

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

In the Matter of)
)
Truth-in-Billing and Billing Format) CG Docket No. 04-208
)

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments in response to the Petition for Declaratory Ruling (Petition) filed by the National Association of State Utility Consumer Advocates (NASUCA). NASUCA accuses all carriers of engaging in inappropriate billing activity and intentionally misleading their customers. The petition requests that the Commission prohibit telecommunications carriers from imposing monthly line-item charges, surcharges or other fees on customers' bills, unless both recovery of the fee, and the amount of the fee carriers are entitled to assess, is expressly mandated by federal, state or local government.²

While NTCA agrees with NASUCA that telecommunications carriers' bills should be truthful and non-misleading, NASUCA's petition is fraught with unsupported

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² NASUCA Petition, p. 24.

assumptions and incomplete analysis. NASUCA accuses carriers, individually and as a whole, of misconduct, but fails to provide any evidence supporting its allegations. NASUCA's approach for solving the perceived problem, overhauling the billing system in this country, is impractical and fails to consider technological advances and the needs of consumers. Truth in billing rules are already in place. Rather than adopting new rules and forcing all carriers to overhaul their billing system as requested by NASUCA, the Commission should investigate substantiated complaints and punish the wrongdoers.

I. THE FCC SHOULD NOT CREATE NEW RULES AND POLICIES IN THE ABSENCE OF SPECIFIC INFORMATION

In its petition, NASUCA goes to great length to describe the supposed misleading and unreasonable charges imposed by carriers. It names specific carriers it claims are engaging in shameful conduct and discusses specific fees increases. NASUCA charges wireless carriers with "conducting covert operations against their customers."³ It accuses carriers of, among other things, collecting "substantial" amounts money under the guise of number portability implementation to "fund the carriers' legal and political battles."⁴ Simply stating that it is so does not make it so. NASUCA has not submitted specific information to back up its allegations. NASUCA fails to ask the necessary questions and offers no concrete example of carrier misconduct. It accuses the carriers, individually and as a whole, without a single specific example of actual wrongdoing.

A question about increases in end user charges could be answered with the far less sinister explanation that costs have increased. What is included in a specific end user charge could be answered by calling the toll-free number provided on a bill. NASUCA suggests that any time permissive line item charges appear on a bill, the carriers

³ NASUCA Petition, p. 47.

⁴ *Id.*

obviously abuse them, adding impermissible costs so that their base rates appear lower to the consumers. It is more likely that usage-based rates have decreased while regulatory charges have increased is that usage-based costs have decreased, while regulatory costs have increased. NASUCA skips the necessary step of asking the questions and jumps right to the conclusions. NTCA is not in a position to defend individual carriers, but claims of rampant misconduct throughout the industry lack any factual basis.

NASUCA offers no explanation for the supposed misconduct other than to state that the carriers intend to confuse their customers.⁵ Given the increasingly competitive telecommunications environment, the only way for a customer confusion tactic to work would be if all carriers agreed to it. If one carrier dissented, the plan would fail. The dissenting carrier would figure out the competitive advantage of a different billing system and employ it. Since there is no allegation of collusion between or among the carriers, we can assume that NASUCA does not suspect it. Another, more plausible explanation for the purported confusing quality of consumer bills is that the industry is in a transition period and while carriers do their best to provide adequate information, there are new regulations and unfunded mandates adopted on a daily basis.

Further, consumers benefit from being able to make choices when they are made aware of the costs of new regulations and unfunded mandates. The NASUCA petition ignores the potential consumer benefit of monthly line-item charges, surcharges or other fees on bills. It is true that a great public and social benefit is derived from many regulatory programs. TRS, E911 and local number portability are things that serve the American public. But none come without a cost. Making the consumer aware of how unfunded mandates affect the bottom line, of how much cost they add to a monthly bill,

⁵ NASUCA Petition, p. 32.

permits the consumer to perform his own cost-benefit analysis and decide whether to support the program. Society benefits from the consumer questioning the bill and advocating change where appropriate. Hidden charges imposed across the industry leave the consumer with no knowledge and little recourse.⁶

II. NASUCA'S PROPOSED RULING IS IMPRACTICAL

NASUCA petition targets ILECs, CMRS providers and IXC's. It asks that these carriers be prohibited from recovering costs via an end-user charge unless both the fee and the amount of the fee are mandated. This approach fails to recognize that the telecommunications industry is in a state of transition. The line between traditional ILECs, CMRS providers and IXC's is blurring and the carriers are competing with each other to provide the same services to the same customers. Broadband, whether provided via DSL, cable modem, wireless connections, electric utility lines, or some other as yet not thought of technology adds a whole new dynamic to the mix. VoIP, no matter how provided, is already proving itself to be a worthy competitor to the traditional carriers.

Regulation cannot keep up with technology, or the whims of the consumer. Some consumers may enjoy the convenience of receiving all of their telecommunications needs from one company. Others may prefer an a la carte method, picking and choosing services and plans from the wide array of providers. Some may like to be billed according to their usage, while others may prefer the stability of a monthly flat rate. There are a myriad of service choices and billing plans. It does not make sense for the Commission to set up a strict billing regime since it cannot accommodate all situations

⁶ In its Truth in Billing First Report and Order, the Commission rejected proposals to require carriers to combine regulatory fees into one charge stating, "[W]e are concerned that precluding a breakdown of line item charges would facilitate carriers' ability to bury costs in lump figures." Truth in Billing and Billing Format, First Report and Order, CC Docket No. 98-170, ¶ 55 (rel. May 11, 1999).

and lacks the jurisdiction to regulate all potential providers. It is better to let carriers contract with their subscribers and to let the market work. Consumers should be permitted to determine what provider with what billing system is best suited for their own needs.

Further, NASUCA's billing idea only permits recovery if the actual fee and the amount of the fee are mandated. This idea not only puts additional burden on the regulators, forcing them to rule every time contribution factors change or inflation kicks in, it encourages carrier inefficiency. If, for example, if state regulators mandate an E911 line-item charge of 4% of the customer's bill, there is no incentive for the carrier to reduce its costs so that it can provide E911 for less. Rather than mandating rates, it makes more sense to permit carriers to recover their actual costs.

III. NASUCA'S PROPOSED RULING IS UNNECESSARY

NASUCA argues that carriers are violating the truth in billing requirements.⁷ Inexplicably, NASUCA never proposes that the Commission enforce its truth in billing requirements. A simpler solution to the real or perceived problems with carrier billing is for the FCC to enforce the current truth in billing rules. The Commission has the authority to investigate complaints and punish the wrongdoers. Instead of forcing the modification of the billing system of every carrier in the country, the Commission should target those carriers not in compliance with the rules.

⁷ NASUCA Petition, p. 27.

IV. THE UNIQUE SITUATION OF INDIVIDUAL CARRIERS REQUIRES INDIVIDUALIZED BILLING STRUCTURES

Individual carriers and their customers have unique needs. The mandated, across the board billing changes proposed by NASUCA fail to consider this reality. The large telecommunications companies the NASUCA petition targets may have problems not typically encountered by small telephone companies or those that are cooperatively owned.

Small telephone companies are closer to their subscribers than are the large carriers. Carriers operating with a small market base of only a few thousand, or even a few hundred, subscribers may be able to address any billing concerns most efficiently through a small customer service staff which is highly familiar with subscribers' accounts. Absent a complaint or evidence of wrongdoing, there is no reason to require the small companies to go to the expense of changing their billing systems.

The subscribers are the owners when a telephone company is cooperatively owned. Any incentive to mislead the customer is lost. The subscriber-owners elect board members to set the company's policies. If the subscriber-owners are unhappy with the way the coop is run, or how their bills are presented, they may voice their opposition and elect new board members to run the company. Further regulatory oversight of billing practices is unnecessary.

V. ANY PROPOSED CHANGE IN THE BILLING REQUIREMENTS WOULD NEED A COMPLETE AND ACCURATE REGULATORY FLEXIBILITY ANALYSIS

The Regulatory Flexibility Act (RFA) requires that the Commission incorporate an Initial Regulatory Flexibility Analysis (IRFA) into a Notice of Proposed Rulemaking

before considering changes to the truth in billing rules.⁸ This IRFA must not only identify the proposed rule and its legal basis, but also describe the projected compliance costs, and identify alternatives for small entities that would accomplish the Commission's goals, while minimizing any significant economic impact.

There are potentially significant costs associated with new billing requirements. NTCA requests that if the Commission moves forward with the NASUCA proposal, it comply with its RFA requirements. The Commission should do an independent analysis of the costs involved and the overall impact on small businesses before it asks the industry to comment on proposed rules. There should also be a discussion of potential alternative regulation for small carriers. NTCA proposes that absent real evidence of wrong-doing by small carriers, no small carrier should be forced to spend its precious resources updating their billing system. Further, any evidence of intentionally misleading bills should be dealt with on a case-by-case basis.

VI. CONCLUSION

NTCA agrees with NASUCA that telecommunications bills should be truthful and non-misleading. However, the FCC should not act to overhaul carriers' billing systems, based on the NASUCA petition. NASUCA makes allegations of wrongdoing without any factual backup. Its proposal is impractical, unnecessary, and fails to consider the

⁸ 5 U.S.C. § 603

unique circumstances of individual carriers. The Commission should not, as NASUCA proposes, prohibit carriers from imposing monthly line-item charges on customers' bills, unless government mandates recovery of the fee, and the amount of the fee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, RITA H. BOLDEN, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CG Docket No. 04-208, DA 04-1495 was served on this 14th day of July 2004 by first-class, U.S. Mail, postage prepaid, to the following persons listed below:

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