

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

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

**BELLSOUTH COMMENTS**

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**BELLSOUTH COMMENTS**

BellSouth Corporation, on behalf of itself and its wholly owned affiliates (“BellSouth”), by its attorneys, files these Comments in response to the *Second Further Notice of Proposed Rulemaking* issued with the Commission’s *Second Report and Order* and *Declaratory Ruling* denying NASUCA’s Petition for Declaratory Ruling.<sup>1</sup>

**I. Introduction and Summary**

BellSouth is appreciative of the Commission addressing these important issues. On many fronts, billing has become an extremely complex area of compliance for all carriers. While the Commission appropriately allowed carriers flexibility in their billing practices by adopting broad guidelines, as opposed to specific rules,<sup>2</sup> the uncertainties that can arise in following the guidelines are disruptive to the business. These uncertainties include state rules that exceed the

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<sup>1</sup> *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170 & CG Docket No. 04-208, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, 20 FCC Rcd 6448 (2005) (“Notice”).

<sup>2</sup> *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 (1999) (“*Truth-in-Billing Order*”).

requirements set forth in the *Truth-in-Billing Order* and confusion over labeling of agency cost recovery programs. For this reason, BellSouth welcomes the *Notice* and is confident that it will be a catalyst resulting in further clarity and eliminating the confusion that has arisen in the past.

Specifically, BellSouth supports the Commission's tentative conclusion to preempt state rules related to truth-in-billing. The Commission clearly has authority to preempt state rules governing this area, based on the inseverable interstate and intrastate aspects of the billing of telecommunications services, and the status of truth-in-billing as a valid federal regulatory objective. Preemption will eliminate the unnecessary hardships that carriers face in having to comply with both national and local rules governing this area, and will lessen confusion faced by consumers whose bills must reflect requirements imposed by multiple jurisdictions. State rules that are inconsistent with each other and with the federal rules serve only to complicate an area where simplification and clarity are needed and in the public interest. The Commission's rules are more than adequate to offer consumers all the protection they need against misleading and confusing practices that affect their telecommunications services bills.

Indeed, the Commission does not need to further supplement those rules, and thus should reject the proposals in the *Notice* to require carriers to create a separate bill section for mandated charges. Furthermore, the Commission should not require any other bill section categories or any standardized labels to define such categories. Such additions not only make it more difficult for customers to review and validate the charges on their bills, but generate additional expense for carriers by requiring them to restructure their bills.

Finally, the Commission should not require point of sale disclosures. The Commission has no basis for regulating carriers' sales activities in competitive markets. There is nothing

unique about the sale of telecommunications services that requires regulation over and above existing state and local rules prohibiting deceptive trade practices. In a competitive market, it is in the carrier's own self-interest to treat its customers fairly, before and after the sale of its services. This marketplace incentive and existing state and local regulations provide adequate protections for the consumer.

The Commission should, however, act on the petitions for reconsideration ("PFRs") that were filed in this docket in 1999 and reverse its requirement prescribing standardized labels for mandated charges. Instead of required standardized labels, the Commission should establish a set of labels to serve as a safe harbor that carriers could use in labeling mandated charges, thereby encouraging a gradual and voluntary transition to standardized labeling. Additionally, it should adopt a broad definition of mandated charges to include all fees that are remitted to the government or its agent.

## **II. The Commission Should Preempt State Law That Is Inconsistent with the Federal Truth-in-Billing Rules**

### **A. Inconsistent State Rules Harm Carriers' Ability to Function in the Marketplace**

BellSouth fully supports the *Notice's* tentative conclusion that the Commission should reverse its prior "pronouncement that states may enact and enforce more specific truth-in-billing rules than ours."<sup>3</sup> For many of the reasons cited in the *Notice*, the ability of any carrier to maintain nation- or region-wide operations is severely hampered when the carrier must comply with multiple sets of rules governing the same area of business. This is particularly true as it relates to billing. Carriers may have more than one billing system. The billing system consists

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<sup>3</sup> *Notice*, 20 FCC Rcd at 6474, ¶ 51.

of extremely large and complex databases and sets of software that cannot be easily altered. The complexity of the systems is magnified when the carrier must maintain multiple sets of billing rules over various jurisdictions. For example, one state may have established rules about the language that a carrier may use in a bill, while another state may have different rules, and both of these states may differ from the federal rules. In this scenario, the carrier would have to modify its billing system to be able to generate bills based on where the end user lives that reflect the different language requirements, or attempt to work through a compromise with each of the states that would allow the carrier to use language that is acceptable to both.

**B. The Commission Has Ample Authority to Preempt States on This Matter**

The Commission has ample authority to preempt state regulation of billing that conflicts with the federal truth-in-billing rules for any telecommunications service for “all carriers under the provisions of the Act.”<sup>4</sup> The Commission has recognized that it has jurisdiction over the billing practices of a carrier’s interstate telecommunications services pursuant to section 201(b) of the Communications Act of 1934, as amended.<sup>5</sup> Because billing of telecommunications services unquestionably includes both interstate and intrastate aspects that cannot be reasonably severed, the Commission must therefore exercise jurisdiction over intrastate services and preempt the states on billing practices regulations related to truth-in-billing matters.

When an issue involves overlapping interstate and intrastate components, the Commission, as well as the courts, has found that the Commission has the authority to preempt

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<sup>4</sup> *Id.* ¶ 50.

<sup>5</sup> *Truth-in-Billing Order*, 14 FCC Rcd at 7503-04, 7506-08, ¶¶ 21, 24-25.

the states on intrastate matters.<sup>6</sup> In a similar case, the United States Court of Appeals for the District of Columbia found that the Commission “preemption of state regulation is . . . permissible when (1) the matter to be regulated has both interstate and intrastate aspects; (2) [Commission] preemption is necessary to protect a valid federal regulatory objective; and (3) state regulation would ‘negate[] the exercise by the [Commission] of its own lawful authority’ because regulation of the interstate aspects of the matter cannot be ‘unbundled’ from regulation of the intrastate aspects.”<sup>7</sup> All of these conditions exist for truth-in-billing matters.

Clearly, truth-in-billing regulations affect both interstate and intrastate communications. A carrier’s bill presents charges for both interstate and intrastate services. No entity would send separate bills based on the jurisdiction of the call. Even regional Bell companies, such as BellSouth Telecommunications, Inc. (“BST”), who are prohibited from providing interLATA services themselves in certain states,<sup>8</sup> bill for their affiliates that provide interLATA services and, in many cases, bill for interstate services on behalf of unaffiliated IXCs. Moreover, even if an IXC billed its customers through its own billing systems and did not provide local exchange services, it would still bill for intrastate and interstate toll services on the same bill. Accordingly, interstate and intrastate communications are inextricably intertwined on carrier bills.

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<sup>6</sup> *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355 (1986).

<sup>7</sup> *Maryland v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990) (citations omitted).

<sup>8</sup> The Communications Act of 1934, as amended, prohibited an RBOC from providing in-region interLATA services until it received authority to do so from the Commission through section 271. Once approval was received, the provisioning of interLATA services had to be through a structurally separate affiliate as defined and operated pursuant to section 272. The separate affiliate requirements of section 272 sunset, by state, three years from the date the Commission granted the company interLATA approval. Sunset has occurred for some companies in various states and while the RBOC can legally provide interLATA services itself in those states, BellSouth is unsure if any RBOC is doing so.

Additionally, the Commission applied the truth-in-billing regulations to intrastate billing practices. The Commission found in the *Truth-in-Billing Order* that the truth-in-billing regulations played a vital role in the protection against unauthorized changes in a customer's preferred carrier ("slamming") prohibited by section 258. Having found a link between slamming prevention and billing practices, the Commission stated that section 258 provided it with "jurisdiction to regulate the billing practices of interstate, *as well as intrastate*, carriers to the extent that [the] regulations serve as a means of verifying carrier changes."<sup>9</sup> The Commission concluded that "with the exception of the guideline . . . [involving] standardized labels for charges relating to federal regulatory action, the truth-in-billing principles and guidelines adopted in [the *Truth-in-Billing Order*] are justified as slamming verification requirements pursuant to section 258, and thus can be applied to both interstate and intrastate services."<sup>10</sup> Based on these findings, the truth-in-billing guidelines and principles impact both interstate and intrastate telecommunications services, thus meeting the first prong of the *Maryland* test.

There is no doubt that truth-in-billing represents a valid federal regulatory objective. In establishing the initial truth-in-billing guidelines and principles, the Commission stated "we take this action in furtherance of the pro-competitive goals of the 1996 Act and our responsibility to ensure that *all* consumers have a fair opportunity to share in the benefits of competitive telecommunications markets. . . . In this item, we seek to provide consumers with the basic tools

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<sup>9</sup> *Truth-in-Billing Order*, 14 FCC Rcd at 7504, ¶ 22.

<sup>10</sup> *Id.* ¶ 21.

they need to participate meaningfully in a competitive telecommunications marketplace.”<sup>11</sup> The Commission’s statements reflect the importance it places on the rules, guidelines and principles that it established in this proceeding. In protecting this important federal goal, the Commission has authority to preempt state regulations that conflict with the Commission’s rules. In many instances, placing additional state requirements on billing practices serves to frustrate the Commission’s goals by creating longer and more confusing telecommunications bills. Unlike the Commission’s regulations that apply to both interstate and intrastate services, state regulations would only apply to purely intrastate services. This leads to lengthy explanations on bills and more consumer discontent. Furthermore, attempting to apply state regulations to the intrastate portion of bundled services would be impossible unless the carrier was required to separate the bundle into intrastate and interstate components. Such a requirement would have a very chilling effect on the progression of the competitive telecommunications market, where bundling local service and long distance service at a single price is growing. Preemption is therefore necessary to protect the purpose set forth in the *Truth-in-Billing Order* to further “the pro-competitive goals of the 1996 Act.”

Finally, the Commission should preempt state truth-in-billing regulation because intrastate aspects cannot be separated from the interstate aspects of the matter. Customers use both interstate and intrastate communications service and carriers bill for these services on a single bill. Not only would it be cost prohibitive for a carrier to attempt to send a customer separate bills for interstate and intrastate services, it would also cause mass confusion to consumers. Moreover, as more and more customers move to bundled offerings that provide a

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<sup>11</sup> *Id.* at 7498, ¶ 8.

customer with a package of both interstate and intrastate services, separate bills for interstate and intrastate services would be impossible to provide.

### **III. Other Proposals Presented in the *Notice***

#### **A. Separate Section for Mandated Charges**

BellSouth opposes the Commission's proposal to create a separate section for mandated charges. In an era of competition and de-regulation there is no need for new regulations that govern such minutiae as where a line item should be placed on a bill. Adding such a section provides no value to the customer, and could make it more difficult to review and validate charges.

In many cases, mandated charges relate to particular types of services and appear in different sections of the bill based on the types of charge they represent. Taxes, for example, typically appear in the section associated with the services against which they are applied. This makes sense. Consumers are very accustomed to having taxes calculated on the charges to which they relate. A separate section would frustrate the reader of the bill because it would merely be a listing of various charges with no readily available reference point to look at for reasonableness, i.e., a customer may not know the tax rate for a service but by comparing the amount of taxes to the total amount of services to which the tax relates the customer can determine whether the taxes seem reasonable or out of line. A separate section for these charges, therefore, will confuse consumers and make reviewing their bill more complicated and less user-friendly.

Additionally, forcing carriers to restructure their bills would be extremely expensive. As discussed, billing systems are large, complex systems that are not easily manipulated even for

small changes. A full scale restructure of a bill would be a monumental task requiring significant manpower and financial resources. From the consumer's standpoint, a forced restructure, such as would be required for a separate section for mandated charges, is unlikely to be of any value, and, indeed, would likely be counterproductive. BellSouth's research has shown that customers want simplification and clarity. In the focus groups that BellSouth has conducted, simple, less cluttered bills tested the best. Breaking charges into different sections, especially when it is unclear as to what services those charges relate, does nothing for simplification and clarification and instead further complicates and confuses the bill. The Commission should abandon its initial conclusion and allow carriers to report line item charges, mandated and non-mandated, in the section the carrier finds to be most appropriate. Nevertheless, were the FCC to require that bills be reformatted to include a mandated section, adequate time should be allowed for implementation of such a change. Given the number of billing systems that would be impacted, and the agreements with consolidators who bill on behalf of other parties that would be affected, BellSouth would suggest that the Commission provide at least one year for implementation.

**B. Definition of Mandated Charges**

The Commission seeks comment on the distinction between mandated and non-mandated charges. As described in the *Notice*, the Commission describes two potential definitions. The first is to define mandated charges as "amounts that a carrier is *required* to collect directly from customers, and remit to federal, state or local governments" while non-mandated charges would be "comprised of government authorized but discretionary fees, which a carrier must remit pursuant to regulatory action but over which the carrier has discretion whether and how to pass

on the charge to the consumer.”<sup>12</sup> The second defines mandated charges as those that are “remitted directly to a governmental entity or agent” while non-mandated would include only the charges collected and retained by the carrier.<sup>13</sup> The second proposed definition is the better of the two options. Defining mandated charges as including all amounts remitted directly to a governmental entity or its agent provides a more accurate picture of the customer’s bill for services compared to fees that are not tied to any particular service.

The Commission used the first definition in defining certain mandated charges in the *Truth-in-Billing Order*. Using faulty logic, the Commission refused to allow carriers to label universal service fees as mandated because, the Commission reasoned, it was the carriers’ business decision whether or not to recover the fee from their customers. The deciding factor in defining mandated, however, should not be whether or not the carrier has made a business decision to collect the fee from the customer, but rather whether the carrier has an obligation to remit funds to the government or its agent in response to a government mandate. If a carrier is required to submit the payment of funds to the government for a program to further the government’s interest then that fee should be labeled a mandated fee. Such fee remittances will usually be broken out as line items on a carrier’s bill – it is unlikely that any carrier could afford to forgo collecting that fee from its customers. Therefore, the best consumer choice is to label all fees that are remitted to the government or its agent as mandated.

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<sup>12</sup> *Notice*, 20 FCC Rcd at 6469, ¶ 40.

<sup>13</sup> *Id.* at 6470, ¶ 41.

### C. Standardized Labels for Separate Service Categories

The Commission asks whether bills should be divided into only two sets of charges – mandated and non-mandated – or whether a further separation of charges should be required. If it did require more categories than just mandated and non-mandated, the Commission asks whether it should create standardized labels for these categories of charges.<sup>14</sup> BellSouth believes that categories of charges beyond mandated and non-mandated are not helpful or practicable.

First, BellSouth sees no benefit to having services broken into prescribed categories. The Commission's rules apply to telecommunications services billed by carriers. What benefit can be derived by trying to categorize a carrier's telecommunications services? Would it require a transmission category (telephone calls) and a separate vertical features category (caller ID)? Or, would it require services for which there is a flat rate in one category, while separating out a category for services based on usage? As these examples demonstrate, there are numerous ways of grouping services, none of which makes a bill simpler or more easily verifiable. Furthermore, many carriers today offer bundles of services, which are sold for a single price. It would be very confusing to a customer to purchase a complete telecommunications package, e.g., all local with vertical features and long distance, for a single price only to receive a bill that divided the package into categories. The customer would have to piece together the different categories in order to determine whether the price quoted for the bundled services was the price actually billed.

Second, it is not practicable to require carriers to place services into categories for billing purposes. Apart from the confusion that consumers would experience, a requirement that bills

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<sup>14</sup> *Id.* at 6472, ¶ 46.

group services by category would place a burden on carriers' billing systems. The carrier's creation of a bundle, including the price to charge for the combined services, is based on the total services offered through that bundle. In many cases it is very difficult to then separate a price to be allocated to a specific piece of that bundle and bill it in separate sections of the bill. Superimposing a category billing requirement greatly increases the complexity of billing systems, which leads to additional cost for maintenance and a very time consuming change process.

Clearly, consumers do not want more information if that information is not helpful. In fact, BellSouth has conducted focus groups on billing and the overwhelming response was that the bills were too long and difficult to understand. Adding the complexity of service categories will only increase the bill length and further confuse matters. Considering the negative consumer and carrier impact that separate categories of charges will cause, the Commission should not require any categories beyond mandated and non-mandated.

#### **D. Standardized Labeling for Mandated Charges**

BellSouth believes that the Commission should give further guidance on the labeling of mandated charges. In the *Truth-in-Billing Order*, the Commission adopted a requirement that carriers must use standardized labels to identify "line item charges associated with federal regulatory action;"<sup>15</sup> however, it did not establish any standard labels but instead issued a *Further Notice of Proposed Rulemaking* to determine "the specific labels that carriers should

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<sup>15</sup> *Truth-in-Billing Order*, 14 FCC Rcd at 7523, ¶ 50.

adopt.”<sup>16</sup> The Commission has never acted on that *Further Notice*, and labels for these charges vary significantly among carriers. Moreover, several parties filed PFRs on this issue.

BellSouth believes the Commission should complete the *Further Notice* proceeding, and act on the PFRs on this issue, by reversing the requirement for standardized labels in the initial *Truth-in-Billing Order*. To address the concerns discussed by the Commission for needing standardized labels, however, the Commission should establish a set of standardized labels to serve as a safe harbor for carriers in labeling mandated charges. A safe harbor set of labels accomplishes at least two things.

First, although carriers would not be required to adopt the standard language, it provides carriers guidance in naming these types of charges. Thus, while costs would prohibit carriers from making a wholesale adoption of the standard names, as carriers perform other maintenance on their bills, they will probably also adopt the standard language. Over time, it is likely that the standard language would become the norm.

Second, it closes an open proceeding before the Commission, thereby removing uncertainty. Equally important, it does so in a way that diminishes any concerns the Commission may have about a First Amendment violation. Although the Commission satisfied itself that required standardized labels did not violate the First Amendment, at least one party questioned the constitutionality of the requirement in its PFR; thus, this issue has never been fully litigated. Accordingly, any attempt by the Commission to maintain its standard label requirement and actually implement standardized labels for these line items will cause a new round of litigation. Even if the Commission was successful in its litigation, a required change of

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<sup>16</sup> *Id.* at 7537, ¶ 71.

line item labels in a short period of time, as opposed to a gradual move to the standardized labels that BellSouth believes many carriers will make under the safe harbor proposal, will cause carriers to incur significant costs. Such costs are hardly justified considering that the industry has been operating without the actual standardized label names for over five years since the Commission ordered that standardized labels be used.

**E. Point of Sale Disclosures**

Although BellSouth currently informs customers at the point of sale of the services that he or she is purchasing, including the cost for the services and the fact that additional charges, such as fees and taxes, will apply, it opposes the requirement for disclosure proposed in the *Notice*. First, telecommunications markets are highly competitive – both wireline and wireless. It therefore is unreasonable to apply regulations around sales activities to these markets beyond those that any other competitive market would face. At its core, the Commission’s aim should be to regulate where regulation is needed and to step back when competition is present. As Commissioner Furthgott-Roth stated in his dissent to the *Truth-in-Billing Order*, “as competition increases, the need for regulation decreases. Through [sections 10 and 11] and other provisions of the 1996 Act, Congress made clear its intention that the Commission remove regulations as competition develops. We are not supposed to increase regulation in response to competition, as this Order does.”<sup>17</sup> Such competition ensures that competitors are providing customers with the proper information to allow them to shop and compare services. And competition, not regulation, is the best motivator of carriers’ behavior. Regulation in a competitive market only adds unnecessary costs to the service and limits what competitors can provide to the customer.

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<sup>17</sup> *Id.* at 7571.

Competition has been tried and tested time and again and always prevails as the best way to ensure that consumers receive the services they want at the best possible price. Competition in the markets certainly provides carriers great incentives to treat customers fairly. Service providers can ill-afford to acquire reputations for being bad actors and misleading consumers.

Moreover, if the Commission is concerned about deceptive trade practices, consumers have recourse in state proceedings to fight such actions. Telecommunications carriers are no different from any other provider of services – they are subject to the same sales practice rules. If a state agency believes that a telecommunications carrier is not disclosing enough information to a customer, the carrier will be assessed penalties by that state agency. Indeed, BellSouth desires to provide the best customer service available in sales and support and that is the reason that it provides customers the disclosures that it does today. Even if BellSouth did not have such a strong customer commitment to excellence, however, it would not be free to omit these disclosures, as most of them ensure that BellSouth is compliant with state sales practice rules. Additionally, the Commission references a settlement agreement reached between various wireless carriers and 32 states' attorneys general regarding sales practices. Rather than this settlement agreement evidencing a need for Commission regulation in area not even within the expertise of the Commission, the settlement agreement demonstrates that state governance of sales activities is working. The sale of telecommunications services poses no greater threat to consumers than the sale of any other service and should not receive additional regulation.

Second, the proposed disclosures are impossible to provide. The disclosures that are proposed in the *Notice* would require all non-mandated charges and a reasonable estimate for mandated charges. In many cases, such charges are usage-based and impossible to estimate

when the carrier has no history on which to base the estimate. Accordingly, the Commission cannot create a rule that is impossible to implement.

#### **IV. Conclusion**

For the reasons set forth herein, the Commission should preempt state law over truth-in-billing but should not implement any of the new rules that it proposed in the *Notice*. The Commission should, however, act on the PFRs that were filed in this docket in 1999 and reverse its requirement prescribing standardized labels for mandated charges. Additionally, it should adopt a broad definition of mandated charges to include all fees that are remitted to the government or its agent.

Respectfully submitted,

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Dated: June 24, 2005

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 24<sup>th</sup> day of June 2005 served the following parties to this action with a copy of the foregoing **BELLSOUTH COMMENTS** by electronic filing to the parties listed below.

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