

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

REC'D
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FCC MAIL SECTION

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

CC Docket No: 98-170

ORDER

Adopted: March 31, 2000

Released: March 31, 2000

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On April 15, 1999, the Commission adopted "truth-in-billing" rules applicable to common carriers.¹ Some of these rules went into effect on November 12, 1999, while the remainder of these rules will become effective on April 1, 2000.² These rules are designed to reduce telecommunications fraud such as slamming and cramming³ by making telephone bills easier for customers to read and understand, and thereby making such fraud easier to detect and report. We have before us multiple petitions for temporary waivers or extensions of time to come into compliance with the truth-in-billing rules that are scheduled to become effective on April 1, 2000.⁴ We hereby deny these petitions.

¹ *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492 (1999); *Errata*, 14 FCC Rcd 17090 (1999) (*TIB Order*). A summary of the *TIB Order* and the rules adopted, 47 C.F.R. §§ 64.2400 and 64.2401, was published in the *Federal Register*. See 64 FR 34488-01 (June 25, 1999); see also 64 FR 57994 (October 28, 1999).

² See ¶ 9, *infra*, citing *Truth-in-Billing and Billing Format*, Order on Reconsideration, CC Docket No. 98-170, FCC 00-111 (rel. March 29, 2000), *Errata*, DA 00-745 (rel. March 31, 2000) (*TIB Reconsideration Order*).

³ Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization. Cramming refers to the practice of causing unauthorized, misleading, or deceptive charges to be placed on consumers' telephone bills.

⁴ The Commission rules at issue in the petitions, subsections 64.2401(a), (b), (c), and (d), state as follows:

- (a) *Bill organization*. Telephone bills shall be clearly organized, and must comply with the following requirements:

- (1) the name of the service provider associated with each charge must be clearly identified on

II. BACKGROUND

2. The rules adopted in the *TIB Order* originally were to take effect on July 26, 1999. The effective date of these rules, however, was dependent upon the Office of Management Budget (OMB) granting emergency approval on the information collections contained within the *TIB Order*.

3. On September 24, 1999, the Office of Management and Budget (OMB) approved the information collections contained in the rules. During its review, OMB raised concerns that certain requirements of the Order could impair the efforts of small and medium-sized telecommunications carriers to ensure that their systems were Y2K-compliant. On September 30, 1999, the Commission, recognizing that ensuring Y2K compliance of telecommunications-related computer systems was an important public concern, postponed the effective date of two

the telephone bill.

- (2) where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider, and the telephone bill must provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service.
- (i) "Clear and conspicuous notification" means notice that would be apparent to a reasonable consumer.
 - (ii) "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.

(b) *Description of Billed Charges.* Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the prices charged.

(c) *"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.

(d) *Clear and Conspicuous Disclosure of Inquiry Contacts.* 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.

of the requirements until April 1, 2000. The affected rules were subsection 64.2401(a)(1)'s requirement that carriers highlight new service providers and subsection 64.2401(c)'s requirement that carriers identify deniable and non-deniable charges.⁵ The Commission specified that all other principles and guidelines adopted in the *TIB Order*, including subsection 64.2401(a)(1)'s requirement that carriers separate charges on bills by service provider, would become effective on November 12, 1999, 30 days after *Federal Register* publication of notice of the effective date.⁶ In addition, the Commission invited carriers, especially small and medium-sized carriers, to present timely-filed petitions for waiver if compliance with the *TIB Order* would impede a carrier's ability to become Y2K-compliant.⁷

4. In response, several parties representing the interests of small, rural carriers sought waivers due to continued concerns about compliance with the rules in light of Y2K remediation efforts. On December 27, 1999, the Commission granted, in part, these petitions for temporary waiver and granted all common carriers an extension of time until April 1, 2000, to comply with the *TIB Order*'s requirements of provider identification on customer bills, separation by provider on customer bills, and billing inquiry contact information on bills.⁸

5. We have before us two petitions for temporary waiver of the Commission's truth-in-billing rules, both of which initially were filed prior to the release of the *TIB Waiver Order* extending the effective date of the rules to April 1, 2000. Both of these petitions recently have been amended. Also before us are eight petitions for temporary waiver of the truth-in-billing rules, all filed less than 30 days before the date that the new rules were to become effective. The Appendix attached to this Order lists the ten petitions and summarizes the arguments that each presents.

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.⁹ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹⁰

⁵ See 47 C.F.R. §§ 64.2400 and 64.2401; *Truth-in-Billing and Billing Format*, Public Notice, CC Docket No. 98-170, 14 FCC Rcd 16196 (1999) (*Sept. 30 Public Notice*).

⁶ *Id.*

⁷ *Id.*; 47 C.F.R. § 1.3.

⁸ *Truth-in-Billing and Billing Format*, Order Granting, In Part, Temporary Waivers, CC Docket No. 98-170, DA 99-3010 (Comm. Carrier Bur. rel. Dec. 27, 1999) (*TIB Waiver Order*); see, e.g., NECA, NTCA, and OPASTCO Joint Petition for Expedited Interim Waiver of Section 64.2401 of the Commission's rules (filed Oct. 26, 1999); Dunkirk and Fredonia Telephone Company and Cassadaga Telephone Corporation Petition for Temporary Limited Waiver (filed Oct. 27, 1999); UNITEL, Inc. Petition for Temporary, Limited Waiver (filed November 2, 1999); Petition of West Side Telecommunications (filed Nov. 10, 1999).

⁹ 47 C.F.R. § 1.3.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*Wait Radio*).

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹

7. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹² With the *Sept. 30 Public Notice* and the *TIB Waiver Order*, the Commission extended the effective date for carriers' compliance with many of the truth-in-billing rules' requirements until April 1, 2000, nearly one year from the release of the *TIB Order*.¹³ We believe the prior extensions gave carriers ample time to prepare to comply with our truth-in-billing rules, which are designed to help protect consumers from telecommunications fraud. We also find that there is a significant public interest benefit in not delaying the consumer benefits of these rules any longer.

8. After consideration of the arguments presented in the petitions and described in the Appendix to this Order, we find that none of the carriers who filed waiver petitions has shown special circumstances warranting an extension of the date by which its billing systems must comply with the provisions of 47 C.F.R. § 64.2401. A number of petitioners assert that they are unable to meet the April 1, 2000, deadline because outside vendors have not yet prepared the necessary software upgrades. We do not find this to be a persuasive basis for waiver in light of the long period in which carriers have been on notice of the new rules. We also note that most of the waiver requests were filed less than two weeks before the long-known April 1, 2000, deadline.

9. While we do not grant any of the waiver petitions in this instance, we note that, in the recently-released *TIB Reconsideration Order*, the Commission has modified certain subsections of section 64.2401 of the Commission's rules, and has clarified others, in ways that may provide partial relief to the parties seeking waiver. In addition, as set forth in the *TIB Reconsideration Order*, certain provisions of 47 C.F.R. § 64.2401 are stayed until the amendments thereto adopted in the *TIB Reconsideration Order* take effect.¹⁴ Those amendments are contingent upon OMB approval and will take effect no sooner than 30 days following the publication of the amended rules in the Federal Register. Thus, as a practical matter, carriers are not required to comply with certain provisions of 47 C.F.R. § 64.2401 by April 1, 2000. The resulting short-term delay in the effective date of these rule provisions also has the potential to provide partial relief to many petitioners.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *Wait Radio*, 418 F.2d at 1159.

¹³ *See Sept. 30 Public Notice; TIB Waiver Order* at 4-5.

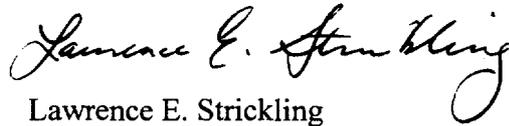
¹⁴ *See TIB Reconsideration Order* at ¶ 14; *see also Errata*, DA 00-745 (rel. March 31, 2000).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the petitions, specified in the Order, that seek limited or temporary waiver from compliance with any of the requirements of 47 C.F.R. § 64.2401 by April 1, 2000, are hereby DENIED.

11. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION



Lawrence E. Strickling
Chief, Common Carrier Bureau

APPENDIX

This order addresses ten petitions for temporary waiver of the Commission's truth-in-billing rules. The petitions are listed in chronological order:

BellSouth Petition for Waiver, filed August 20, 1999, and Amended Waiver Petition, filed March 14, 2000. In its initial Petition, BellSouth sought an extension of time until June 30, 2000, to implement 47 C.F.R. § 64.2401(c). In its Amended Waiver Petition, BellSouth seeks a waiver of subsection 64.2401(c)'s requirement until August 20, 2000. BellSouth states that it has undertaken negotiations with state utility commissions in those state jurisdictions which currently require some billing differentiation of "deniable" and "non-deniable" charges, in order to achieve region-wide uniformity in the presentation of this information on customers' bills.¹⁵ BellSouth alleges that these negotiations have delayed its implementation of the requirement, and, as a result, BellSouth now seeks an extension of time until August 20, 2000, to complete the billing system modifications necessary for compliance.¹⁶

Teligent Petition for Limited Waiver, filed September 3, 1999, and Teligent Petition for Limited and Temporary Waiver, filed January 6, 2000. In its initial Petition, Teligent sought an extension of time until the first billing cycle in June 2000 to implement 47 C.F.R. § 64.2401(c). In its subsequent Petition, Teligent renewed its earlier request for temporary waiver until June 1, 2000, citing two primary reasons. First, Teligent claims that the billing vendor that provides Teligent with paper billing services will not have the necessary software available until June 2000.¹⁷ Second, Teligent contends that Y2K compliance issues have significantly hindered its ability to devote resources to making the appropriate billing system revisions for meeting this rule's requirement.¹⁸ Teligent notes that, while it has not been able to comply with the rule's requirement for its paper billing format in a timely fashion, it has been able to implement the requirement in its electronic billing format.¹⁹

Bristol Bay Telephone Cooperative, Inc. (Bristol Bay) Petition for Temporary Waiver, filed March 15, 2000. Bristol Bay seeks an extension of time until October 1, 2000, to implement 47 C.F.R. § 64.2401(a)(1),(2) and (d). In its Petition, Bristol Bay states that it needs a waiver of the rules' requirements because the company which performs its billing services, Aptis, is not able to develop the software necessary for Bristol Bay's compliance with the rules by the required

¹⁵ Amended Waiver Petition at 2-3. BellSouth claims that, within its nine-state region, Florida, Georgia, Kentucky, and North Carolina have adopted a "deniable" and "non-deniable" charge requirement. *Id.* at 2.

¹⁶ *Id.* at 2-3.

¹⁷ Teligent Petition at 3.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 4-5.

implementation date, April 1, 2000.²⁰ Bristol Bay requests an extension of time or temporary waiver until October 1, 2000, to comply with the rules' requirements.²¹

Joint Petitioners' Petition for Temporary, Limited Waiver, filed March 21, 2000, and supplemented on March 22, 2000, March 23, 2000, March 24, 2000, March 27, 2000, March 28, 2000, and March 29, 2000. The Joint Petitioners seek various extensions of time to implement 47 C.F.R. § 64.2401(a)(1),(2), (c), and (d).²² Their Petition attaches documentation of contacts the Joint Petitioners made with their billing software vendors regarding the need to come into compliance with the truth-in-billing requirements. The Joint Petitioners state that, despite these good-faith efforts, their billing software vendors (including Aptis, Illuminet, and NIBI) have not been able to develop and test the software necessary for compliance with the rules by April 1, 2000.²³ For this reason, the Joint Petitioners request various extensions of time or temporary waivers to comply with different aspects of the rules' requirements.²⁴

ALLTEL Petition for Limited Waiver, filed March 22, 2000. ALLTEL, on behalf of its incumbent local exchange carrier (ILEC) affiliates and competitive local exchange carrier (CLEC) affiliates, seeks an extension of time until October 31, 2000, to implement 47 C.F.R. § 64.2401(a) and (c). ALLTEL states that it needs a temporary waiver because, due to its Y2K compliance program, its affiliate companies have not completed the modifications to their billing systems that are necessary to "highlight" new providers on customers' bills, as well as to identify charges as "deniable" or "non-deniable."²⁵ ALLTEL contends that these problems are not unique within the industry and notes that an industry solution is presently being tested.²⁶

²⁰ Bristol Bay Petition at 1-2.

²¹ *Id.* at 2.

²² The "Joint Petitioners" are Armstrong Telephone Company – Maryland, Armstrong Telephone Company – New York, Armstrong Telephone Company – North, Armstrong Telephone Company – Northern Division, Armstrong Telephone Company – Pennsylvania, Armstrong Telephone Company – West Virginia, Chazy & Westpoint Telephone Corp., Chicamauga Telephone Corporation, Climax Telephone Company, Colorado Valley Telephone Cooperative, Inc., Copper Valley Telephone, Inc., Deerfield Farmers' Telephone Company, Dekalb Telephone Cooperative, Inc. dba DTC Communications, Diamond Telephone Services, Inc., Fulton Telephone Company, Germantown Telephone Company, Gulf Pines Communications, LLC, Home Telephone Company, Inc., Mound Bayou Telephone and Communications, Inc., North Pittsburgh Telephone Company, Piedmont Rural Telephone Cooperative, Inc., Pine Belt Telephone Company, Inc., Poka Lambro Telephone Cooperative, Inc., Poka Lambro Telecommunications, Inc. dba Polka Lambro Telephone Company, Valley Telephone Cooperative, Inc. and West Side Telecommunications, Inc.

²³ Joint Petitioners' Petition at 4-5.

²⁴ While most of the Joint Petitioners seek waiver of most aspects of section 64.2401 until July 1, 2000, some of the Joint Petitioners request different amounts of time to implement different rule provisions. For example, Climax Telephone Company requests extensions of time until May 1, 2000 to comply with one rule requirement and until August 1, 2000 to comply with certain other rule requirements. *See* March 28, 2000 Supplement to Joint Petitioners' Petition at Attachment B.

²⁵ ALLTEL Petition at 3.

²⁶ *Id.* at 3-4.

Matanuska Telephone Association, Inc. (Matanuska) Petition for Further Limited Temporary Waiver, filed March 22, 2000. Matanuska requests temporary postponement of its obligation to comply with 47 C.F.R. § 64.2401(a)(2).²⁷ Matanuska states that, while its new billing system complies with the other requirements of section 64.2401, Matanuska received notice on March 9, 2000, that Aptis, its billing software provider, would not be able to deliver software to meet the requirement of subsection 64.2401(a)(2) until some time after April 1, 2000. Matanuska therefore requests a temporary waiver until October 1, 2000.²⁸

Public Service Telephone Company (Public Service) Petition for Temporary, Limited Waiver, filed March 24, 2000. Public Service seeks a temporary waiver of 47 C.F.R. § 64.2401(a)(2) until June 1, 2000.²⁹ Public Service states in its Petition that, despite reasonable and good-faith efforts, its in-house computer programming staff experienced unanticipated demands, including technical difficulties, changes in state regulatory requirements, and audit preparations, that rendered them unable to make the necessary software changes by April 1, 2000.³⁰ Public Service warns that it may have to terminate certain third-party billing relationships if it does not receive an extension of the requirement of subsection 64.2401(a)(2).³¹ Public Service notes that one of the petitions for reconsideration of the *TIB Order* would, if granted, moot its request for temporary waiver.³²

Coastal Utilities, Inc. (Coastal) Petition for Temporary, Limited Waiver, filed March 24, 2000. Coastal requests waiver of 47 C.F.R. § 64.2401(a)(2), (b), (c), and (d) until July 1, 2000.³³ Coastal asserts in its Petition that it had extensive contacts with Aptis, its billing services provider, regarding compliance with these truth-in-billing requirements but that it is nevertheless unable to comply with the requirements by April 1, 2000.³⁴ Coastal states that, if it does not receive an extension of these requirements, there will be various adverse consequences for customers and carriers.³⁵ Coastal suggests that grant of an extension should be conditioned on Coastal's agreement to undertake certain interim measures to assist customers in receiving the information specified by the relevant rule requirements.³⁶ Coastal further notes that one of the

²⁷ Matanuska Petition at 1.

²⁸ *Id.* at 1-3.

²⁹ Public Service Petition at 1.

³⁰ *Id.* at 4-6.

³¹ *Id.* at 6-7.

³² *Id.* at 2, 8.

³³ Coastal Petition at 1-2.

³⁴ *Id.* at 2-7.

³⁵ *Id.* at 8-9.

³⁶ *Id.* at 4.

petitions for reconsideration of the *TIB Order* might, if granted, provide Coastal with some or all of the requested relief.³⁷

Churchill County Telephone & Telegraph System (Churchill) Petition for Expedited Interim Waiver, filed March 27, 2000. Churchill asks for a temporary waiver of 47 C.F.R. § 64.2401(a)(1) and (d) until September 30, 2000.³⁸ Churchill notes that it used the previous waiver extension to meet Y2K deadlines.³⁹ Churchill states that the billing vendor on which it depends, Aptis, is not yet ready to provide billing software that will meet these requirements and has not given a specific date by which it expects Churchill's bills to fully comply with them.⁴⁰

Joint Petition for Extension of Time and/or Temporary Waiver of six Michigan local exchange carriers - Blanchard Telephone Association, Inc., Kaleva Telephone Company, Ogden Telephone Company, Sand Creek Telephone Company, Waldron Telephone Company, Westphalia Telephone Company, and Winn Telephone Company (Michigan Petitioners), filed March 28, 2000 and supplemented March 29, 2000. The Michigan Petitioners seek extensions of time to implement the requirements of 47 C.F.R. § 64.2401(a)(2). The Michigan Petitioners state that the company from whom they receive billing services, NIBI, informed them in a letter dated March 8, 2000, that its system would not permit compliance with these rules by April 1, 2000.⁴¹ Based on their correspondence with the vendor, the Michigan Petitioners request two extensions of time: until August 1, 2000, to implement one requirement of subsection 64.2401(a)(2), and until June 1, 2000 to implement another requirement of that subsection.⁴²

³⁷ *Id.* at 2 n.8, 10.

³⁸ Churchill Petition at 1, 3.

³⁹ *Id.* at 4.

⁴⁰ *Id.*

⁴¹ Michigan Petitioners' Petition at 1-2.

⁴² *Id.* at 2-3.