

These principles apply to both the IXCs and CMRS carriers and govern the carrier surcharges and fees that are the subject of NASUCA's Petition.⁶⁵

In order to implement its general "truth-in-billing" principles, the Commission adopted certain "minimal, basic guidelines . . . designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints we have received."⁶⁶ Under the first principle dealing with the organization of bills, the Commission directed that telephone bills must be clearly organized and include information clearly identifying the service provider associated with each charge.⁶⁷ For the second principle, dealing with full and non-misleading billed charges, the Commission adopted three guidelines addressing billing descriptions, "deniable" and "non-deniable" charges, and standardized labels for charges resulting from federal regulatory action.⁶⁸ The guidelines implementing the Commission's third principle, dealing with clear and conspicuous disclosure of inquiry contacts, included the provision of toll-free numbers for consumers to contact appropriate customer service representatives.⁶⁹

These guidelines apply fully to the IXCs. With regard to CMRS providers, the Commission concluded that some of the guidelines it was adopting "may be inapplicable or

⁶⁵*Id.*, ¶ 13 ("the broad principles we adopt to promote truth-in-billing should apply to all telecommunications carriers, both wireline and wireless").

⁶⁶ *Id.*, ¶ 5.

⁶⁷ *Id.*, ¶¶ 28-36; *see* 47 C.F.R. § 64.2401(a).

⁶⁸ *Id.*, ¶¶ 37-65; *see* 47 C.F.R. § 64.2401(b) & (c).

⁶⁹ *Id.*, ¶¶ 66-68; *see* 47 C.F.R. § 64.2401(d).

unnecessary in the CMRS context.”⁷⁰ However, the Commission indicated that it intended “to require CMRS carriers to comply with standardized labels for charges resulting from Federal regulatory action, if and when such requirements are adopted.”⁷¹ Significantly, the Commission stated that it expected:

[T]o apply the same rule to both wireline and CMRS carriers, however, because we believe that labels assigned to charges related to federal regulatory action should be consistent, understandable, and should not confuse or mislead customers.⁷²

Finally, the Commission noted that, although several of the guidelines it adopted in the *TIB Order* did not apply to wireless carriers, “such providers remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202 of the [1934] Act, and our decision here in now way diminishes such obligations as they may relate to billing practices of CMRS carriers.”⁷³

Taken together, these principles and guidelines, the Commission believed, “represent

⁷⁰*Id.*, ¶ 17.

⁷¹*Id.*, ¶ 18. In addition, the Commission made it clear that “there are two rules that we think are so fundamental that they should apply to all telecommunications common carriers,” namely: (1) that the service provider associated with each charge must be clearly identified on the customer’s bill, and (2) that each bill prominently display a telephone number that customers may call, free-of-charge, to question any charge on the bill. *Id.*, ¶ 17.

⁷²*Id.*, ¶ 18.

⁷³*Id.*, ¶ 19.

fundamental principles of fairness to consumers and just and reasonable practices by carriers.”⁷⁴

Neither wireline nor wireless carriers are exempt from the application of these principles and guidelines.

B. The Carriers’ Surcharges Violate The TIB Order’s Second Principle – “Full and Non-Misleading Billed Charges” – And the Implementing Guidelines.

The second, broad principle adopted by the Commission in the *TIB Order* – “Full and Non-Misleading Billed Charges” – applies to the carrier surcharges at issue here. This principle requires “that bills contain full and non-misleading descriptions of charges that appear therein. . .

.”⁷⁵ As discussed above, this principle applies to wireline and wireless carriers with equal rigor.

With regard to why full and non-misleading description of charges should be included in all telecommunications customers’ bills, the Commission stated:

In our view, providing clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier’s obligation of reasonable charges and practices. Indeed, we find it difficult to imagine any scenario where payment could be lawfully demanded on the basis of inaccurate, incomplete, or misleading information. Moreover, to permit such practices in the context of telecommunications services is particularly troublesome in light of the rapid technological and market developments, and associated new terminology, that can confuse even the most informed and savvy telecommunications consumer.⁷⁶

As previously noted, the Commission adopted three specific guidelines To implement its full and non-misleading billed charges principle. These guidelines deal with: (1) billing

⁷⁴*Id.*

⁷⁵*Id.*, ¶ 37.

⁷⁶*Id.*

descriptions,⁷⁷ (2) “deniable” and “non-deniable” charges,⁷⁸ and (3) standardized labels for charges resulting from federal regulatory action.⁷⁹ The IXCs’ surcharges addressed herein violate the first and third guidelines. As is obvious from the review of carrier surcharges listed above, the nomenclature of the carriers’ line items is, at the least, inconsistent with the Commission’s goals in establishing standardized label guidelines, if not the guidelines themselves.

1. The IXCs’ Surcharges Generally Fail to Meet the Commission’s Guidelines for Billing Descriptions.

The Commission’s first guideline for fully disclosed and non-misleading billed charges requires services included on a telephone bill to be accompanied by a “brief, clear, plain language description of the services rendered.”⁸⁰ This description must be:

[S]ufficiently 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 price charged.⁸¹

It is difficult to see how the IXCs’ bills provide information that is sufficiently clear and specific in content, such as to allow customers to accurately assess that the services for which

⁷⁷*Id.*, ¶¶ 38-43.

⁷⁸*Id.*, ¶¶ 44-48.

⁷⁹*Id.*, ¶¶ 49-65.

⁸⁰ *Id.*, ¶ 38.

⁸¹*Id.*

they are being billed correspond to what they have received and that the costs assessed for those services conform to their understanding of the price charged. Surcharges identified as “regulatory assessment fees,” “carrier cost recovery charges,” “interstate access surcharge,” “TSR administration surcharge,” “universal connectivity charge,” and “primary carrier charge” simply do not allow the IXCs’ customers to “accurately assess” what it is they are being billed for. Nor do the surcharges, as identified on customer bills, permit customers to determine whether the amounts they are being charged conform to the price charged for service. Given the “grab bag” of putative costs each surcharge purportedly recovers (*e.g.*, property taxes, TRS costs, NANPA costs, access costs, costs of regulatory compliance and proceedings, and others), it is impossible to assess whether the IXCs’ surcharges bear any relationship to the services the carriers’ customers are receiving.

The situation is worse with respect to the plethora of monthly surcharges imposed by the smaller IXCs. Here the surcharges are not merely misleading, they are downright deceptive. Consider OneStar, for example. It is impossible to determine from its tariffs precisely what OneStar’s “Primary Carrier Charge” is intended to recover and there is no information regarding the charge available on the carrier’s website.⁸² However, the “Primary Carrier Charge” is deceptively similar to the “Presubscribed Interexchange Carrier Charge” (“PICC”) authorized by the Commission.⁸³ Similarly, OneStar’s “Universal Connectivity Charge” sounds like it is

⁸²While OneStar has a “questions and answers” section on its website, none of the multitude of charges, fees and assessments it imposes on customers are discussed. See <http://www.onestarcom.com/customerservice/faq.asp>.

⁸³The PICC is an inter-carrier charge local carriers are allowed to pass through to their customers who select the IXC they want to handle all 1+ toll calls unless the customer makes other (Footnote con’t.)

related to the federal universal service fund, an assumption reinforced by the fact that additional surcharges related to state funds are set forth in the "Universal Connectivity Charge" portion of OneStar's tariff. Yet this assumption is contradicted by the fact that OneStar also imposes a federal USF charge pursuant to a different section of its tariff.

Or consider TalkAmerica's "TSR Administration Fee." This fee's name does not readily convey any information that would advise a consumer about what the charge is intended to recover, or whether it is mandated by regulatory action. But the surcharge's name does appear calculated to be confused with the Telecommunications Relay Service ("TRS") charges that states and the Commission have authorized carriers to recover. No doubt, many consumers – even regulators – assume that TalkAmerica's TSR fee is somehow related to TRS service.

2. The Carriers' Surcharges Do Not Meet the Commission's Guidelines Regarding Standardized Billing Labels.

In order to ensure that the principle of fully disclosed and non-misleading billed charges is achieved, the Commission required carriers to employ standardized labels for charges resulting from federal action.⁸⁴ The Commission noted that "consumers may be less likely to engage in comparative shopping among service providers if they are led erroneously to believe that certain rates or charges are federally mandated amounts from which individual carriers may not

arrangements on a specific call. PICCs have been phased out for most large phone carriers as a result of the Commission's *CALLS Order*. See *In the Matter of Access Charge Reform*, Sixth Report and Order, CC Docket No. 96-262 *et al.*, FCC 00-193, ¶¶ 76, 105 (rel. May 31, 2000).

⁸⁴*TIB Order*, ¶ 49.

deviate.”⁸⁵ The Commission noted considerable confusion with regard to various line item charges appearing on consumers’ monthly service bills, assessed by carriers ostensibly to recover costs incurred as a result of specific government action.⁸⁶

Although the Commission adopted, as a guideline, the requirement that carriers use standardized labels to refer to certain charges relating to federal regulatory action, it sought comment on specific labels that carriers should be obligated to adopt.⁸⁷ The Commission tentatively concluded that the labels it described were appropriate for charges related to interstate access charges, universal service contributions and local number portability. Further, the Commission tentatively concluded that the labels it described would “adequately identify the charges and provide consumers with a basis for comparison among carriers” while allowing carriers’ descriptions to be succinct enough to not burden their billing systems.⁸⁸

The Commission’s concerns that carriers adequately identify their charges and that consumers be able to price shop among carriers, are each directly threatened by the carrier

⁸⁵*Id.*

⁸⁶*Id.* The Commission addressed three broad types of line items that had appeared on consumers’ bills: charges associated with federal universal service obligations, access related charges, and other charges associated with federal regulatory action (*e.g.*, subscriber line charge and local number portability charge). *Id.*, ¶¶ 51-52. Because the *TIB Order* did not solve problems with the universal service assessment, the Commission subsequently mandated that line items to recover the USF assessment be limited to the current assessment rate authorized by the Commission. *See Contribution Order, supra* note 17, ¶¶ 50-51.

⁸⁷*Id.* at ¶ 72. The Commission’s concern focused on three types of line item charges: those dealing with carriers’ contributions for universal service, access related charges, and charges associated with federal regulatory action (such as the subscriber line charge or “SLC”).

⁸⁸*Id.*

surcharges at issue here. Experience has shown that carrier labels only further confuse consumers, and the proliferation of line items and surcharges inhibits the ability of consumers to compare the prices of telecommunications services offered by different carriers.

a. The IXCs' Surcharges Are Not Adequately Identified and Stymie Consumers' Efforts to Price Shop Among Carriers.

Many of the IXC surcharges appear to have been named in a way calculated to mislead or confuse consumers about the origin of the charge in question. For example, AT&T's "Regulatory Assessment Fee" creates the impression that it is the result of regulatory action, an impression reinforced by the nature of the costs the fee is intended to recover (e.g., costs of regulatory compliance and property taxes). "Regulatory compliance and proceedings" perforce imply regulation, something only the government does. Similarly, only the government collects property taxes.

Likewise – as previously noted – TalkAmerica's "TSR Administration Fee" appears to have been calculated to be confused with otherwise proper assessments for TRS service. Similarly, OneStar's "Primary Carrier Fee" appears intended to be confused with the PICC allowed by the Commission, while OneStar's "Universal Connectivity Fee" sounds like a device to recover the company's universal service fund contribution, but that contribution is collected through a different assessment. The surcharges imposed by these carriers appear to be recovering government-authorized charges and only close examination – usually by those regularly engaged in telecommunications regulation – establishes that they are not.

The names that MCI, Sprint and BellSouth give their surcharges (*i.e.*, some variation on "carrier cost recovery") are broadly accurate in one respect: they are intended to recover various

of the carrier's operating costs. However, this is not what the carriers tell their customers. Customers are advised that the carriers' surcharges recover costs that are associated with regulatory action (e.g., costs of providing TRS service, costs associated with the NANP, regulatory compliance and certain property taxes). The surcharges imposed by these carriers are misleading in that the name of the charge is vague and fails to convey to customers information allowing them to readily identify what they are paying for.

b. The CMRS Providers' Surcharges Similarly Violate the TIB Order's "Full and Non-Misleading Billed Charges" Principle.

As previously discussed, the three broad principles enunciated in the Commission's *TIB Order*, including that requiring "Full and Non-Misleading Billed Charges," apply equally to wireless carriers. Thus, CMRS carriers' bills must contain "full and non-misleading descriptions" of the fees and surcharges they impose.⁸⁹ Although the Commission's guidelines for billing descriptions do not currently apply to CMRS carriers, the Commission expressed its intent to make wireless carriers subject to any standardized labeling guidelines that it ultimately adopted.⁹⁰ Finally, the Commission made it clear that, "notwithstanding our decision at this time not to apply these several guidelines to CMRS providers, we note that such providers remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202" of the

⁸⁹ *Id.*, ¶ 37.

⁹⁰ *Id.*, ¶¶ 17-18. To NASUCA's knowledge, however, the Commission has never adopted final, standardized labeling requirements pursuant to the *TIB Order*.

1934 Act.⁹¹

In other words, application of the Commission's "full and non-misleading billed charges" principle to wireless carriers must be considered in the context of the Commission's discussion of standardized labels, as well as the provisions of Sections 201 and 202 of the 1934 Act. When viewed against this backdrop, it becomes clear that the wireless carriers' surcharges are likewise unreasonable and violate the truth-in-billing principles endorsed by the Commission. Like the wireline IXCs, wireless carriers use vague or misleading labels for their monthly surcharges. For example, there is AWS' "Regulatory Programs Fee." This label conveys precious little information to consumers, nor does the carrier's explanation of the charge shed any light ("to help fund . . . compliance with various government mandated programs which may not be available yet to subscribers"). "Various" programs?" "Government mandated?" "May not be available yet to subscribers?" It is difficult to imagine a more imprecise description of what consumers are paying for.

ALLTEL is little better, imposing a \$0.41 "Regulatory Cost Recovery Fee" for expenses incurred to provide "government mandated services." The same is true for Cingular's "Regulatory Cost Recovery Fee," which "helps defray costs incurred in complying with obligations and charges imposed by State and Federal telecom regulation." For its part, Western Wireless' explanation of its fee (the charge helps "offset the cost of complying with the obligations being imposed on wireless telecommunications companies by state and federal

⁹¹*Id.*, ¶ 19. Without doubt, the provisions of Sections 201 and 202 of the 1934 Act equally apply to the wireline IXCs as well.

governments)” is more in the nature of lobbying than the imparting of information.⁹²

As with the IXCs’ monthly surcharges, the wireless carriers fail to adequately or accurately describe what regulatory costs their surcharges purport to recover. Worse, some carriers’ descriptions are flatly deceptive, purporting to recover costs – such as compliance with CALEA or E911 implementation – that are borne by other entities, in whole or part. These issues are discussed in more detail below.

3. The Carriers’ Line Item Charges Also Violate The Contribution Order.

Not only do the carriers’ line item charges, fees and surcharges violate the *TIB Order* in several respects, they also violate the Commission’s *Contribution Order*. As NASUCA has previously pointed out, the Commission gave carriers a “green light” to impose new line items and surcharges in that order.⁹³ However, the Commission made it clear that it did not believe it “appropriate for carriers to characterize these administrative and other costs as regulatory fees . . .”⁹⁴ Yet, as NASUCA has amply shown, it is *precisely* as “regulatory fees” that carriers are characterizing their various line item charges.

⁹²Surely Western Wireless is not helping offset other wireless carriers’ costs, yet its monthly surcharge is not even company specific; instead it speaks of costs imposed on wireless companies generally.

⁹³ *Contribution Order*, ¶ 54.

⁹⁴ *Id.*

4. The Carriers' Disclaimers Heighten, Not Lessen, Customer Confusion.

Some of the IXCs⁹⁵ and CMRS carriers surveyed by NASUCA have included short disclaimers on their bills or websites regarding the source, or rather the non-source, of their surcharges. These disclaimers typically advise customers that the charge in question "is not a tax or otherwise required by the government." No doubt these carriers will assert that their disclaimers dispel any confusion customers may have about the nature of the charge.

Contrary to such arguments, the carriers' disclaimers heighten, not lessen, customers' confusion. The carriers' assertion that the charge is not required by the government is contradicted by the fact that the charge is recovering costs typically associated with regulatory action. For example, the charges cover the costs of regulatory compliance, or providing TRS service, or the NANP, or property taxes.

Customer confusion is the natural consequence of such contradictory messages. Such confusion is precisely one of the evils the Commission sought to address in the *TIB* and *Contribution Orders*. As the Commission noted, "the names associated with line item charges as well as accompanying descriptions . . . may convince consumers that all of these fees are federally mandated."⁹⁶

⁹⁵Not, however, VarTec, TalkAmerica, OneStar or MCI. These carriers have made no attempt to alleviate customers' confusion that results from the carriers' use of vague or inaccurate descriptions of the charges in issue.

⁹⁶*TIB Order*, ¶ 53.

C. Even If Not Specifically Prohibited by the TIB Order, the Carriers' Surcharges Should Be Prohibited on the Grounds that they Are Misleading and Therefore Unreasonable and Unjust Under Sections 201 and 202 of the 1934 Act.

1. The Carriers' Surcharges Are Misleading and Deceptive in Their Application.

More invidious, and more subtly violating the pro-consumer, pro-competition goals of the telecommunications laws that were intended to be furthered by the Commission's *TIB Order*, is the carriers' overall pricing strategy. Succinctly put, the surcharges are simply devices designed to increase the carriers' revenues without raising their monthly or usage-based rates for the telecommunications services provided. In the competitive market, in which consumers generally shop among carriers based on rate information, these surcharges mask the true cost of a carrier's service and make it difficult for consumers to make an "apples-to-apples" comparison of the cost of carrier service.⁹⁷ The surcharge regime adopted by the carriers is, therefore, inherently misleading and deceptive, and should be prohibited.

Take, for example, AT&T's Regulatory Assessment Fee. AT&T has reduced its per minute rates for long distance service over the years, both in response to competition and in response to regulatory directives from state commissions. AT&T generally trumpets these rate reductions to the public and regulatory bodies. What AT&T does not trumpet, however, is the fact that these rate reductions have been offset, at least in part, by the imposition of unavoidable

⁹⁷ Although the Commission has a policy of letting competition establish efficient rates to the extent possible, it has previously recognized that because of averaging and mark-ups of surcharges by carriers "...customers are prevented from making head-to-head comparisons among local service providers." *CALLS Order*, ¶ 19; see also *Contribution Order*, ¶ 50.