

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

In the Matter of)	
)	
National Association of State Utility Consumer)	CG Docket No. 04-208
Advocates Petition for Declaratory Ruling)	
Regarding Truth-in-Billing and Billing Format)	
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
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OPPOSITION OF SPRINT CORPORATION

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TABLE OF CONTENTS

	<u>Page</u>
Summary.....	ii
I. INTRODUCTION	1
II. THE NASUCA PETITION FOR DECLARATORY RULING CANNOT BE GRANTED AS A MATTER OF LAW.....	4
A. NASUCA Seeks a Reversal of the Truth-in-Billing Order	4
B. NASUCA Provides No Factual Support for Its Claims of Unreasonable Practices.....	7
C. The Evidence Does Not Support NASUCA’s View That Surcharges Confuse Customers.....	8
D. The Relief NASUCA Seeks is Overly Broad and Threatens to Reintroduce Rate Regulation at the Commission	10
III. PUBLIC POLICY DICTATES AGAINST THE RELIEF NASUCA SEEKS.....	11
IV. NASUCA’S ALLEGATIONS LACK MERIT AS APPLIED TO SPRINT.....	14
A. NASUCA’s Allegations Against Sprint PCS	14
B. NASUCA’s Allegations Against Sprint Long Distance	16
V. NASUCA’S ARGUMENTS DEMONSTRATE THAT IT MISUNDERSTANDS APPLICABLE LAW AND THE TECHNOLOGY OF TELECOMMUNICATIONS CARRIERS.....	17
VI. CONCLUSION.....	20

Summary of Opposition

Sprint Corporation opposes the NASUCA declaratory ruling petition:

1. The Commission cannot grant the petition as a matter of law. NASUCA does not ask the FCC to clarify existing law, it asks the FCC to reverse orders entered in multiple rulemaking proceedings; overturn numerous FCC rules, and subject carriers without market power to rate structure regulation despite the FCC's nearly 25-year-old policy that competitive markets best protect consumers. Under the Administrative Procedures Act and prior FCC precedent, the FCC has no choice but to dismiss NASUCA's declaratory ruling petition. If NASUCA is interested in changing existing rules, it must first submit a petition for rulemaking. NASUCA does not provide evidence that any consumer has been misled or deceived by current practices. The best evidence available – customer complaints – indicates that the “problem” over which NASUCA complains is not a problem at all.

2. Public policy dictates against the relief NASUCA seeks. Contrary to the fundamental purposes of the *Truth in Billing Order*, NASUCA's declaratory ruling, if granted, would require that carriers recover various regulatory costs through their per-minute charges. Thus, customers would be deprived of information regarding the costs of regulatory programs such as universal service, telecommunications relay service and 911. Stated differently, it is NASUCA's proposal, not current carrier practices, which would be misleading and deceptive.

3. NASUCA's allegations lack all merit as applied to Sprint. NASUCA's allegations that Sprint's surcharges are misleading are unsupported and without merit. NASUCA provides no evidence that Sprint's customers do not understand the surcharges that Sprint has imposed. To the contrary, all evidence before the Commission demonstrates that Sprint fully and fairly discloses its surcharges.

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OPPOSITION OF SPRINT CORPORATION

Sprint Corporation, on behalf of its local, long distance and wireless divisions (“Sprint”), submits the following opposition to the National Association of State Utility Consumer Advocate’s (“NASUCA”) Petition for Declaratory Ruling filed on March 30, 2004.¹

I. INTRODUCTION.

NASUCA acknowledges that the “overriding purpose” of the Communications Act is to “promote competition *and reduce regulation.*”² NASUCA cannot contest that the telecommunications market is now more competitive than at any time in history and that pricing is at new and substantial lows. It proposes, however, that the FCC intercede in this competitive marketplace and impose new government regulation and oversight that would reduce the information and choices made available to American consumers, impose a new form of rate regulation, reduce

¹ See Public Notice, *National Association of State Utility Consumer Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-in-Billing and Billing Format*, CG Docket No. 04-208, DA 04-1496 (May 25, 2005), *published in* 69 Fed. Reg. 33021 (June 14, 2004) (“NASUCA Petition”).

² See NASUCA Petition at 5, *quoting* Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

pricing flexibility, burden the Commission with cost proceedings and ultimately provide no benefit to consumers.

Sprint does not agree with NASUCA's fundamental premise that consumers lack the intelligence or willingness to review billing information carriers provide in their stores, on their web sites or in their advertising.³ Sprint serves over twenty-six million customers and has seen no evidence that line item surcharges have caused customer confusion or prevented consumers from making rational and informed choices. On the contrary, robust competition has served the purposes envisioned in the Act and resulted in lower rates and greater choices for consumers. NASUCA's Petition should be denied as a matter of law and as a matter of public policy.

As a legal matter NASUCA cannot obtain the relief it seeks in a declaratory ruling proceeding. NASUCA does not seek to clarify existing law based upon a set of undisputed facts. Rather, it seeks to reverse standing FCC Orders in multiple dockets; overturn numerous FCC Rules, and subject carriers without market power to rate structure regulation despite the FCC's nearly 25-year old policy that competitive markets rather than regulation will ensure that non-dominant carriers' rates and rate structures comply with the requirements of Section 201 and Section 202 of the Act. 47 U.S.C §§201, 202. Even if such relief were justified, it could only be obtained in a notice and comment rulemaking proceeding

A declaratory ruling petition is also not a lawful substitute for a Section 205 proceeding. If NASUCA wants the Commission to find that carrier specific charges are unjust and unreasonable, it should submit a complaint seeking a Section 205 investigation. It cannot short circuit such process by having the Commission issue a declaratory ruling that some broad category of

rates violate Sections 201 and 202 of the Act. Moreover, such complaint seeking an investigation of a carrier's charges requires that the complainant present substantial evidence as to why the carrier's charges are unlawful. Such a complaint could not be entertained by the Commission on the basis of NASUCA's unsupported allegations that carriers' surcharges "soak consumers."

In addition to these legal issues, sound public policy requires that NASUCA's proposals be rejected. Contrary to the fundamental purposes of the *Truth-in-Billing Order*,⁴ NASUCA's declaratory ruling, if granted would (among other things) require that carriers recover various regulatory costs through their per-minute charges. Thus customers would be deprived of information regarding the costs of regulatory programs such as universal service, telecommunications relay service and E911. Stated differently, it is NASUCA's proposal, not current carrier practices, which would be misleading and deceptive. Surcharges are used in many industries to recover various costs and are an entirely appropriate form of competitive rate structure. The Commission has so found with respect to cost recovery of regulatory programs. NASUCA's requested relief would have the net effect of requiring carriers to initiate multiple rate proceedings before the Commission to obtain the requisite authority to place them on their invoices. In other words, NASUCA seeks a return to rate regulation.

Finally, NASUCA's allegations that Sprint's surcharges are misleading must be rejected. NASUCA provides no evidence that Sprint's customers have been misled or do not understand the surcharges that Sprint has imposed. Indeed, the only evidence NASUCA provides demon-

³ According to NASUCA, consumers do not read the materials that carriers provide them and do an inadequate job of comparison shopping. *See, e.g.*, NASUCA Petition at 11 and n. 21.

⁴ *In the Matter of Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 98-170, FCC 99-72, 14 FCC Rcd 7492 (May 11, 1999) ("*Truth-in-Billing Order*").

strates that Sprint fully and fairly discloses its surcharges. As discussed more fully herein, Sprint's surcharges are consistent with all existing Commission rules and orders.

II. THE NASUCA PETITION FOR DECLARATORY RULING CANNOT BE GRANTED AS A MATTER OF LAW.

As a threshold matter, the Commission has ample grounds for dismissing the petition outright. Section 1.2 of the Commission's Rules, 47 CFR §1.2, provides that "[t]he Commission may...on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty." NASUCA's request that the Commission declare that the use of carrier surcharges and the surcharges themselves violate Section 201 and 202 of the Communications Act does not meet this standard. Declaratory rulings are appropriate where no factual issues are in dispute. That is certainly not the case here. Sprint not only challenges every one of NASUCA's alleged facts as they pertain to Sprint, but Sprint questions the general validity of the facts alleged with respect to the telecommunications industry as a whole.

While NASUCA characterizes its petition as a request that the Commission clarify the application of its *Truth-in-Billing Order*, it is in fact a request that the FCC reverse its decision. Moreover, the reversal would apply not only to the *Truth-in-Billing Order*, but to numerous other proceedings in which the Commission has directly stated that individual line items or surcharges could be used by carriers to recover their costs of providing a particular service or complying with a particular government mandate.

A. NASUCA Seeks a Reversal of the Truth-in-Billing Decision.

NASUCA seeks a declaratory order "prohibiting telecommunications carriers from imposing monthly line-item charges, surcharges or other fees on customers' bills, unless such

charges have been expressly mandated by a regulatory agency.”⁵ However, NASUCA fails to note that the Commission has already rejected this very argument. In its *Truth-in-Billing Order* the FCC held as follows:

We recognize that several commenters assert that service providers . . . should be prohibited from separating out any fees resulting from regulatory action. . . . *We decline at this time to mandate such requirements*, but rather prefer to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in separate line items. We believe that so long as we ensure that consumers are readily able to understand and compare these charges, competition should ensure that they are recovered in an appropriate manner.⁶

NASUCA participated in the *Truth-in-Billing* docket. Neither it nor any other party sought reconsideration or an appeal of the Commission’s decision rejecting arguments that it should prohibit line item surcharges. The Commission has consistently held that “indirect challenges to Commission decisions that were adopted in proceedings in which the right to review has expired are considered impermissible collateral attacks and are properly denied.”⁷ If

⁵ NASUCA Petition at 1. Although it is not clear, it would appear that broad relief sought by NASUCA would not only encompass mandates imposed by “a regulatory agency” but also various taxes, *e.g.*, gross receipts taxes, imposed on telecommunications carriers by state legislatures and local governments. In this regard, Sprint understands that the United State Communications Association (USCA), an organization of tax professionals from most of the major wireline and wireless telecommunications carriers, is filing comments in which it will demonstrate that prohibiting carriers from seeking to recover these taxes through separate line items on customers’ bills is unjustified and would reverse established Commission precedent. Sprint agrees with USCA’s position. Indeed, as USCA explains, the inability of carriers to recover gross receipts taxes from the residents of those jurisdictions that impose such taxes externalizes the burden of those taxes on customers living in other jurisdictions, an unfair result.

⁶ *Truth-in-Billing Order*, 14 FCC Rcd 7492, 7526 ¶ 55 (1999) (emphasis added). *See also id.* at 7523 ¶ 50 (“[W]e decline the recommendations of those that would urge us to limit the manner in which carrier recover these costs of doing business.”).

⁷ *See Declaratory Ruling Motions Regarding Rules and Polices for Frequency Coordination*, 14 FCC Rcd 12752, 12757 ¶ 11 (1999). *See also San Francisco IVDS*, 18 FCC Rcd 724 (2003);

NASUCA wants the Commission to change its rules and prohibit all line item surcharges, it must file a petition for rulemaking.⁸

NASUCA's Petition does not attempt to resolve an outstanding controversy left unresolved by the *Truth-in-Billing Order*. There is no "uncertainty" over the lawfulness of imposing surcharges. Indeed, the Commission reaffirmed the lawfulness of surcharges only 18 months ago when it stated:

Carriers that are not rate-regulated by this Commission, namely interexchange carriers, CMRS providers, and competitive local exchange carriers, will have the same flexibility that exists today to recover legitimate administrative and other related costs. In particular, *such costs can always be recovered* through these carriers' rates or through other line items.⁹

Similarly, the FCC has explicitly acknowledged the lawfulness of surcharges and line items to recover the costs of government mandates in other dockets.¹⁰ NASUCA has provided no facts to warrant the reversal of these multiple FCC rulings and orders, nor could the FCC

Warren Havens, 17 FCC Rcd 27588 (2002); *Special Access Pricing Flexibility Petitions*, 17 FCC Rcd 6462 (2002); *Dataradio*, 16 FCC Rcd 21391 (2001); *Association of Public Safety Communications Officials*, 14 FCC Rcd 4339 (1999); *MCI v. Pacific Northwest Bell*, 5 FCC Rcd 216, 227 n.38 (1990), *recon. denied*, 5 FCC Rcd 3463 (1990), *appeal dismissed*, 951 F.2d 1259 (10th Cir. 1991).

⁸ See, e.g., 47 C.F.R. § 1.401(a) ("Any interested person may petition for the issuance, amendment or repeal of a rule or regulation."); *Sprint v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

⁹ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 2002 FCC Lexis 6622, 6672 ¶ 55 (2002) (emphasis added) ("*USF Contributions Order*").

¹⁰ *In the matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County, Washington*, Order on Reconsideration, CC Docket No. 94-102, FCC 02-146, (July 24, 2002), ("[Carriers] could recoup their costs from customers through surcharges or increased rates") ¶19. See also, *Letter to Marlys Davis re King County, Washington Request Concerning E911 Phase I Issues*, issued by Thomas J. Sgrue, Chief, Wireless Telecommunications Bureau, May 7, 2001, "carriers are free to recover these costs in their charges to customers, either through their service rates or through specific surcharges on customer bills."

grant such relief in this proceeding. The FCC should reject NASUCA's petition as a matter of law.

B. NASUCA Provides no Factual Support for its Claims of Unreasonable Practices.

NASUCA asserts that any surcharge (other than those mandated by a regulatory agency) is "inherently misleading and deceptive"¹¹ and seeks a prohibition on all surcharges. NASUCA admits, however, that its Petition identifies only a handful of surcharges assessed by a handful of carriers.¹² Clearly, the Commission cannot declare all carrier surcharges unlawful when there is no evidence whatsoever about a particular carrier's surcharge practices – much less evidence suggesting that the practices are misleading and deceptive.

Whether or not a given carrier's customers are misled by a given surcharge is a fact-intensive issue. The Commission has held that a declaratory ruling "may be used to resolve a controversy if the facts are clearly developed and essentially undisputed."¹³ Conversely, "[i]ssues that are heavily dependent on factual situations are not appropriately addressed through a declaratory ruling" and should instead be addressed *via* a proceeding that fully complies with Section 205.¹⁴

If NASUCA believes that a specific surcharge assessed by a specific carrier is misleading and deceptive, the appropriate action is to file complaint against that carrier. Here, however, the

¹¹ See NASUCA Petition at 23.

¹² See *id.* According to NASUCA, it is unnecessary for the FCC to review other surcharges before declaring them unlawful because NASUCA is "certain" these other surcharges "also should be forbidden." *Id.* at 63.

¹³ *American Network*, 4 FCC Rcd 550, 551 ¶ 18 (1988). See also *International Satellite Service*, 15 FCC Rcd 7207, 7216 n.43 (1999).

¹⁴ *Communique Telecommunications*, 10 FCC Rcd 10399, 10405 ¶ 33(1995).

petitioner proposes to “change the rules of the game, . . . [and] more than a clarification has occurred.”¹⁵ The Commission may change the rules of the game only through exercise of its rule-making procedures.¹⁶ Based on the record before it and the existing law and precedent, the Commission must dismiss the NASUCA Petition for Declaratory Ruling as procedurally infirm.

C. The Evidence Does Not Support NASUCA’s View That Surcharges Confuse Customers.

Throughout its Petition, NASUCA asserts that customers are confused by surcharges designed to recover the costs of government mandates and that there is a “problem” as a result.¹⁷ However, NASUCA provides no evidence that any customer has been misled or deceived by any surcharge assessed by a carrier.¹⁸ As NASUCA acknowledges, “the Commission is certain to hear from those customers” who believe they have been misled or are subject to deceptive practices.¹⁹ Yet a review of available complaint data does not support a finding that consumers are being confused or misled by carrier surcharges.

The Commission tracks both wireless and wireline customers’ complaints involving “billing and rate” issues. For wireless carriers, this category encompasses a wide range of subjects, including complaints concerning airtime charges, credit/refunds/adjustments, line items, recur-

¹⁵ *Sprint v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003).

¹⁶ *Id.*

¹⁷ *See, e.g.*, NASUCA Petition at 10, 32, 42 and 67.

¹⁸ NASUCA complains that carriers employ different labels to describe their surcharges and thus violate the Commission’s *Truth-In-Billing Order*’s guideline that NASUCA says requires carriers to employ “standard labels.” Petition at 30-35. The difficulty with NASUCA’s position here is that the Commission did not prescribe any standard labels in the *Truth-in-Billing Order* and instead asked for further comments on what labels should be employed. The Commission has yet to issue a decision prescribing the specific labels that carriers must use. Carriers cannot be said to violate a rule, standard, or guideline that has not been prescribed.

ring charges, roaming rates, rounding and service rate plan related-issues. For wireline carriers, the category includes complaints dealing with various line items, credits/refunds/adjustments, recurring charges, casual calling, double billing, rates for international calls, etc.²⁰ Last year (2003), the FCC received a total of 10,592 “billing and rate” related complaints from wireless customers – at a time when wireless carriers served 148 million customers.²¹ Thus, during 2003, the Commission received one billing-related complaint for every 13,972 wireless customers. The Commission received 17,028 “billing and rate” related complaints from landline customers out of the 107,100,000 households served by landline carriers. Accordingly, landline carriers recorded one billing-related complaint for every 6,290 households in America with telephones.

Sprint submits that even if one were to make two unreasonable assumptions – namely, all “billing and rate” related complaints involved line item surcharges (as opposed to the many other subcategories of complaints included within this category) and all complaints were valid²² – these complaint rates do not suggest that there is problem justifying regulatory intervention. Given NASUCA’s failure to provide any evidence in support of its allegations, the Commission must look to its own data. The evidence is that current market practices do not pose a concern for consumers.

¹⁹ See NASUCA Petition at 64.

²⁰ See FCC News, *Quarterly Report on Informal Consumer Inquiries and Complaints Released* June 10, 2004.

²¹ Wireless carriers served 148,065,824 customers on June 30, 2003. See *Trends in Telephone Service* at 11-6, Table 11.3.

²² But see FCC News, *Quarterly Report on Informal Consumer Inquiries and Complaints Released* (Nov. 20, 2003) (“The Commission receives many informal complaints that do not involve violations of the Communications Act, or a rule or order of the Commission. The existence of a complaint does not necessarily indicate wrongdoing by the company at issue.”). In addition, the Commission sometimes counts the same complaints more than once in its reporting.

D. The Relief NASUCA Seeks is Overly Broad and Threatens to Reintroduce Rate Regulation at the Commission.

NASUCA's request for relief is so ambiguous and overly broad that it threatens to undermine rate structures of all kinds. It would also require the Commission to reinstitute the process of rate regulation and cost study review, if not tariffing itself.

NASUCA seeks an FCC Order:

Prohibiting carriers from imposing *any* separate monthly fees, line items or surcharges unless: (A) such charge is mandated by federal, state or local law, *and* (b) the amount of such charge conforms to the amount expressly authorized by federal, state, or local governmental authority.²³

Such an Order would not only impact surcharges used to recover the cost of regulatory mandates such as universal service and 911, but would also potentially encompass line items for all types of services including monthly recurring charges, charges for consolidated billing, charges for voice command services and untold other services and rates, provided on separate bases. Such sweeping change would be devastating to carriers attempting to provide differentiating services and would not serve consumer needs in this area.

In addition, the relief sought requires that the amount of the surcharge be expressly authorized by a federal, state, or local governmental authority. This requested relief would require telecommunications carriers to file hundreds of rate cases before the Commission, seeking FCC approval of their rate levels for all costs they seek to recover through surcharges. The FCC would find itself reviewing hundreds of cost studies and conducting rate regulation at an unprecedented level.

²³ See NASUCA Petition at 68.

NASUCA's desire for such regulatory control is directly contrary to the fundamental premise of the Telecommunications Act as recited by NASUCA at the beginning of their petition. The Act (as well as long-standing Commission policy) presumes that competition, not regulation, is the more effective method of controlling rates and services. Despite NASUCA's desire to have every rate approved by a governmental authority, this relief cannot be granted under the Act as written today.

III. PUBLIC POLICY DICTATES AGAINST THE RELIEF NASUCA SEEKS.

NASUCA suggests that it does not object to carriers recovering the costs they incur in complying with various government mandates. Its complaint is that carriers recover such charges as separate line items on their bills rather than incorporating them in per-minute rates. Stated differently, NASUCA would prefer that consumer have **less** information about the costs of the regulatory mandates now imposed upon carriers by federal, state and even local government authorities. NASUCA's preference here is not in the public interest.

It is surprising that an advocacy group representing the interests of consumers would ask the FCC to enact rules that would deprive consumers of information, particularly where these consumers are being asked to fund the regulatory programs imposed on carriers. Separate line items designed to recover the costs of various government mandates and programs enables consumers to understand the costs of government regulation and to weigh such costs against the benefits that such regulation is designed to achieve.

Moreover, from a competitive standpoint, separate line items enable consumers to judge whether the charges that carriers have imposed to recover their costs of complying with govern-

ment mandates are reasonable and either move to a carrier that meets these mandates in a more cost effective manner or file a complaint with the appropriate regulatory agency.²⁴

It is not unusual for companies to include surcharges as part of their overall price of providing a service, especially for costs that they cannot or have a very limited ability to control. Often such surcharges are to recover costs for what NASUCA would undoubtedly characterize as ordinary costs of doing business. Airlines, for example, have imposed separate fuel surcharges to recover the increased costs resulting from an unanticipated spike in fuel prices. Car dealerships do not hide the costs they incur for delivery of new cars to their lots or the advertising costs allocated to the dealership by the manufacturer in the price that they will quote to a potential car buyer but instead will include such charges as separate line items on the invoice. And, natural gas companies may have several line items on the bills they send to customers including one called a purchased gas charge which recovers the price of gas and the cost of transporting the gas to the company.²⁵

If NASUCA believes that carriers would be forced to “compete away” the cost of government mandates if these costs were included in existing rate structures, it misunderstands basic economics and the nature of such costs. As a Sprint economist recently testified in a proceeding before the Missouri regulatory commission regarding a proposed prohibition on carrier line item charges for universal fund assessments:²⁶

²⁴ Ironically, if the Commission *had* required carriers to recover their costs through their rates rather than allowing them to do so through line items, NASUCA would not have been able to complain in its current petition that carriers are seeking to over-recover the costs of such mandates and programs.

²⁵ See, e.g., <https://eservice.washgas.com/>.

²⁶ Rebuttal Testimony of Dr. Brain K Staihr filed in Missouri Case No. TO-98-329 (October 3, 2001) at 5. Dr. Staihr’s also pointed line items are consistent with a competitive markets and the Commission has so stated. See Surrebuttal Testimony of Dr. Staihr in TO-98-329 filed October

A carrier's universal service assessment is *not* like many other costs of doing business because it is a cost over which a carrier has no control. It is a cost that is not affected by productivity, nor can it be altered through efficiency gains. A carrier cannot "economize" on its universal service assessment. A carrier cannot alter its technology in an attempt to minimize its universal service contribution, nor can a carrier opt for a certain scale or scope of production in order to reduce its universal service assessment. In a nutshell, there is nothing any carrier can *do* that affects its universal service assessment.¹ It is most definitely not the same as many other costs of doing business.

¹ On an absurd level, one could claim that a carrier could minimize its universal service assessment by minimizing its revenues. This would, of course, lead to the logical conclusion that the most efficient thing a carrier could do with regard to USF contributions would be to not be in business at all.

There is no reason why interested consumers cannot compare the per minute rates, minimum monthly charges and the surcharges of the multitude of carriers providing wireless and wireline long distance services to determine the overall price of the service plan that best meets their communications needs. Consumers do so daily. If consumers find they are unable to take the time to do such comparisons, there are many consumer-oriented publications which provide service/price comparisons. To affirmatively prevent consumers from having access to this information, or to prevent carriers from competing on the basis of such charges, is contrary to good public policy.

26, 2001 at 5 quoting the Commission statement that "the recovery of universal service contributions through line items on customer bills is consistent with consistent with competitive markets, in which suppliers generally pass such costs on to their consumers." *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking* 16 FCC Rcd 9892, 9895 fn. 11 (2001).

IV. NASUCA'S ALLEGATIONS LACK MERIT AS APPLIED TO SPRINT.

NASUCA makes sweeping allegations against numerous interexchange ("IXC") and wireless carriers, including Sprint. Sprint is not in a position to evaluate NASUCA's allegations as applied to all other carriers. However, insofar as NASUCA makes these allegations against Sprint, NASUCA's allegations lack all merit.

A. NASUCA's Allegations Against Sprint PCS.

NASUCA asserts that the following three Sprint PCS surcharges and fees are misleading and deceptive: (1) "Federal Universal Service Fund," (2) "Federal E911;" and (3) "Federal Wireless Number Pooling and Portability."²⁷ NASUCA specifically asserts that these Sprint PCS surcharges are "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. * * * The surcharge regime adopted by [Sprint PCS] is, therefore, inherently misleading and deceptive, and should be prohibited.²⁸

These NASUCA allegations as applied to Sprint PCS are unfounded on their face.

The Commission has held that carrier bills must contain "full and non-misleading descriptions of the service charges that appear therein":

[S]ervices included on the telephone bill must be accompanied by a brief, clear, plain language description of the services rendered. The description of the charge 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 they have requested and received.²⁹

²⁷ See NASUCA Petition at 21-22.

²⁸ NASUCA Petition at 34 and 37.

²⁹ *Truth-in-Billing Order*, 14 FCC Rcd at 7516 ¶¶ 37-38.

The Commission has nonetheless emphasized that carriers have “considerable discretion” in how they label their surcharges.³⁰

The surcharges Sprint PCS have imposed are both clearly labeled and explained. Sprint PCS’ “Federal Universal Service Charge” uses the very label that the Commission has proposed utilizing in a pending rulemaking docket.³¹ Sprint PCS’ “Federal E911” surcharge lets customers know that the line item pertains to E911 costs, and specifically federal enhanced 911 costs, not state imposed costs.³² Sprint PCS’ “Federal Wireless Number Pooling and Portability” surcharge lets customers know that the line item pertains to number pooling and portability costs.³³ In short, Sprint PCS’ challenged labels contain “a brief, clear, plain language description of the services rendered.”³⁴

³⁰ See *id.* at 7497 ¶ 6. See also *id.* at 7499-7500 ¶¶ 9-13.

³¹ See *First Contributions Further NPRM*, 17 FCC Rcd 3752, 3797 ¶ 103 (2002) (“We now seek comment on whether to require carriers that elect to impose a separate line-item charge on customer bills to recover their contribution costs to describe the line item as the ‘Federal Universal Service Fee.’”).

³² The Commission itself suggested the use of this surcharge when it decided to eliminate the requirement that governmental agencies requesting enhanced 911 services pay for the service they received. *In the matter of Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County, Washington*, Order on Reconsideration, CC Docket No. 94-102, FCC 02-146, (July 24, 2002), (“[Carriers] could recoup their costs from customers through surcharges or increased rates”) ¶19. See also, *Letter to Marlys Davis re King County, Washington Request Concerning E911 Phase I Issues*, issued by Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, May 7, 2001, “carriers are free to recover these costs in their charges to customers, either through their service rates or through specific surcharges on customer bills.”

³³ 47 C.F.R. §52.33(b) (“all telecommunications carriers other than incumbent local exchange carriers may recover their number portability costs in any manner consistent with applicable state and federal laws and regulations”)

³⁴ See *Truth-in-Billing Order*, 14 FCC Rcd at 7516 ¶ 38.

Even if these labels could be interpreted as ambiguous, Sprint PCS adds the following description on each monthly bill:

Surcharges and Fees. The surcharges in this section generally recover the costs incurred by Sprint in complying with various federal and state mandates. Charges that appear in this section of your invoice, including charges associated with Federal Wireless Number Pooling and Portability, Federal and State Universal Service Funds (USF) and Federal E911*, are neither taxes nor government-imposed assessments. The Federal USF charge is calculated using the FCC-prescribed contribution factor, which many change on a monthly basis. Neither federal nor state law requires carriers to impose these charges but carriers are permitted to recover those costs of complying with these federal and state mandates. Call 1-866-770-6690 for more information, including the current Federal USF invoice surcharge.

* Please note that current availability of E911 services is very limited. E911 service is dependent upon several factors, including the ability of your local public safety agency to receive and process this information and the capabilities of your equipment.³⁵

In short, no reasonable person could conclude, as NASUCA charges, that Sprint PCS' surcharge descriptions are "misleading and deceptive."

B. NASUCA's Allegations Against Sprint Long Distance.

NASUCA also would have the Commission find that Sprint's long distance carrier "Carrier Cost Recovery Charge" is misleading and deceptive.³⁶ But again it provides no evidence that customers are confused or misled. As described above, Sprint's Carrier Cost Recovery Charge is no different from surcharges used in other industries. As a non-dominant carrier in a highly competitive arena, Sprint is free to structure its rates as it chooses. Indeed, after the surcharge was implemented, only a handful of customers actually filed informal complaints with regulatory commissions. More to the point, none claimed to have been confused or misled by

³⁵ See NASUCA Petition, Attachment E.

³⁶ See NASUCA Petition at 7 and 13-14.

the charge or Sprint's description of it.³⁷ In short there is no basis for the Commission to declare that Sprint Carrier Cost Recovery Charge violates the Commission's *Truth-in-Billing Order*.³⁸

V. NASUCA'S ARGUMENTS DEMONSTRATE THAT IT MISUNDERSTANDS APPLICABLE LAW AND THE TECHNOLOGY OF TELECOMMUNICATIONS CARRIERS.

The arguments NASUCA advances demonstrate a fundamental misunderstanding of governing communications law and telecommunications technology. For example, NASUCA suggests that Sprint PCS' "Federal Wireless Number Pooling and Portability" surcharge is unlawful because "the Commission has never authorized an end-user charge for number pooling."³⁹ NASUCA similarly asserts the E911 surcharges are unlawful because the Commission supposedly ruled that carriers can recover their implementation costs, but only "in their rates" and not *via* surcharges.⁴⁰ These are simply incorrect statements. The FCC did not hold that wireless carriers could recover their 911 costs only "in their rates" and not through surcharges. The Wireless Bureau (later affirmed by the Commission) in fact held the very opposite. "[C]arriers are free to recover these costs in their charges to customers, either through their service rates *or through*

³⁷ From the time that Sprint first notified its customers in July 2003 that Sprint would implement its Carrier Cost Recovery Charge effective September 1 until November 2003, Sprint received 24 complaints about the charge. Such complainants argued that the charge should not be applied to them; other asked whether the charge had been approved by a regulatory commission; and still others professed not to have been notified of the charge. For the period September 23, 2003 through November 8, 2003, Sprint received 3,299 inquiries about the charge, which represents substantially less than 0.1% of the accounts to which the charge is applied.

³⁸ Since NASUCA presents no specific evidence challenging the level of Sprint's charge here as unjust and unreasonable, there is no reason for Sprint to provide any data in defense of such charge. Sprint cannot be expected to respond to amorphous claims regarding such rates of the type set forth in NASUCA's petition.

³⁹ NASUCA Petition at 45.

⁴⁰ *See id.* at 58.

specific surcharges on customer bills.”⁴¹ Likewise, the LNP rules permit carriers to recover their costs in any manner consistent with applicable state and federal laws and regulations. 47 C.F.R. §52.33(b).

NASUCA asserts that Sprint PCS’ number pooling surcharge is “misleading at best” and that wireless carriers have intentionally obfuscated their number pooling label to recover their NANP compliance costs.⁴² However, Sprint PCS’ “Federal Wireless Number Pooling and Portability” surcharge is designed to recover its pooling and portability costs. NASUCA does not even attempt to provide an explanation for its unsupported allegation. NASUCA’s willingness to make such an allegation without any attempt to validate its facts undermines the credibility of its pleading and its allegations in general.

NASUCA also contends that Sprint PCS’ surcharge for number pooling is “excessive” and bears “no demonstrable relationship to the regulatory costs” incurred.⁴³ Understandably, NASUCA is not familiar with the differences between wireless and wireline technologies. As the Commission has recognized, however, the changes wireless carriers had to implement in order to become pooling compatible were “particularly complex . . . because of the mobile nature of wireless service and the need to support roaming.”⁴⁴ That these more complex changes also

⁴¹ *Letter to Marlys Davis re King County, Washington Request Concerning E911 Phase I Issues*, issued by Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, May 7, 2001.

⁴² See NASUCA Petition at 45 n.166 (“Given the sophistication of the wireless carriers, it seems improbably that they innocently chose the more ambiguous phrase ‘number pooling’ rather than ‘NANP compliance.’”).

⁴³ See NASUCA Petition at 42 and 45-46.

⁴⁴ *CMRS Partial Forbearance Order*, 17 FCC Rcd 14972, 14981-82 ¶ 24 (2002)(“[S]eparation of the Mobile Directory Number (MDN) and Mobile Identification Number (MIN) will require changes to a large number of systems and must be accomplished by every wireless carrier, including those operating in markets where pooling will not initially be implemented.”).

cost more to implement is not surprising to those more familiar with the actual operation of telecommunications networks.⁴⁵

NASUCA also appears to misunderstand the nature of finite resources and the harm its proposal would inflict on consumers. Carriers have finite sums to invest each year. The import of NASUCA's position is that carriers, when facing a new government mandate, should postpone planned network improvements (*e.g.*, coverage in new areas, increased capacity in existing coverage areas) and use the money instead for government mandates. Thus, under the NASUCA proposal, customers would receive an inferior service for which customers would eventually pay more (because of the cost of money involved in a delayed recovery).

Finally, NASUCA's assertion that carrier E911 surcharges are "deceptive and misleading" because the "vast majority (40 or more) of states have established funding mechanisms to engage their PSAPs to pay for such infrastructure"⁴⁶ is again a misstatement of the law.

NASUCA is apparently unaware that the vast majority of these state surcharges do not provide for the recovery of a wireless carrier's Phase II expenses, which are the bulk of the cost associated with complying with the FCC's enhanced 911 mandates. Indeed, many states provide no carrier cost recovery of any kind. The FCC, on the other hand, has mandated that wireless carriers install the necessary technology and network architecture required to support Phase I and II enhanced 911 services throughout their networks. Carriers must incur these costs regardless of

⁴⁵ Given that the MDN/MIN separation that wireless carriers had to undertake was "particularly complex for wireless carriers," there is no factual basis for NASUCA's unsupported assertion that the LNP implementation costs for LECs and wireless carriers "should be roughly the same." *Id.* at 51. The Commission has already recognized differences in LNP implementation requirements for wireline and wireless carriers.

⁴⁶ NASUCA Petition at 58.

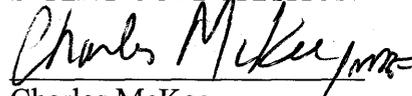
whether a state funding mechanism exists and regardless of whether a PSAP is able to pay for the service or has even requested it.⁴⁷

VI. CONCLUSION.

For the foregoing reasons, the Commission should dismiss NASUCA's Petition for Declaratory Ruling as an impermissible collateral attack on valid Commission orders. Alternatively, the Commission should deny the Petition.

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July 14, 2004

⁴⁷ 47 C.F.R. 20.18(g)(1). *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS*, Order, CC Docket 94-102, FCC 01-297 (October 12, 2001); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, CC Docket 94-102, FCC 00-326 (September 8, 2000).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **OPPOSITION OF SPRINT CORPORATION** was sent by e-mail or by United States first-class mail, postage prepaid, on this the 14th day of July 20004, to the below-listed parties.


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