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

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

ORDER

Adopted: April 19, 2000 Released: April 19, 2000

By the Chief, Accounting Policy Division, 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 became effective on April 1, 2000.[2] These rules are designed to reduce telecommunications fraud such as slamming and cramming[3] 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 became effective on April 1, 2000.[4] We hereby deny these petitions.

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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* ¶ 10, *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

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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.

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 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. Subsequently, several small and large carriers sought waivers or extensions of time beyond the April 1, 2000, deadline for compliance with some or all of the truth-in-billing rules.[9] On March 31, 2000, the Commission denied these waiver petitions, noting that the carriers had been given more than enough time to comply with the rules.[10]

6. We have before us five similar petitions for temporary waiver of the Commission's truth-in-billing rules, all filed on or after March 28, 2000, no more than three days from the date that the new rules became effective. The Appendix attached to this Order lists the five petitions and summarizes the arguments that each presents.

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[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] *See, e.g.*, BellSouth Petition for Waiver (filed August 20, 1999), and Amended Waiver Petition (filed March 14, 2000); Bristol Bay Petition for Temporary Waiver (filed March 15, 2000); Teligent Petition for Limited Waiver (filed September 3, 1999), and Petition for Limited and Temporary Waiver (filed January 6, 2000).

[10] *See Truth-in-Billing and Billing Format*, Order, CC Docket No. 98-170, DA 00-746 (rel. March 31, 2000) (*TIB Waiver Denial Order*).

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.[11] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[12] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[13]

8. 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.[14] 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*.[15] 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.

9. 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 section 64.2401 of the Commission's rules. 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.[16] 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 again note that all of the waiver requests were filed within three days of the long-known April 1, 2000, deadline. Our denial of these waiver requests is consistent with our recent denial of similar petitions.[17]

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[11] 47 C.F.R. § 1.3.

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

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

[14] *WAIT Radio*, 418 F.2d at 1159.

[15] *See Sept. 30 Public Notice*; *TIB Waiver Order* at ¶¶ 4-5.

[16] *See, e.g.*, Citizens Utility Company Petition for Waiver, CC Docket No. 98-170 (filed March 29, 1999), at 2-3; Joint Petitioners' Petition for Expedited Interim Waiver, CC Docket No. 98-170 (filed March 31, 2000), at 2-4.

[17] *See TIB Waiver Denial Order* at ¶¶ 8, 10.

10. 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 section 64.2401 of the Commission's rules are stayed until the amendments thereto adopted in the *TIB Reconsideration Order* take effect.[18] 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 section 64.2401 of the Commission's rules 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.

IV. ORDERING CLAUSES

11. 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 this 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Irene M. Flannery

Irene M. Flannery
Chief, Accounting Policy Division,
Common Carrier Bureau

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

APPENDIX

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

Citizens Petition for Waiver, filed March 29, 1999. In its Petition, Citizens Utility Company (Citizens) seeks a temporary waiver of the Commission's truth-in-billing rules, section 64.200, *et seq.* until April 1, 2001. Citizens notes that its subsidiaries use six separate billing systems to operate its various subsidiaries, each of which is operated by a different third-party vendor.[19] While the six billing systems vary in their levels of compliance with the Commission's truth-in-billing rules, Citizens states that none will be fully compliant by the rules' April 1, 2000, effective date. Based on discussions with its vendors, Citizens believes that all of its billing systems will comply with the rules by the end of the first quarter of 2001. Accordingly, Citizens seeks a waiver of the rules until April 1, 2001.[20]

Hamilton Petition for Limited Waiver, filed March 30, 2000. Hamilton County Telephone Cooperative, Inc. (Hamilton), requests a limited waiver of the Commission's truth-in-billing rules until April 1, 2001.[21] Hamilton claims that it currently does not use the 8 ½ x 11 billing statements required by the truth-in-billing rules. Hamilton contends that compliance with this requirement will cost more than $25,000 in time and resources. As a result, Hamilton requests an extension of time until April 1, 2001, in order to install and implement the new software, printers, folders/stuffers, paper, and training required for compliance with the rules.[22]

Joint Petitioners' Petition for Expedited Interim Waiver, filed March 31, 2000. The Joint Petitioners seek extensions of time to implement subsections 64.2401(a)(1),(2), and (d) of the Commission's rules.[23] The Joint Petitioners claim that an interim waiver is necessary because their billing software vendor has not completed the programming changes needed to comply with the truth-in-billing rules. Accordingly, they seek a waiver of these rules until June 1, 2000.[24]

Nushagak Request for Waiver, filed March 31, 2000. Nushagak Telephone Cooperatives, Inc. (Nushagak), requests a waiver of subsection 64.2401(c) of the Commission's truth-in-billing rules until June 1, 2000.[25] Nushagak claims that its determination of the software needed to

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19 Citizens Petition at 2-3.

20 *Id.*

21 Hamilton Petition at 1.

22 *Id.* at 2.

23 The Joint Petitioners include East Otter Tail Telephone Company, Callaway Telephone Company, Twin Valley-Ullen Telephone Company, Tekstar Communications, Inc., and WETEC, LLC.

24 Joint Petitioners' Petition at 2-4.

25 Nushagak Petition at 1.

comply with the Commission's rules has taken more time than originally anticipated. As a result, Nugashak requests an extension of time until June 1, 2000, in order to install the new software and printer required for compliance with the rules.[26]

Cuba City and Belmont Joint Petition for Expedited, Interim Waiver, filed April 3, 2000. Cuba City Telephone Exchange Company (Cuba City) and Belmont Telephone Company (Belmont), jointly request an expedited, interim waiver of subsections 64,2401(a)(1), (a)(2), (c), and (d) of the Commission's truth-in-billing rules until September 1, 2000.[27] Cuba City and Belmont request an extension of time until September 1, 2000, in order to install and implement new software programming changes required for compliance with the rules.[28]

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26 *Id.* at 2.

27 Cuba City and Belmont Joint Petition at 1.

28 *Id.* at 1-3.