

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

CC Docket No. 98-170

COMMENTS ON PETITIONS FOR RECONSIDERATION

TIME WARNER TELECOM

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SUMMARY

Time Warner Telecom (TW Telecom) supports those petitions for reconsideration of the Commission's Truth-in-Billing Order which seeks changes to certain of the rules adopted in that order. Several of the rules adopted, specifically the "New Service Provider" rule, the "Deniable-Non-deniable" rule, and the requirement that all carriers utilize specific FCC-mandated language to describe charges which result from federal regulatory actions, are burdensome, cannot be implemented in the short-term, can only be implemented at great cost in the longer term, are unnecessary to protect consumers from slamming and cramming, are overly regulatory and are unnecessarily complex. These rules deviate markedly from the "minimal, basic guidelines," and "broad, binding principles" which the Commission purported to enact in this proceeding.

Rather than requiring carriers to identify every new service provider (defined as any provider that did not bill for services on the customer's previous billing statement), TW Telecom urges the Commission to limit the requirement to identification of changes to customers' presubscribed providers. The rule should be reconsidered so as not to be applicable to dial around, operator-assisted calling, and other casual billed services. Further, the rule requiring billing carriers to identify which billed charges are "deniable" (*i.e.* non-payment of which may result in termination of local exchange service) is beyond the Commission's jurisdictional authority. The Deniable/Non-deniable rule cannot be justified either under Section 201(b) or Section 258 of the Communications Act. Moreover, the rule is unnecessary. The same objective could be achieved by declaring that any misrepresentation by a carrier that an interstate charge is deniable when it is not constitutes an unreasonable practice in violation of Section 201(b), and by enforcing such requirement against offending carriers. The Commission should reconsider its decision to mandate specific "one size fits all" language to be used by all carriers to describe

charges based on federal regulatory actions in favor of a flexible rule of reason approach which would afford carriers reasonable latitude in selecting the words to describe such charges based on their own perceptions of consumer demands and wants so long as the descriptions are clear and informative.

In addition to the specific changes described above, TW Telecom concurs with the U.S. Small Business Administration which has asked the Commission to reconsider whether the truth-in-billing rules should be applicable to all small telecommunications carriers – incumbent LECs, competitive LECs, and others which bill for themselves and on behalf of other providers. Smaller carriers, including CLECs like TW Telecom, are unable to benefit from the economies of scale and scope enjoyed by the larger incumbent LECs and will therefore be unable to bear the cost of truth-in-billing compliance and remain competitive. In addition, the truth-in-billing rules designed to protect consumers against inappropriate practices should not be applicable to the custom and complex billings of sophisticated business customers.

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COMMENTS ON PETITIONS FOR RECONSIDERATION

Time Warner Telecom (TW Telecom) hereby submits its comments on the petitions for reconsideration of the Commission's First Report and Order issued in the above-captioned proceeding,¹ and states as follows:

INTRODUCTION

On May 11, 1999, the Commission released its First Report and Order in CC Docket No. 98-170, the Truth-in-Billing proceeding.² In the Truth-in-Billing Order, the Commission promulgated a series of rules to govern the content and format of bills rendered by telecommunications carriers. The stated purpose for the truth-in-billing rules is to enable consumers to better understand the content of their telephone bills and to make such objectionable practices as "slamming" and "cramming" more readily detectable. The

¹ The following parties submitted petitions for reconsideration: AT&T Corp. (AT&T), the United States Telephone Association (USTA), SBC Communications, Inc. (SBC), MCI WorldCom (MCIW); the National Telecommunications Cooperative Association (NTCA), and U S West Communications, Inc. (U S West).

² In the Matter of Truth-in-Billing and Billing Format (First Report and Order and Further Notice of Proposed Rulemaking), FCC 99-72, released May 11, 1999 (hereinafter "Truth-in-Billing Order"). Notification of the filing of the petitions for reconsideration was published in the Federal Register on August 30, 1999. 64 Fed. Reg. 47190.

Commission described its truth-in-billing rules as “minimal, basic guidelines,”³ and as “broad, binding principles to promote truth-in-billing, rather than [to] mandate detailed rules that would rigidly govern the details or format of carrier billing practices.”⁴ Notwithstanding those characterizations, what the Commission promulgated in the Truth-in-Billing Order was something far afield from minimal basic guidelines and broad principles. Rather, the Commission imposed upon the telecommunications industry, especially the invoice-rendering portion of the industry, detailed, complex and very specific requirements to govern the content and format of customer bills. As demonstrated in the petitions for reconsideration, these requirements cannot be complied with in the near-term and can only be met at great cost in the longer term. Moreover, the cost of compliance with those requirements will far exceed any conceivable public interest benefit, and is likely to cause significant adverse consequences, including limiting the availability of important telecommunications services, forcing some providers to discontinue offering certain services, and increasing the costs to consumers of needed telecommunications services.

TW Telecom is a competitive provider of telecommunications services, including facilities-based local exchange service and exchange access service, as well as resold interexchange service. Its services are marketed only to medium and large business users. TW Telecom has expended considerable effort to learn from its customers what those customers desire with regard to billing. Based upon focus groups conducted with its customers as well as ongoing dialogue with many customers, TW Telecom has learned from its customers that they do

³ Truth-in-Billing Order, *supra* at ¶ 5.

⁴ *Id.* at ¶ 9.

not want and do not need invoices which meet each of the very specific requirements imposed on the industry in the Truth-in-Billing Order. TW Telecom's customers seek electronic billing where feasible and TW Telecom is moving toward an Internet-based billing system in response to customer demands. TW Telecom customers desire bills that are clear and easily reviewable. TW Telecom is endeavoring to upgrade its billing system to meet those consumer demands.

TW Telecom does very little billing for third parties. Presently, it has a billing and collection agreement with one billing aggregator which enables it to bill the services of a limited number of interexchange carriers. Third party billing is provided by TW Telecom largely as an accommodation to those of its customers who utilize the services of certain interexchange carriers and who desire to have those services included on their TW Telecom local service bills. TW Telecom rarely, if ever, receives complaints from its customers about the format or content of its bills, either with regard to charges for its services, or with regard to charges for services billed on behalf of third parties. Although TW Telecom has experienced virtually no adverse feedback from consumers regarding its billing procedures or its invoices themselves, TW Telecom generally supports the Commission's efforts to establish standards for carrier billing which will enable consumers to make informed choices and to detect when they have been invoiced for unwanted services or for services from providers other than those chosen by the customers. Because TW Telecom concurs with those petitioners for reconsideration who have demonstrated the near term impossibility of implementing the billing systems changes necessary to comply with certain of the truth-in-billing requirements, as well as the excessive cost of compliance relative to any conceivable benefit, and because TW Telecom believes that the Commission's consumer protection objectives can be achieved by alternative, less burdensome,

less legally questionable means, TW Telecom supports certain aspects of the petitions for reconsideration as described below.

I. THE COMMISSION SHOULD RECONSIDER AND MODIFY ITS NEW SERVICE PROVIDER REQUIREMENT

Several petitioners, including MCIW, USTA, and U S West, have asked the Commission to reconsider and modify the so-called “New Service Provider” requirement codified at Section 64.2001(a)(2) of the Commission’s Rules. Pursuant to that rule, billing entities must provide clear and conspicuous notification of any change in service provider, including notification that a new service provider has begun providing service. The rule defines a “new service provider” as “. . . any provider that did not bill for services on the previous billing statement.”

As noted by several petitioners, compliance with the New Service Provider requirement will be extremely costly. In order for a billing carrier to determine whether or not it has billed services of another carrier in the previous billing cycle, the carrier’s billing system must have the capability of identifying the previous month’s billing records and comparing the previous month’s records with the records for the current month. Several petitioners describe this capability as “stare and compare.”⁵ None of the companies which addressed this issue either individually (*e.g.*, U S West) or through their associations (USTA, NTCA) presently have stare and compare capability in their billing systems. Neither does TW Telecom. Indeed, TW Telecom is not aware of any telecommunications carrier which has stare and compare capability in its billing system.

⁵ See, *e.g.*, U S West petition at 5-6.

Moreover, even if that capability were to be developed, compliance with the New Service Provider Rule would not ensure that consumers would be notified of new providers. Many consumers use specific providers regularly but do not use those providers' services every billing cycle. In fact, some providers do not even bill for their services every month. Thus, as several petitioners have noted, the New Service Provider rule, if implemented, may increase consumer confusion with regard to new service providers.⁶

TW Telecom agrees with MCIW that the New Service Provider requirement should be limited to identifying changes in customers' presubscribed carriers, and that the requirement should not be applicable to dial-around services, operator-assisted services (often utilized from locations other than the customers' premises), and other casual billed services. In a given month, a consumer may utilize several – or even many – such services. To require billing carriers to determine for each such service provider whether or not a consumer utilized that provider's service during the previous month would be burdensome and would not protect consumers against being billed for services of providers other than the providers they have chosen. As MCIW correctly points out, consumers can only utilize such casual billed services by making an affirmative decision to do so, *e.g.*, by dialing the carrier's access code. In the case of operator services from remote locations, existing laws and regulations already require clear and specific identification of the service provider.⁷ Given these existing service provider branding and rate

⁶ *Id.*, at 4.

⁷ *See, e.g.*, the requirements of the Telephone Operator Consumer Services Improvement Act codified at 47 U.S.C. § 226, and Section 64.703 of the Commission's rules, 47 C.F.R. § 64.703.

information requirements, imposition of such additional billing requirements as the New Service Provider requirement is overly regulatory, unnecessary, and wasteful.

II. THE COMMISSION SHOULD RECONSIDER ITS “DENIABLE/NON-DENIABLE” RULE AND SHOULD LEAVE DECISIONS ABOUT LOCAL TELEPHONE SERVICE TERMINATION TO STATE COMMISSIONS

TW Telecom also supports those petitioners who have asked the Commission to reconsider and to modify the rule that requires billing carriers to clearly and conspicuously identify on invoices which charges may result in termination of local exchange telephone service if unpaid.⁸ As with the New Service Provider rule, the Commission’s intent in seeking to protect consumers from being intimidated into paying contestable charges because of fear that they might lose telephone service is commendable.⁹ However, TW Telecom concurs with those petitioners who assert that the Commission lacks jurisdictional authority to impose such a requirement on billing carriers. Moreover, TW Telecom believes that less burdensome means exist to protect consumers from such intimidation tactics.

In asserting jurisdiction to establish its truth-in-billing rules, including the Deniable/Non-deniable Rule, the Commission relies upon two sections of the Communications Act – Section 201(b) and Section 258.¹⁰ Neither of these sections affords the Commission jurisdictional authority to promulgate a rule governing the disconnection of local exchange service. Section 201(b)¹¹ requires that carrier charges, practices, classifications, and regulations for and in

⁸ That rule, referred to by several petitioners as the “Deniable/Non-deniable Rule,” is set forth at Section 64.2001(c) of the rules.

⁹ Truth-in-Billing Order, *supra* at ¶ 44.

¹⁰ *Id.* at ¶¶ 20-27.

¹¹ 47 U.S.C. § 201(b).

connection with interstate communications service be just and reasonable, and confers jurisdiction on the Commission to enact rules to implement that requirement. Local exchange service is not interstate service. Pursuant to Section 221(b) of the Communications Act,¹² local exchange service is considered to be intrastate service subject solely to regulation by state utility commissions. Nothing in Section 201(b) nor in any case construing Section 201(b) confers jurisdiction on the Commission to promulgate rules to govern termination of local exchange service, including rules prescribing how deniable and non-deniable services must be identified on carrier invoices. In fact, the Commission historically has left determinations about disconnection of local service for non-payment where those determinations belong – with state commissions.¹³

Section 258 was added to the Act by the Telecommunications Act of 1996.¹⁴ It authorizes the Commission to enact verification rules to protect consumers against unauthorized carrier changes in both the interstate and intrastate markets. However, the Deniable/Non-deniable rule will only require that billing carriers identify which services included on invoices are deniable. Whether or not a billed service may result in termination of local exchange service

¹² 47 U.S.C. § 221(b).

¹³ Detariffing of Billing and Collection Services, 102 FCC2d 1150 (1986). The Commission did establish a very limited exception to the requirement that decisions about termination of local service for non-payment be left to state commissions. In Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776 (1997) at ¶¶ 390-397, the Commission held that carriers who receive revenue from the federal Lifeline program not be allowed to terminate local service for non-payment of interstate toll charges. However, that exception was narrowly limited to those customers who receive federal funds pursuant to programs established under Section 254 of the Communications Act. The Commission affirmatively left to the states whether to apply a no disconnect rule to other customers. *Id.* at ¶ 392. Even in that limited circumstance, the action was taken based upon a recommendation of a Federal-State Joint Board with full input from state regulators.

¹⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

III. THE COMMISSION SHOULD MODIFY ITS REQUIREMENT THAT CARRIERS USE STANDARD LABELS TO IDENTIFY CHARGES RESULTING FROM FEDERAL REGULATORY ACTION IN FAVOR OF A FLEXIBLE RULE OF REASON APPROACH

TW Telecom agrees with those petitioners who have asked the Commission to reconsider its stated intent to mandate specific language to be used by all carriers to describe charges which result from federal regulatory actions.¹⁶ TW Telecom addressed this matter in depth in its comments on the further notice of proposed rulemaking in this proceeding.¹⁷ TW Telecom will not reiterate its comments on the further notice here other than to restate its view that there is no single correct or best way for all carriers to describe charges related to contributions to the universal service fund, carrier access charge requirements, or number portability. The Commission should recognize that in competitive markets, carriers should be afforded reasonable latitude to describe their charges in manners which they believe to be appropriate for their customers, and that government agencies should not be in the business of dictating how carriers describe such charges.

IV. THE COMMISSION SHOULD RECONSIDER WHETHER TO IMPOSE THE RULES PROMULGATED IN THE TRUTH-IN-BILLING ORDER ON ALL SMALLER CARRIERS, NOT JUST ON SMALLER INCUMBENT LECS

USTA and NTCA – two industry associations which, at least in part, represent the interests of small and rural incumbent LECs -- have asked the Commission to reconsider whether the truth-in-billing rules in general and the New Service Provider and Deniable/Non-Deniable rules in particular should be applicable to small incumbent LECs. They note correctly

¹⁶ Reconsideration on this issue was requested by AT&T, MCIW, USTA and others.

¹⁷ See Comments of Time Warner Telecom on Further Notice of Proposed Rulemaking, filed in CC Docket No. 98-170, July 9, 1999.

that in promulgating these rules, the Commission failed to consider their impact on small and mid-size LECs, and that this failure resulted in the Office of Management and Budget's refusal to approve the Truth-in-Billing Order.¹⁸

TW Telecom agrees that the Commission should carefully consider the impact of the rules on small LECs. On reconsideration, TW Telecom urges the Commission to consider more than the impact of the rules on small and rural incumbent LECs. TW Telecom respectfully urges the Commission to heed the advice of the U.S. Small Business Administration (SBA) and should reconsider whether the rules should be applicable to all small telecommunications carriers.¹⁹ As SBA has noted, "all small telecommunications carriers face different and distinct needs."²⁰ The implementation difficulties and costs identified by petitioners for reconsideration are applicable to all carriers who render bills for services – their own services as well as billing for other providers. Moreover, because of their small size, the costs imposed by the truth-in-billing regulations (especially the New Service Provider and Deniable/Non-deniable requirements) will place disproportionate burdens on small carriers who do not have the size necessary to benefit from the economies of scale and scope.²¹

TW Telecom and most other competitive LECs (CLECs) are small carriers. They are recent market entrants and do not have broad bases of customers to allocate costs of

¹⁸ USTA petition at 8.

¹⁹ Comment of the Office of Advocacy, U.S. Small Business Administration in Support of United States Telephone Association's Petition for an Expedited Waiver or Stay, filed September 3, 1999.

²⁰ *Id.* at 2.

²¹ *Id.* at 3.

implementing new billing systems. As SBA correctly notes, the burdens of compliance with the truth-in-billing rules will be passed on to consumers. In the case of smaller carriers – whether ILEC or CLEC – those costs will have to be borne by customer bases far more limited than those of the major ILECs. Imposition of these costly billing requirements will require smaller carriers to carefully evaluate whether it is in their economic interest to provide billing services for third parties. Those service providers who rely on LEC billing may soon find such billing services unavailable and, if available, economically unaffordable. The result will be a limitation on the variety of services and service providers available to consumers. Accordingly, on reconsideration, TW Telecom joins with USTA, NTCA, and SBA in urging the Commission to relieve smaller telecommunications carriers from the rules promulgated in the Truth-in-Billing Order.

V. THE TRUTH-IN-BILLING REQUIREMENTS SHOULD NOT BE APPLICABLE TO SERVICES PROVIDED TO SOPHISTICATED BUSINESS CUSTOMERS

AT&T has asked the Commission to reconsider the applicability of the Deniable/Non-deniable rule to business customers, suggesting that carriers be permitted to use alternative means of notification (including Internet-based notification) regarding non-deniable charges to business customers.²² Ameritech has asked the Commission to clarify that the truth-in-billing requirements not be applicable to custom and complex billings of business customers.²³ TW Telecom supports these requests. It agrees with Ameritech that business customers using such custom and complex arrangements are typically large, sophisticated users, that such users already

²² AT&T petition at 3-4.

²³ Petition for Stay, and Clarification or Reconsideration of Ameritech, filed July 26, 1999, at 8.

use elaborate systems and procedures to audit and validate their bills, and that such users neither want nor need the protections offered by the truth-in-billing rules.²⁴

TW Telecom provides its services to such business users. As described earlier in these comments, TW Telecom has been expending considerable effort working with its customers and learning from its customers what they desire and need in their billing for telecommunications services. Stated simply, such customers have needs which differ markedly from those of smaller business and residential customers. The Commission's "one size fits all" approach to carrier billing and consumer protection seems to disregard the profound differences which exist between customers. For that reason, TW Telecom urges the Commission to reconsider the application of its truth-in-billing rules to larger, sophisticated business users who neither desire nor need the protections inherent in the truth-in-billing rules.

²⁴ *Id.*

if the charge for the billed service is not paid has nothing to do with presubscribed carrier verification or prevention of slamming. In fact, the deniable services may be services which are not even offered to consumers on a presubscribed basis. In short, since the Deniable/Non-deniable rule extends beyond interstate services and since it was not enacted to prevent slamming, promulgation of that rule is beyond the Commission's jurisdiction, and should be reconsidered.¹⁵

If the Commission's intent in enacting the Deniable/Non-deniable rule is to protect consumers against being intimidated into paying contestable charges, the same objective can be achieved by taking an action less burdensome on carriers and well within the Commission's jurisdictional authority. TW Telecom simply recommends that the Commission declare it to be an unreasonable practice in violation of Section 201(b) for any carrier to misrepresent to consumers of any interstate service that such interstate service is deniable (*i.e.*, that non-payment may result in local service termination) when said service is not deniable. Carriers found to have acted in violation of that requirement could be subject to such sanctions, including forfeitures, as the Commission has authority to impose. Enactment and enforcement of such a rule would protect consumers from being misled by carriers as to whether certain services may be deniable without imposing on all billing carriers a requirement to identify which services reflected on invoices are deniable.

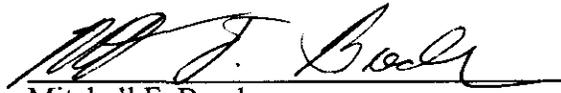
¹⁵ TW Telecom concurs with MCIW that the Commission has not identified and could not identify any linkage between customers knowing that non-payment of certain charges will result in disconnection of local service and consumers' ability to detect and prevent slamming. MCIW petition at 5.

CONCLUSION

For the reasons described in these comments, TW Telecom supports the petitions seeking reconsideration of certain aspects of the Truth-in-Billing Order and the regulations promulgated in that order, and urges the Commission to reconsider those rules in accordance with these comments.

Respectfully submitted,

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September 14, 1999

CERTIFICATE OF SERVICE

I, Melodie Kate, a secretary in the law firm of Greenberg Traurig, certify that I have this ___ day of September, 1999, caused a copy of the foregoing **COMMENTS ON PETITIONS FOR RECONSIDERATION** to be served via first-class mail, unless otherwise indicated, upon the persons listed below:

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