NW
Washington, DC 20036

Kathryn Marie Krause
U S WEST
1020-19th Street, NW
Suite 700
Washington, DC 20036

Peter M. Connolly
Koteen & Naftalin, LLP
(US Cellular Corp.)
1150 Connecticut Avenue, NW
Washington, DC 20036

Leslie A. Cadwell
Vermont Department of Public Service
112 State Street
Drawer 20
Montpelier, VT 05620

Christine O. Gregoire
Shannon E. Smith
WUTC
1400 S. Evergreen Park Drive, SW
P.O. Box 40128
Olympia, WA 98504

ITS
1231-21st Street, NW
Washington, DC 20036