

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Truth-in-Billing
and
Billing Format

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CC Docket No. 98-170

Petition for Temporary, Limited Waiver

West Side Telecommunications ("West Side"),¹ by counsel, hereby seek temporary, limited waiver of the Truth-in-Billing ("TIB") requirements established by the Federal Communications Commission ("Commission" or "FCC") in its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.² Specifically, West Side seeks temporary waiver of the requirements of Sections 64.2401(a)(1) and (2) regarding the name of and separating charges by service provider (the "TIB Separate Provider Requirements") and Section 64.2401(d) regarding disclosure of inquiry contacts (the "TIB Inquiry Contact

¹ Attachment A contains the declaration of Susan E. Jackson, General Manager of West Side. The original signed declaration will be filed upon receipt by counsel.

² In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72, released May 11, 1999, 64 Fed. Reg. 34488 (June 25, 1999)("TIB Order"); Errata, CC Docket No. 98-170, DA 99-2092, released October 6, 1999.

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Requirement")(collectively, the "TIB Requirements").³ West Side seeks this waiver until April 1, 2000.

West Side, which is not a member of the United States Telecom Association ("USTA"), recognizes that a pending Petition filed by USTA⁴ seeks similar relief for USTA member companies, and would not otherwise cover West Side unless the relief sought was applied to all carriers as USTA has suggested.⁵ Moreover, West Side recognizes that a pending Joint Petition filed by the National Exchange Carrier Association, Inc., the National Telephone Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, Inc. (collectively the "Associations") also seeks similar relief for their member companies. Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, West Side requests a waiver of the TIB Requirements until April 1, 2000.

³ In pertinent part, 47 C.F.R. § 64.2401(a)(1) requires that the name of the service provider "associated with each charge must be clearly identified on the telephone bill" and 47 C.F.R. § 2401(a)(2) states that "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. . . ." 47 C.F.R. § 64.2401(d) states, in turn, that:

Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

⁴ See Public Notice, DA 99-1616, released August 13, 1999.

⁵ See Reply Comments of USTA, CC Docket No. 98-170, filed September 10, 1999 at 2.

Until the requested waiver expires, West Side will continue to work internally and with its toll billing vendor to have the necessary software changes made and tested in order to comply with the TIB Requirements. Moreover, even after the waiver expires, West Side's customer representatives will continue to provide assistance to customers with questions concerning charges from particular carriers. West Side respectfully submits that these actions will ensure that the underlying public interest objectives of the TIB Requirements will be advanced during the time that the requested waiver is in effect.

I. Background

West Side provides exchange and exchange access services to approximately 2,500 lines in West Virginia. West Side is a rural telephone company under the Communications Act of 1934, as amended. West Side uses TPI to process and print all toll portions of the bills rendered by West Side to its customers for the carriers for which West Side provides billing and collection services. West Side, in turn, maintains its own system (i.e., software and support) for the billing and bill rendering of local and other services.⁶ West Side contacted TPI in approximately in the middle of July of this year to discuss the software changes that would be necessary by TPI to ensure West Side's TIB compliance with respect to the toll billing services TPI renders to West Side.

⁶ When this system requires modifications (e.g., in order to address regulatory or other issues), West Side performs such modifications itself, including all necessary software modifications. Accordingly, West Side has now included its activities as one part of its Year 2000 issue checklist associated with all of its computer-based systems.

In the beginning of November, TPI informed West Side that no additional toll billing program changes would be processed, and that the software changes required to render a toll bill in compliance with the TIB Inquiry Contact Requirement would not be available until the end of 1999. TPI indicated that this policy was in effect due to the backlog in programming demands, including those arising from Year 2000 issues.

With respect to local service billing, West Side also recently recognized the need to disaggregate by service provider the charges that West Side currently aggregates in its local section of the bill and placing the name of the service provider in that section. Based on a clearer understanding of the requirements, West Side immediately began the process of developing the software required by it to comply with the TIB Separate Provider Requirements. The necessary software modifications and testing should be completed by approximately the same time as TPI is able to provide toll bill statements complying with the TIB Inquiry Contact Requirement. Accordingly, the practical problems and existing billing software system limitations confronting West Side associated with implementing the TIB Requirements make compliance by the November 12, 1999 effective date infeasible.⁷

The need for the waiver of the TIB Inquiry Contact Requirement arises from the billing services that West Side renders to casual calling and alternate service providers (collectively referred to as "AOS providers"), i.e., carriers other than the presubscribed "1+" carrier of the

⁷ See 64 Fed. Reg. 55163 (Oct. 12, 1999); see also Public Notice, DA 99-2030 (Sept. 30, 1999) and Public Notice, DA 99-1789 (Sept. 2, 1999).

customer.⁸ Specifically, TPI, on behalf of West Side, receives data from the AOS provider's clearinghouse, which, in turn, are aggregated by TPI in one section of a West Side customer's bill. This bill section may identify one or, at times, several different AOS providers based on the customer's decision to make a casual call or to use an alternative service provider in a given billing cycle. The charges that West Side receives are sorted by customer, by date and time of that customer's usage, and by AOS provider.⁹ The toll bills that West Side receives from TPI do not, however, place the AOS service provider's toll free number on the bill. Accordingly, TPI's existing software requires modifications to accommodate varying levels of screening and identification of an AOS provider, and to provide for the contact number of the AOS provider.

With respect to the need for a waiver of TIB Separate Provider Requirements, West Side's existing billing system currently aggregates charges for both West Side's affiliated internet service provider ("ISP") and affiliated paging/customer premise equipment ("CPE") vendor ("Paging/CPE Vendor") in the "Detail of Current Charges/Monthly Service" section of West Side's bill. As indicated, above, West Side recently recognized the need to place these charges in separate sections of the bill,¹⁰ and is undertaking the necessary software modifications and

⁸ Although the West Side typically has the authority to issue credits to customers for AOS charges, the AOS providers may, independently, seek payment of those charges from customers. Moreover, West Side notes that it is not "fully authorized to resolve consumer complaints on the carrier's behalf." 47 C.F.R. § 64.2401(d). Accordingly, West Side requests this waiver of the TIB Inquiry Contact Requirement. West Side also notes that, in its experience, customer inquiries regarding AOS provider charges are minimal.

⁹ Based West Side's experience, the vast majority of its customers do not make calls carried by an AOS provider. For example, based on a representative's month data, West Side estimates that less than approximately seven percent (7%) of West Side's customers made an AOS provider call, or typically less than one-hundred and seventy-five (175) of the approximately 2,500 end user bills that West Side renders in a given month.

¹⁰ See TIB Order at para. 31.

testing in an effort to accomplish the separation by service provider (as well as placing the name of the service provider in the section) by West Side's January, 2000 billing cycle.

Although, West Side currently anticipates compliance with the TIB Requirements in the month of January, 2000, West Side requests this waiver until April 1, 2000. A waiver of the TIB Requirements until April 1, 2000 will help to ensure that all TIB efforts required by both TPI and West Side are coordinated efficiently, and would otherwise accommodate unanticipated delays or problems in the development of the software modifications and of the testing of the changes required to comply with the TIB Requirements.

II. Good Cause Exists for and the Public Interest will be Served by a Grant of this Limited Waiver

Based on these facts and circumstances, West Side respectfully submits that good cause exists for a grant of this limited waiver, and that the public interest will be served by such action. As demonstrated herein, West Side will not be able to meet the TIB Requirements by November 12, 1999.¹¹ Moreover, even assuming the availability of its software upgrades, West Side would not be able to successfully test its upgrades by November 12, 1999. West Side anticipates, however, that compliance with the TIB Requirements should be possible by April 1, 2000. Accordingly, for the reasons stated, good cause exists for this waiver.¹²

¹¹ See n.7, *supra*.

¹² "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

West Side also respectfully submits that the public interest would be served by grant of this request. First, the Commission has recognized the need to balance the implementation of new regulatory directives which affect computerized systems with on-going Year 2000 activities.¹³ The software changes required by West Side (and by TPI) clearly fall into this Commission-defined category. The Commission's concerns regarding utilization of its Year 2000 Policy Statement to "'forestall' or 'roll back' disfavored regulations, or use this policy for purposes of competitive advantage"¹⁴ are not applicable here. West Side is working internally and with TPI toward TIB compliance and seeks only a limited extension of time that is otherwise consistent with the underlying objectives which justified the Commission-prescribed compliance date of certain other TIB rules. Accordingly, there is no basis to conclude that West Side is attempting to "forestall" or "roll back" disfavored regulations. In addition, there is no "competitive advantage" associated with this request. A grant of this waiver does not affect a competitor of West Side; rather it allows an interim measure to be implemented that allows continuation of existing billing arrangements for other carriers in a manner consistent with the status of the overall TIB compliance efforts by West Side.

Second, the Commission has already determined that the April 1, 2000 date is appropriate for implementing other TIB rules.¹⁵ Accordingly, the ability of both TPI and West Side to continue to work toward the April 1, 2000 implementation date for all TIB rules would ensure

¹³ See In the Matter of Minimizing Regulatory and Information Technology Requirements That Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem, Year 2000 Network Stabilization Policy Statement, FCC 99-272, released October 4, 1999 ("Year 2000 Policy Statement") at para. 15.

¹⁴ Id. at para. 16.

¹⁵ See n.7, supra.

efficiency and continuity in the necessary billing system enhancements and capabilities without incurring unnecessary expenditures or jeopardizing Year 2000 compliance issues.

Third, the underlying goal of the TIB Requirements -- the ability of a customer to identify a carrier and make inquiry concerning a charge -- would not be frustrated by a grant of the requested waiver. As is done today, even after the requested waiver expires, West Side will continue to provide its local telephone number on the bill in order to allow customers to contact West Side about charges. Likewise, when a customer questions an AOS provider charge, West Side will, at the customer's option, provide the AOS provider's toll free number or will seek to establish a three-way conference call with the AOS provider (or its billing clearinghouse) in order that the customer may address his/her concern about a charge. Accordingly, the goal of the TIB Requirements will be advanced. Waiver of the TIB Requirements as requested herein will merely maintain the status quo until such time as the billing system modifications are made and successfully tested, while effecting the goals of these requirements in an alternative manner.

Finally, West Side notes that, in the absence of this limited waiver of the TIB Inquiry Contact Requirement, its ability to bill for isolated customer-originated traffic on behalf of AOS providers would be in jeopardy. Similarly, in the absence of a waiver of the TIB Separate Provider Requirements, West Side's ability to continue to bill for its affiliated ISP and Paging/CPE Vendor would be at risk. Facing the risk of non-compliance with the TIB Requirements, West Side may be forced to consider terminating its billing relationship with each

of these providers. This, in turn, may increase the cost to various providers for their respective billing, thereby inhibiting the continued development of a competitive marketplace for such services.

Even assuming that harm to the public interest is present, that harm does not outweigh the public interest benefits arising from a grant of this request. As indicated, concerns expressed by the customers of West Side regarding AOS provider, ISP and Paging/CPE vendor charges have been minimal. Moreover, West Side anticipates that its experience will not change during the time that the requested waiver is in place.

III. Conclusion

Because West Side is technically incapable of complying with the TIB Requirements by November 12, 1999, a grant of this request until April 1, 2000 should ensure implementation of the TIB Requirements is completed in an efficient manner, while avoiding unnecessary expense or raising additional Year 2000 compliance issues. At the same time, the consumer goals of the TIB Requirements will not be frustrated by a grant of this request. Rather, such goals will be furthered by West Side as it continues to provide customer assistance and responsiveness when questions are received regarding charges from service providers.

Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, West Side requests a waiver of

the requirements of 47 C.F.R. §§ 64.2401(a)(1), 64.2401(a)(2) and 64.2401(d) until April 1, 2000.

Respectfully submitted,

West Side Telecommunications

By 
David Cosson
Thomas J. Moorman
Margaret Nyland

Kraskin, Lesse & Cosson, LLP
2120 L Street, N. W., Suite 520
Washington, D.C. 20037
202/296-8890

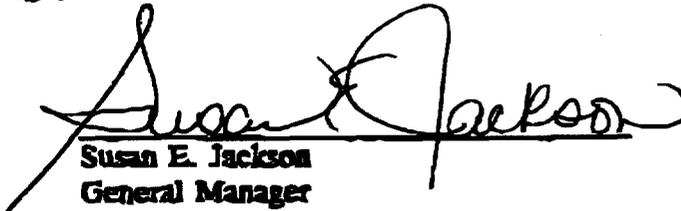
Their Attorneys

November 10, 1999

**Declaration of Susan E. Jackson
General Manager of
West Side Telecommunications**

I, Susan E. Jackson, General Manager of West Side Telecommunications ("West Side"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding West Side is true and accurate to the best of my knowledge, information, and belief.

Date 11-10-99


Susan E. Jackson
General Manager

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Temporary, Limited Waiver" of West Side Telecommunications was served on this 10th day of November, 1999 by hand delivery to the following parties:



Shelley Davis

Lawrence Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW Room 5-C450
Washington, DC 20554

Lisa Zaina, Acting Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B303
Washington, DC 20554

Glenn T. Reynolds, Chief
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A847
Washington, DC 20554

David Konuch, Attorney
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C313
Washington, DC 20036

International Transcription Services
1231 20th Street, NW
Washington, DC 20554