

**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)	

**COMMENTS OF THE OFFICE OF THE PEOPLE'S COUNSEL
FOR THE DISTRICT OF COLUMBIA**

Elizabeth A. Noël
People's Counsel

Sandra Mattavous-Frye
Deputy People's Counsel

Barbara L. Burton
Assistant People's Counsel

Joy M. Ragsdale
Assistant People's Counsel

OFFICE OF THE PEOPLE'S COUNSEL
FOR THE DISTRICT OF COLUMBIA
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005-2710
202-727-3071

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I. INTRODUCTION

The Office of the People's Counsel for the District of Columbia ("OPC-DC" or "Office"), in furtherance of its mandate as the statutory representative of District of Columbia ratepayers in utility proceedings,¹ hereby respectfully submits its Comments pursuant to the Federal Communications Commission's ("FCC" or "Commission") Public Notice ("*Notice*") issued May 25, 2004.² In its *Notice*, the Commission seeks comment on the National Association of State Utility Consumer Advocates' ("NASUCA") Petition for Declaratory Ruling ("*Petition*") concerning Truth-in-Billing ("*TIB*") and billing formats for both wireline and wireless carriers.³

A. Summary of OPC-DC's Position

The Office supports NASUCA's Petition that recommends the FCC prohibit telecommunications carriers from imposing monthly line-item charges, surcharges, or

¹ D.C. CODE 2001 Ed. § 34-804(d).

² *In re National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing* ("*Petition*") CG Docket No. 04-208 (May 25, 2004). On June 24, 2004, the FCC granted NASUCA's Motion for an Extension of Time to File Reply Comments and revised the reply comment filing date to August 13, 2004. (DA 04-1820, rel. June 24, 2004).

³ OPC-DC is a founding member of NASUCA.

other fees on customers' bills unless such charges have been expressly mandated by a regulatory agency. OPC-DC submits granting NASUCA's Petition is in the best interests of residential consumers in the District of Columbia and, accordingly, requests the FCC to issue a Declaratory Ruling adopting NASUCA's Petition and recommendations discussed therein.

In support of NASUCA's Petition, OPC-DC submits the following recommendations:

- The FCC should prohibit wireline and wireless carriers from recovering normal business operating expenses through line-item charges;
- The FCC should take a leading role in bringing the industry and consumer focus groups together to develop uniform billing terminology;
- The FCC's TIB principles and guidelines should apply to all telecommunications bills, bill inserts and associated service confirmation and new subscriber welcome letters.

B. Statement of OPC-DC's Interest

The Office of the People's Counsel is acting under authority granted by Section 34-804, *et seq.*, of the District of Columbia Code to represent the people of the District of Columbia in state and federal proceedings that involve the interests of users of the products and services furnished by public utilities under the jurisdiction of the Public Service Commission of the District of Columbia.⁴ The Office's interest in this proceeding is to ensure that District of Columbia residents have clear and non-misleading information that allows them to effectively compare rates, i.e. "*the bottom line*" between wireline and wireless carriers, as well as advanced telecommunications service providers.

⁴ D.C. CODE § 34-804 (2001).

Consumers want to know “*How much will my total bill for telephone or cell phone service be at the end of the month?*”

OPC-DC submits the FCC’s current TIB policy allows carriers to benefit from hidden fees and vague billing terminology that leaves consumers frustrated and in the dark in understanding how much their telecommunications services truly cost and, thereby does not advance or otherwise protect the public interest of consumers.

II. BACKGROUND

In the *TIB Order and FNPRM*, the FCC adopted TIB principles and guidelines to ensure consumers can make informed service choices based upon accurate, meaningful information in a billing format they can understand.⁵ The principles require the carriers to first, clearly identify a service provider; second, give full and non-misleading descriptions of service charges and, finally, provide clear and conspicuous disclosure of consumer inquiry and complaint contacts.⁶ The FCC implemented guidelines to enact these principles, for example. The FCC focused primarily on three types of line items charges that result in federal action: 1) universal service fund (“USF”) service related fees and 2) subscriber line charge (“SLC”) and 3) local number portability (“LNP”).⁷ In addition, the Commission sought comment on standard labels for fees and surcharges resulting from federal regulatory action.⁸

In the *Universal Service Contribution Order*, the FCC took steps regarding carriers’ disparate recovery of USF contributions including 1) capping the amount of

⁵ *In re Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72 (May 11, 1999) (“*TIB Order and FNPRM*”).

⁶ *Id.*

⁷ *Id.*, ¶ 2.

⁸ *Id.*, ¶¶ 51-52.

universal service costs carriers are allowed to recover through a separate line and, 2) concluding the USF line item charged to end users may not include a mark up above the relevant contribution factor.⁹ In addition, the FCC gave carriers discretion to recover “any administrative or other costs” either embedded in rates or through another line item.¹⁰

In that same Order, the Commission directed carriers to no longer characterize administrative and other costs as regulatory fees or universal service charges after April 2003.¹¹ The FCC correctly determined that these fees are no different than the other costs associated with the business of providing telecommunications services, i.e., the normal costs of doing business.¹² The FCC concluded that it was unreasonable for a carrier to describe an amount as universal regulatory fee when it included other service-related fees that exceed the USF contribution factor.¹³ The FCC allows carriers to recover administrative costs, other costs, combined with USF costs as long as the combined surcharge is not labeled as a regulatory USF.¹⁴ However, the FCC declined to mandate a standard label for federal USF recovery contribution costs¹⁵ or standardized service or

⁹ *In re Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, NSD File No. L-00-72, *Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, ¶ 40 (rel. Dec. 13, 2002) (“*Universal Service Contribution Order*”).

¹⁰ *Universal Service Contribution Order*, ¶ 40.

¹¹ *Id.*, ¶ 54.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, ¶ 58.

¹⁵ *Id.*, ¶ 65.

surcharge descriptions.¹⁶ As discussed further, despite the FCC's adopted principles, carriers continue to label surcharges with vague terms that fail to permit customers to understand how the surcharges correlate to the price of the service to which they subscribe. NASUCA's Petition illustrates well the frustrations customers experience across the country as a result of carriers' failure to fully disclose all rates and charges customers must pay in receipt of telecommunications services.

III. DISCUSSION

The two Orders discussed above are demonstrative of the strides the FCC has taken in its efforts to eliminate customer confusion in understanding their wireline and wireless phone bills and associated surcharges, taxes and fees. Unfortunately, the FCC's task is not complete. OPC-DC Consumer Services Division continually receives calls from District of Columbia residents with questions and complaints about the long list of "add-on" fees on local telephone bills. Their confusion is understandable. The various taxes, fees and various charges can add up to 30 percent more to the total monthly bill for telephone service, and possibly more for subscribers of bundled services. From the consumers' perspective, there are a ton of added surcharges and taxes they do not understand. Consumers do not understand why they have to pay them, nor do they understand for which service the additional fees are related.

Moreover, the addition of competitors in the marketplace and the proliferation of websites and news articles purporting to assist consumers with cutting phone bill costs indicates there is an urgent need for the FCC to take further action in curbing carriers' practice of "padding" telephone and cellular phone bills with add-on fees and surcharges.

¹⁶ *TIB Order and FNPRM*, ¶ 43.

A recent Washington Post article highlights problems customers have in resolving billing disputes or errors with telephone companies in a timely manner.¹⁷ According to the article, billing problems constitute telephone companies' biggest shortcomings -- approximately 25 percent of consumer complaints.¹⁸ The most frequently cited billing problems have been about fraudulent, incorrect, or deceptive billing.¹⁹ Unfortunately, general TIB principles and guidelines have failed to hold carriers accountable for providing deceptive information to customers. More importantly, regulators have no way in knowing whether customers have been overcharged on their bill due to the lack of supporting cost data provided to the FCC. The prevalence of inaccurate billing information and misleading advertisement about rates and terms and conditions necessitates that the FCC reconsider its decision to not adopt rules. Should the FCC adopt TIB rules, OPC-DC does not advocate the FCC should preempt states from adopting stringent guidelines or a code of conduct that is consistent with the FCC's policies.

Furthermore, the FCC encouraged the industry, in conjunction with consumer focus groups, to develop common terminology that would help consumer compare service providers.²⁰ The industry's failure to initiate this effort suggests the FCC should take a leading role in bringing the two groups together to develop uniform billing terminology that meets the reasonableness standards of the Telecommunications Act of 1996 ("1996 Act").

¹⁷ Don Oldenburg, *The Disconnect Over Fixing Phone Bills*, WASH. POST, July 13, 2004, at C10.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Supra*, n.16.

A. Hidden Surcharges and Fees Violates the Just and Reasonableness Standard Under Section 201 of the 1996 Act.

Section 201(b) and 202(a) of the 1996 Act governs the reasonableness standard for rates and charges.²¹ Section 201(b) requires all charges, practices, classification, and regulations “for and in connection with” interstate communications service be just and reasonable.”²² Section 202(a) prohibits “unjust or unreasonable discrimination” in connection with the provision of communications services. Carriers that elect to recover their USF through a separate line item charge must do so in a non-discriminatory and equitable manner and accurately describes the nature of the charge.²³ The FCC presumed the elimination of mark-ups would alleviate customer confusion concerning the USF surcharge.²⁴ Unfortunately, OPC-DC has not seen any evidence that customer confusion over telephone bills has decreased in spite of Verizon Washington DC, Inc. (“Verizon DC”) redesign of the bill in August 2003.²⁵ According to OPC-DC’s records, customers continue to express concern and confusion about federal charges and fees, as well as over state and local government surcharges and fees.²⁶ Carriers have quickly taken advantage of being able to pass on various operational costs to the end user. As NASUCA’s Petition indicates, wireline and wireless carriers have devised numerous line-item

²¹ Communications Act of 1934, as amended, 47 U.S.C. § 201(b). *See* Telecommunications Act of 1996, Pub. L. No. 103-104, 110 Stat. 56 (1996) (“1996 Act”).

²² 47 U.S.C. § 201(b).

²³ 47 U.S.C. § 202(a).

²⁴ *Universal Service Contribution Order*, ¶ 50.

²⁵ *See*, Verizon News Release, *Verizon Launches Overhaul of Monthly Phone Bill; Year-Long Project to Result in Bill That's Easier to Read and Understand* (May 5, 2003).

²⁶ Annual Report of the Office of the People’s Counsel for the District of Columbia (2001 and 2002). Consumers are led to believe the surcharges are imposed by the federal government and must be passed on to the consumer. Subscribers of bundled services complain that they have not seen cost savings as advertised due to hidden fees.

surcharges to purportedly recover all types of regulatory, administrative, and “government-mandated” costs.²⁷ Amazingly, the FCC has allowed carriers to pass on operational costs to consumers without having to prove that the costs have a direct bearing on the costs of the service being provided to the consumer. AT&T charges a Regulatory Assessment Fee (\$0.99) to purportedly recover the cost of regulatory compliance filings.²⁸ This fee is another example of telephone companies passing their own cost of doing business to their customers with an array of surcharges that one could easily mistake for taxes being collected on behalf of the government.²⁹

Many wireline, wireless and, now, Digital Subscriber Line (“DSL”) service providers impose separate monthly surcharges and fees that are not mandated by government, but are described in a misleading manner to suggest that they are imposed by a government regulatory agency. For example, SBC Communications and Verizon Communications, both providers of DSL services, have added on a surcharge to their bill ranging from \$1.84 and \$2 to \$3, respectively.³⁰ Additional fees, however, are rarely disclosed to consumers when they initially sign up for service, so customers end up paying more than expected.

In fact, new phone subscribers receive confirmation letters that explicitly advise the subscriber that the letter supersedes prior terms and conditions agreed to between the

²⁷ NASUCA Petition, at vi, 29.

²⁸ *Id.* at 12.

²⁹ See, Bruce Meyerson, *Fees tacked on telecom bills have look of taxes, but aren't*, SEATTLE TIMES, May 15, 2004, available at seattletimes.nwsourc.com (last visited July 12, 2004).

³⁰ See, Jesse Drucker and Almar Latour, *The Spread of Hidden Fees, Rate Increases That Look Like Taxes Hit High-Speed Internet, Cellphone Bills*, WALL ST. J., Apr. 13, 2004, at D1. See, also, Schumer: *Hidden Cell Phone Fees Costing New Yorkers Millions* (U.S. Senator Charles E. Schumer released a new study finding that cell phone users in New York City pay over \$82 million in hidden fees a year – \$6.9 million a month – as a result of adding non-advertised surcharges to their monthly bills by four of the six wireless providers in New York City.) available at http://www.senate.gov/~schumer/SchumerWebsite/pressroom/press_releases/PR01744.html.

customer service representative (“CSR”) and the subscriber during the initial sale of the service. To demonstrate, an OPC-DC staff attorney received a consumer complaint from a Qwest residential “winback” customer who was given certain free services for a limited period of time.³¹ The welcome letter, signed by the Senior Vice President of Consumer Marketing did not confirm the free services he was promised nor the rates agreed to between him and the customer service representative.³² The customer received a welcome letter, along with a service agreement that stated in part under “Entire Agreement”:

“This written agreement supercedes all prior agreements, discussions, representations, or other statements by you or Qwest, whether orally or in writing, relating to the Services. Neither you nor Qwest will be bound by any representations or statements made by any person relating to the Service which is not contained in this Agreement.”³³

Not only is the failure to disclose hidden fees a violation of section 201 of the 1996 Act, but also clearly a violation of the FCC’s core disclosure principle that requires carriers to fully disclose and provide customers with non-misleading information. This principle must apply to all phone bills and should be extended to any accompanying documentation related to the subscription of phone service. Consumers are lured to sign up with a wireline or wireless carrier based upon low per minute rate advertisements and introductory offers. In many instances, consumers are surprised when they receive their monthly bill to discover that they must pay 20 to 30 percent more than originally quoted

³¹ Electronic Mail from Floyd Borakove, President and CEO, Rocky Mountain Mediation to Joy Ragsdale, NASUCA representative on the FCC Consumer Advisory Committee (May 18, 2004) (the complainant alleges that Qwest’s welcome letter does not obligate the company to adhere to promises made by the CSR.)

³² *Id.*

³³ *Id.*

by a carrier's customer service representative. Carriers should not be allowed to describe a surcharge the FCC gives the carrier the option to pass through to the end user as a "federally mandated" charge.

B. The FCC Must Prohibit Carriers from Recovering Normal Costs of Doing Business Through Additional Surcharges and Fees.

Many carriers believe that billing is a competitive tool by which they differentiate themselves in a competitive marketplace. OPC-DC submits that telephone and cell phone bills are educational and informational tools that assist consumers with making informed choices. A fact that must not be ignored. Federally mandated surcharges must accurately describe the cost and service to which customers are subscribing. Ordinary costs of doing business should be incorporated into a per minute rate that will allow consumer to compare the retail price of communication services. Under no circumstances should carriers be allowed to assess consumers numerous unregulated surcharges to make up for loss of revenues as a result of a financially declining telecommunications marketplace. As correctly noted in NASUCA's Petition, long distance carriers have been allowed to recover a host of operation expenses such as state and local property taxes, federal regulatory fees, local number portability, federal and state USF assessment fees, and administrative filing costs.³⁴ Carriers mislead consumers by advertising low per minute phone rates while surprising customers at the end of the month with a plethora of add-on fees and surcharges. OPC-DC submits wireline and wireless customers should know at the outset how much their communications service is going to cost them, excluding federal, state, and local taxes. Customers, in particular low-income and senior citizens, live on a fixed income and need to budget their monthly

³⁴ NASUCA Petition, at 12-14, 16, 29.

income according to their household expenses. Customers will not be able to budget accordingly if they are continuously assessed surcharges and fees without advanced notice. NASUCA is correct in its assertion that regulatory compliance costs are valid costs of providing telecommunications services and should be incorporated into the per minute rate advertised to consumers.³⁵

Unless the FCC reins in carriers' business practices and conduct, consumers will no doubt see more surcharges and fees on their wireline and wireless bills. More importantly, consumers will continue to be misled about the true cost of telecommunications services which contravenes the FCC's TIB principles and guidelines adopted in 1999.

IV. CONCLUSION

For the foregoing reasons, OPC-DC respectfully requests the Commission consider its Comments and recommendations discussed herein:

- The FCC should prohibit wireline and wireless carriers from recovering normal business operating expenses through line-item charges;
- The FCC should take a leading role in bringing the industry and consumer focus groups together to develop uniform billing terminology;
- The FCC's TIB principles and guidelines should apply to all telecommunications bills, bill inserts and associated service confirmation and new subscriber welcome letters.

Respectfully submitted,

Elizabeth A. Noël

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People's Counsel

Sandra Mattavous-Frye
Deputy People's Counsel

³⁵ NASUCA Petition at 67.

Barbara L. Burton
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