

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	)	

**REPLY COMMENTS IN OPPOSITION TO NASUCA'S PETITION**

Pursuant to Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2), AT&T Corp. ("AT&T") hereby submits these Reply Comments in opposition to the Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates ("NASUCA") in the above-captioned proceeding ("*NASUCA Petition*").<sup>1</sup> NASUCA seeks a declaratory ruling "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,"<sup>2</sup> claiming that these practices violate, among other requirements, the Commission's 1999 *TIB Order*.<sup>3</sup> The comments confirm that the *NASUCA*

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<sup>1</sup> See FCC Public Notice, DA 04-1495, rel. May 25, 2004. A summary of the Public Notice was published in the Federal Register on June 14, 2004. See 69 Fed. Reg. 33021. *National Association of State Utility Consumer Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-In-Billing and Billing Format* ("*NASUCA Petition*"), filed March 30, 2004.

<sup>2</sup> *NASUCA Petition*, at 1. Specifically, NASUCA claims that "carriers' [line-item] charges are misleading and deceptive in their application, bear no demonstrable relationship to the regulatory costs they purport to recover, and therefore constitute unreasonable and unjust carrier practices and charges." *Id.* at vi.

<sup>3</sup> *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 7492 (rel. May 11, 1999) ("*TIB*

(footnote continued on next page)

*Petition* is procedurally flawed, factually unsupported and contrary to law, and must therefore be denied.

The *NASUCA Petition* provides no basis to grant declaratory relief under Section 1.2 of the Commission's rules because there is no Commission order or rule that prohibits imposition of the line-item charges *NASUCA* contests.<sup>4</sup> As USTA states, "[t]his request is more than a clarification or interpretation of the Commission's rules issued in 1999 because there is no existing rule that could be interpreted to prohibit carriers from itemizing certain charges."<sup>5</sup> The comments show that there are serious disputes regarding both the applicable law governing the permissibility of line-item charges and the material facts concerning the charges at issue.<sup>6</sup> Where the applicable law and the material facts are at issue, the appropriate means to address the issue is not a declaratory ruling:

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*Order*"). See also *Truth In Billing and Billing Format, Order on Reconsideration*, 15 FCC Rcd 6023 (rel. March 29, 2000), *Errata*, 15 FCC Rcd 16544 (rel. March 31, 2000) ("*TIB Reconsideration Order*"); *Truth In Billing and Billing Format, 15 FCC Rcd 7549, Order*, (rel. April 19, 2000) ("*TIB Waiver Order*") (collectively, the "*TIB Orders*.").

<sup>4</sup> 47 C.F.R. § 1.2. In order for the Commission to commence an adjudicative proceeding in the form of a declaratory ruling, its decision must be based upon an existing rule or regulation. *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 94 S.Ct. 1757, 40 L.Ed.2d 134 (1974); *Chisholm v. FCC*, 538 F.2d 349, 176 U.S.App.D.C. 1 (D.C. Cir. 1976).

<sup>5</sup> Comments of USTA, at 4-5.

<sup>6</sup> See, e.g. Comments of Sprint, at 2 ("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"). See also, Comments of BellSouth, at 5; CTIA, at 22-24; Cingular, at 22; USTA, at 5; Verizon, at 5-6; Verizon Wireless, at 7-8.

it is a rulemaking proceeding.<sup>7</sup> NASUCA's request for a declaratory ruling is therefore procedurally improper, and for this reason alone, the Commission should reject it.<sup>8</sup>

Nor is there a substantive legal basis for the relief NASUCA seeks. As the comments show, NASUCA's demand for more stringent rules governing the disclosure of monthly line-item charges is wholly unsupported by any of the Commission's previous orders.<sup>9</sup> In the *TIB Order*, the Commission announced "broad binding principles to promote truth-in-billing" requiring that customer bills contain full and non-misleading descriptions and clear and conspicuous disclosures of such fees in order to facilitate customer inquiries, and adopted only "minimal basic guidelines that explicate carriers' binding obligations pursuant to these broad principles."<sup>10</sup> In the *Contribution Order*, the Commission merely prohibited carriers from marking-up federal universal service fund ("USF") assessments on end-users above the Commission-authorized assessment factor, while acknowledging that carriers might continue to incur some administrative costs

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<sup>7</sup> See, e.g. Comments of BellSouth, at 5 ("The Commission cannot provide relief in the form of changing the rules to suit NASUCA's request under the guise of a public notice for a declaratory ruling.") See also Comments of Cingular Wireless, at 22-23; CTIA, at 24; Sprint, at 4; USTA, at 5; Verizon, at 5-6; Verizon Wireless, at 7-8.

<sup>8</sup> See, e.g. *Access Charge Reform*, CC Docket No. 96-262, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14318-9 (rel. Aug. 27, 1999); *AT&T Petition for Declaratory Ruling Regarding Cascade Utilities*, *Memorandum Opinion and Order*, 8 FCC Rcd 781, 782 (rel. February 5, 1993); *Aeronautical Radio, Inc. Petition for Declaratory Ruling*, *Memorandum Opinion and Order*, 5 FCC Rcd 2516 (rel. April 13, 1990); *American Network, Inc. Petition for Declaratory Ruling*, *Memorandum Opinion and Order*, 4 FCC Rcd 550, 551 (rel. January 12, 1989).

<sup>9</sup> See, e.g. Comments of Cingular Wireless, at 2 ("The NASUCA petition is a wholesale attack on the Commission's careful determinations regarding cost recovery and disclosure in the *TIB Order*, the *Contribution Order* on the universal service fund ('USF'), and the 3<sup>rd</sup> R&O on local number portability [citations omitted].") See also, Comments of BellSouth, at 2; CCTM, at 6-7; MCI, at 10-11; Nextel, at 27-28; Sprint, at 5-6; Verizon, at 3-5; Verizon Wireless, at 22.

<sup>10</sup> *TIB Order*, ¶¶ 5, 9. See also 47 C.F.R. § 64.2401.

associated with the collection of USF charges from end users.<sup>11</sup> The *Advertising Joint Policy* concerned advertising *per se* rather than billing practices as such.<sup>12</sup> Contrary to NASUCA’s claims, the Commission has expressly considered and rejected suggestions that it require the use of any additional “safe harbor language” on customer bills or mandate any additional descriptive language in billing disclosures, giving carriers instead broad discretion to fashion their own descriptions.<sup>13</sup>

NASUCA’s factual assertions are wholly unsupported by any evidence regarding AT&T’s Regulatory Assessment Fee (“RAF”). The *NASUCA Petition* does not demonstrate—because it cannot—that AT&T’s RAF disclosures in any manner fail to satisfy the mandates of the *TIB Orders*, the *Contribution Order*, or the *Advertising Joint Policy*. The *NASUCA Petition* in fact shows that AT&T has provided customers with the full and non-misleading descriptions of charges, and the clear and conspicuous disclosure of information that consumers need to understand the RAF.<sup>14</sup> AT&T’s billing statements identify each service for which customers were

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<sup>11</sup> *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24, 952 (rel. Dec. 13, 2002) (“*Contribution Order*”). In the *Contribution Order* (at ¶ 40), the Commission expressly permitted carriers to recover administrative or other costs in customer rates or through other line-items, subject to the Commission’s limitation on the amount of the USF recovery charge.

<sup>12</sup> See *In the Matter of Joint FCC/FTC Policy Statement For the Advertising of Dial-Around And Other Long-Distance Services to Consumers*, File No. 00-EB-TCD-1 (PS), Policy Statement, 15 FCC Rcd 8654 (rel. Mar. 1, 2000) (“*Advertising Joint Policy*”) ¶ 5.

<sup>13</sup> In the *TIB Order*, the Commission made clear its preference for general, non-prescriptive guidelines, stating “[t]hrough this Order, we adopt broad, binding principles to promote truth-in-billing, rather than mandate detailed rules that would rigidly govern the details or format of carrier billing practices. . . . We use the terms, principles and guidelines in this Order to distinguish our approach from a more detailed regulatory approach urged by some commenters. That is, we envision that carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers [citations omitted].” *TIB Order*, ¶ 9.

<sup>14</sup> *NASUCA Petition* at 12-13, n.25 and Attachments A and B.

billed, and make it clear that the RAF recovers some, but not all of the costs AT&T incurs.<sup>15</sup>

AT&T also meets *and exceeds* the requirements of the *TIB Reconsideration Order* by providing customers the toll free numbers *and* the website information needed to make inquiries about or contest charges on their bills, regardless of whether customers receive bills in paper format or electronic format.<sup>16</sup>

The state commissions agree with NASUCA that FCC regulation is necessary to ensure that carrier surcharge disclosures are adequate.<sup>17</sup> Their filings generally confirm, however, that the *TIB Orders* already address misleading descriptions of surcharges, and that any additional relief will exceed the scope of what is required under the current rules.<sup>18</sup> In the five years since the *TIB Order* was released, the Commission has considered and declined to adopt the more stringent rules and guidelines advocated by NASUCA, state commissions and other parties to the *TIB*

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<sup>15</sup> AT&T's bills, bill messages and FAQ's all state that the RAF "will *help* AT&T recover the costs associated with *interstate access charges, property taxes, and the expenses associated with regulatory proceedings and compliance*. This fee applies for each month in which you have any AT&T charges on your bill (emphasis added)."

<sup>16</sup> *TIB Reconsideration Order*, ¶ 11 (requiring carriers to provide e-mail or web site access to their customer service facilities, but only where the customer does not receive a paper copy of the telephone bill.)

<sup>17</sup> *See, e.g.* Comments of California PUC, at 2 ("The CPUC agrees with NASUCA that government regulation is necessary to ensure that carriers' bills to customers—including those parts of the bills showing surcharges and fees—are accurate and clear.") *See also* Comments of Indiana Utility Regulation Commission, at 2; Iowa Utilities Board, at 2-3; Minnesota Department of Commerce, at 5-7; NARUC, at 1; Nebraska Public Service Commission, at 6; Public Utilities Commission of Ohio, at 9-10; Tennessee Emergency Communications Board, at 4.

<sup>18</sup> *See, e.g.* Comments of California PUC, at 2 (proposing that the Commission adopt a California style consumer protection rule); Nebraska Public Service Commission, at 4 (proposing a rule requiring notice that charges and amounts may vary from carrier to carrier); Public Utilities Commission of Ohio, at 9 (proposing a rule requiring disclosure of charges and taxes under a separate heading titled "Government Sanctioned Charges").

proceedings.<sup>19</sup> In the *TIB Reconsideration Order*, the Commission modified certain subsections of Section 64.201 of the Commission’s rules, and clarified others.<sup>20</sup> But the Commission has consistently declined to adopt the prescriptive rules and more stringent guidelines now sought by the state commissions.

Only one party—the Office of the People’s Counsel for the District of Columbia—makes the specious claim that “one could easily mistake [the RAF] for taxes being collected on behalf of the government.”<sup>21</sup> Nothing could be further from the truth. Under a banner heading titled “Important information about your telephone service,” AT&T’s bills state:

“Beginning on July 1, 2003, your bill will include a 99 cent per month Regulatory Assessment Fee. This fee will help AT&T recover the costs associated with interstate access charges, property taxes, and the expenses associated with regulatory proceedings and compliance. This fee applies for each month in which you have any

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<sup>19</sup> In the *TIB* proceedings, the Commission said “[o]ur decision to adopt broad, binding principles, rather than detailed comprehensive rules, reflects our recognition that there are typically many ways to convey important information to consumers in a clear and accurate manner. For this reason, we disagree with those commenters who assert that more prescriptive rules are necessary to combat consumer fraud through the use of misleading telephone bills. Instead, our principles provide carriers with flexibility in the manner in which they satisfy their truth-in-billing obligations. ... Our Order permits carriers to render bills using the format of their choice, so long as the bills comply with the implementing guidelines we adopt today.” *TIB Order*, ¶¶ 10,11.

<sup>20</sup> See *TIB Reconsideration Order*, ¶¶ 2-3, 7-9, 11 (clarifying requirements applicable to the identification of new service providers, providers of bundled services, carriers’ trade names, and labeling of charges as deniable, and requiring Internet customer inquiry services for customers who access bills exclusively by e-mail or Internet.)

<sup>21</sup> Comments of OPC-DC, at 8 (“AT&T charges a Regulatory Assessment Fee [\$0.99] to purportedly cover the cost of regulatory compliance filings. 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 [citations omitted].”)

AT&T charges on your bill. *This fee is not a tax or charge required by the government* (emphasis added).<sup>22</sup>

Every AT&T bill that contains a RAF charge contains a version of this language, including the disclosure that “this fee is not a tax or charge required by the government.” AT&T’s bills and bill messages thus affirmatively dispel any impression that these charges are mandated by regulatory action. They are neither inaccurate nor misleading, and fully comply with the Commission’s truth-in-billing requirements.

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<sup>22</sup> Similar statements appear in AT&T’s FAQ’s and toll-free inquiry lines. In addition, AT&T places the RAF in a separate section of the bill titled “Other Charges and Credits” to make it clear that the RAF is *not* a mandatory fee imposed by the Commission.

## CONCLUSION

The record in this proceeding confirms that the *NASUCA Petition* is procedurally flawed, factually unsupported, and contrary to law. For the reasons stated above, AT&T respectfully requests that the Commission deny the relief requested in the *NASUCA Petition*.

Respectfully submitted,

**AT&T Corp.**

/s/ Richard A. Rocchini

Lawrence J. Lafaro

Peter H. Jacoby

Richard A. Rocchini

Martha Lewis Marcus

AT&T Corp.

Room 3A227

One AT&T Way

Bedminster, NJ 07921

(908) 532-1843 (voice)

(908) 532-1218 (fax)

August 13, 2004

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Opposition of AT&T Corp. was served by the noted methods, the 13th day of August 2004 on the following:

/s/ Hagi Asfaw  
Hagi Asfaw

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A-325  
Washington, D.C. 20554  
**(By Electronic Filing)**

Best Copy and Printing, Inc.  
Federal Communications Commission  
445 12th Street, S.W.  
Room CY-B402  
Washington, D.C. 20554  
fcc@bcpiweb.com  
**(By Electronic-Mail)**

Kelli Farmer  
Policy Division  
Consumer & Governmental Affairs Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 4-C740  
Washington, DC 20554  
**(By Electronic Mail)**

Patrick W. Pearlman  
Deputy Consumer Advocate  
The Public Service Commission of West  
Virginia  
Consumer Advocate Division  
723 Kanawha Boulevard, East  
Charleston, WV 25301  
**(By First Class Mail)**

David C. Bergmann  
Assistant Consumers' Counsel  
Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
**(By First Class Mail)**

NASUCA  
8380 Coleville Road, Suite 101  
Silver Springs, MD 20910  
**(By First Class Mail)**