

**Comments to the Federal Communications Commission
From the National Consumers League
On the National Association of State Utility Consumer Advocates
Petition for Declaratory Ruling Regarding Truth-in-Billing and Billing Format
CG Docket No. 04-208
July 14, 2004**

Introduction

The National Consumers League (NCL) supports the National Association of State Utility Consumer Advocates (NASUCA) petition for declaratory ruling regarding truth-in-billing and billing format. NCL is a nonprofit organization founded in 1899 to identify, protect, represent, and advance the economic and social interests of consumers and workers.

NCL has long been concerned that telephone bill confusion facilitates fraudulent charges and hinders the competitive marketplace for telecommunications products and services. In 1998, NCL participated in a forum that the Federal Communications Commission (FCC) convened on truth-in-billing. NCL supported the FCC's action to adopt truth-in-billing rules and on April 15, 1999 NCL participated in a press conference at the FCC to announce them.

Since that time, complaints about slamming, cramming, and deceptive pay-per-call services have decreased. However, telephone bills are still confusing because of the proliferation of line item charges cited in the NASUCA petition. NCL believes that:

- The terms that carriers have devised to describe these charges on consumers' bills are deceptive and misleading;
- It is unjust and unreasonable for carriers to assess consumers more than the actual costs of government mandates that line items purport to represent;

- The growing practice of diverting certain business expenses from rates into line item charges deceives consumers by making it appear that services cost less than they really do and skews the competitive marketplace by making it difficult to comparison shop.

To eliminate billing confusion, curb overcharging, and promote honest, fair competition, the FCC should:

- Prohibit line item charges related to government mandates unless federal or state agencies have expressly authorized them;
- Monitor and ensure that such charges are commensurate with the actual costs involved;
- Set standard descriptions for FCC-authorized line item charges.

The truth-in-billing rules have helped to reduce fraud

NCL receives information about telephone-related fraud first-hand through its National Fraud Information Center (NFIC), a hotline created in 1992 to offer advice and assistance to consumers concerning telemarketing scams. Information that consumers provide about suspected telemarketing fraud by calling the NFIC toll-free number, 800-876-7060, or via the online complaint form on www.fraud.org, is transmitted to local, state and federal law enforcement agencies, including the FCC.

NCL was among the first to publicly recognize the problem of “cramming” unauthorized charges for non-basic services on consumers’ phone bills. In 1997, NCL created a new category for cramming in the NFIC database, and by the end of that year cramming ranked at #18 in telemarketing complaints reported to the hotline. By the end of 1998, cramming had skyrocketed to become the #1 complaint. Complaints about telephone slamming and pay-per-call services were also among the Top Ten Telemarketing Frauds that year, at #3 and #8, respectively.

In 1999, after the FCC's truth-in-billing rules took effect, complaints about telephone-related fraud began to drop. By the end of 2003, slamming ranked at #8, cramming at #12, and pay-per-call services at #13.

NCL believes that the truth-in-billing rules have helped to reduce these telephone-related scams by making it easier for consumers to spot fraudulent charges and identify the providers to which they relate. Enforcement action by state and federal agencies, greater vigilance on the part of carriers that perform billing services, and public education initiatives by government, industry, and nonprofit groups such as NCL have also helped to stem the tide of fraudulent phone charges.

But other deceptive billing practices have increased

As the NASUCA petition points out, the FCC's truth-in-billing initiative was not aimed solely at combating slamming, cramming, and other telephone-related fraud. The FCC wanted to ensure that consumers could determine if they were being charged what they agreed to pay for services and could easily shop for new plans and providers. In its November 1998 comments in the truth-in-billing proceeding, NCL complained that describing carrier expenses such as line access as government fees was deceptive. Furthermore, NCL questioned whether it was appropriate to separate those expenses from other costs of doing business on telephone bills, since that practice could "make the rates that consumers pay for their calls seem lower than they really are" and complicate comparison shopping.

Subsequent to the issuance of the FCC's truth-in-billing rules, NCL created a new section on its main www.nclnet.org Web site about "Understanding Your Phone Bill." It provides explanations of common charges and advice about how to shop for telephone services as well as how to avoid telephone-related scams.

However, the proliferation of monthly line-item charges with varying and vague descriptions such as “Regulatory Assessment Fees” has made it impossible for NCL to keep this information up-to-date. Indeed, if NCL cannot determine what these charges mean, it is obviously unable to explain them to consumers.

The NCL fraud database does not have a category for complaints about these types of charges. Even if it did, it’s unlikely that people would report these charges to the fraud hotline because they appear to be fees assessed on ratepayers by the government. Consumers may grumble about taxes and other government fees, but they usually accept their validity.

NCL believes that these line item fees violate the “full and non-misleading billed charges” principle embodied in the FCC’s truth-in-billing, not only because the descriptions are not sufficiently clear and specific for consumers to accurately assess the true cost of their service, but because they would lead any reasonable consumer to conclude that the charges are government fees akin to taxes, when that is not the case.

A hypothetical example might be helpful: a grocery store advertises chicken at \$.98 per pound, but when the consumer gets to the cash register with a pound of chicken, a \$2.00 per pound line item for “EPA Recovery Fee” is added to the bill to recoup some of the poultry manufacturer’s expenses in complying with federal environmental regulations concerning the disposal of poultry waste. The bill is misleading and deceptive because the price of the chicken is really \$2.98 per pound, not \$.98. It is also misleading and deceptive to describe the fee in such a way that it appears to be levied on the consumer by the federal government. Another example, with the same misleading and deceptive effect, would be if the grocery store added a “Regulatory Assessment Fee” to cover a portion of its property taxes.

The misleading and deceptive effect of these charges would not be sufficiently diminished with an explanation on a sign in the store or on the chicken manufacturer's Web site. Consumers tend to rely on the advertised prices to shop, whether for groceries or for phone service. Moreover, consumers should not have to hunt for information on costs. If the government assesses tax on groceries, they expect to pay that at the cash register, but it cannot be assumed that they will anticipate and seek out information about other fees such as those that the store and poultry manufacturer have charged in our hypothetical examples.

Costs of doing business should be included in the rates

Even if the descriptions of these charges were more forthright i.e. "Poultry Manufacturer Fee to Defray Costs of Chicken Waste Disposal or "Grocery Store Charge to Recover Portion of City Property Taxes," NCL believes that it is deceptive and anticompetitive for business expenses to be billed separately from the basic rates for goods service.

Generally, prices reflect all of the expenses incurred by the producer and vendor in offering a product or service, along with a reasonable profit. Some business expenses are government-mandated, some are driven by the cost of supplies, labor, and other factors, but all fluctuate. Telecommunications companies may argue that if they included the cost of complying with government mandates in their rates, the price of their services would constantly have to be changed. We question how often those expenses would actually fluctuate, however, and note that other businesses' expenses do not remain static, either. They adjust their prices when necessary; even long-term contracts can provide for price changes.

Rates that include the expense of complying with government mandates would make it easier for consumers to understand the true cost of service and comparison shop between telecommunications providers. This would enhance real competition.

Overcharges for government-mandated expenses are neither just nor reasonable

Whether charges to recover the cost of government mandated expenses are included in the rates or reflected in separate line items on the bill, they should be real and proportionate to the actual expenses involved. NCL is shocked by some of the examples of gouging described in the NASUCA petition. In some cases, it appears that consumers have been grossly overcharged; in others, they may have been charged for government-mandated benefits that were not yet available to them or that were supposed to be reimbursed to carriers by the government, or charged for expenses that have nothing to do with government-mandated programs.

The FCC needs to take more aggressive action through its regulatory and enforcement powers to deter such unjust and unreasonable charges.

If line items for government mandates are allowed, they must be expressly authorized

In the 2002 Contribution Order concerning assessments for the federal universal service fund programs, the FCC expressed concern about carriers overcharging consumers and clarified that it was inappropriate to describe administrative and other costs as regulatory or universal service charges. Unfortunately, the FCC left open the possibility of recovering those costs of doing business through other line item charges, thus opening the floodgates through which the new fees cited in the NASUCA petition have poured. Clearly, the time has come for the FCC to shut the gates and determine whether and how charges for federally mandated expenses should be allowed to flow from carriers to subscribers.

If there are federally mandated expenses that would be appropriate to recoup via line item charges on consumers' telephone bills, those line items should only be allowed if they are expressly authorized by the FCC (correspondingly, line items for state-mandated expenses

should only be made with express authorization from the states). Furthermore, the FCC should prescribe standardized descriptions with which to label those charges.

The FCC should consider convening a public workshop so that representatives of consumer organizations, state and federal regulatory and consumer protection agencies, the telecommunications industry, and other stakeholders can discuss the issues and make constructive suggestions.

Conclusion

The FCC's truth-in-billing rules have not yet fully achieved the goals of de-mystifying telephone bills, stopping billing abuses, and promoting fair competition in the telecommunications marketplace. But with the corrective action sought by NASUCA, NCL, and other consumer advocates, the promises of truth-in-billing can finally be realized. NCL urges the FCC to stand up for consumers' interests in this important matter. We appreciate the opportunity to state our views and look forward to working with the FCC in this regard.

Respectfully submitted by:

Susan Grant
Vice President, Public Policy
National Consumers League
1701 K Street NW, Suite 1200
Washington, DC 20006
202-835-3323