

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

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

**SPRINT COMMENTS**

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## Summary

1. The FCC Should Establish a Uniform Federal Regime for Both Wireless and IXC Billing Practices. Congress has directed the FCC to establish “a Federal regulatory framework to govern the offering of all” CMRS with the “appropriate level of regulation.” Customers have benefited enormously from these policies, as national wireless carriers have generated operational efficiencies and economies of scale. The FCC should protect these customer benefits by preventing states from disrupting the national regime with balkanized state-by-state billing regulation, and it should extend this federal regime to interexchange carriers.

2. States Will Have an Important Role to Play in the Protection of Wireless and IXC Customers. Nothing in the Second FNPRM would prevent states from prosecuting carriers for false or misleading statements under their general contract and consumer protection laws. As the FCC has already recognized, however, supplemental state laws regulating wireless carrier and IXC billing practices would undermine and thwart clearly discernible federal objectives – by “making nationwide service more expensive for carriers to provide and raising the cost of service to consumers.”

3. Enforcement Authority Is Not Properly Delegated to the States. Federal courts have held that the FCC does not possess the authority to subdelegate its authority to states, absent specific Congressional authorization. Here, Congress has not empowered the FCC to delegate billing practices enforcement to states, and such a delegation would be incompatible with the Congressional directive to establish a Federal regulatory framework for CMRS services and encourage competition in the IXC market.

#### 4. Sprint’s Comments on Specific Rule Proposals:

As indicated below, any rules adopted must be based upon a single uniform federal regime and preempt any supplemental state regulation in this area. Without federal uniformity, additional state regulation would defeat important objectives and affirmatively harm consumers.

- (a) *Sprint does not oppose the Commission’s tentative conclusion that “Mandated” and “Non-Mandated” charges should be listed separately.* Sprint has implemented this process within its wireless invoices and does not oppose extension of this mandate to IXC invoices in the context of national rules provided the FCC gives carriers sufficient time to modify billing systems.
- (b) *“Mandated” charges should be defined as charges a carrier is required to collect directly from customers.* This definition is consistent with that already in use by Sprint and Sprint does not oppose its use provided the Commission retains maximum flexibility for carrier implementation of its rules.
- (c) *The FCC should not dictate the line item descriptions or types of charges that carriers may utilize.* The market continues to be the best regulator of carrier practices, including billing practices, and, again, the Commission should maintain maximum flexibility for carriers to respond to the market and consumer needs. Government requirements in this area would also pose significant First Amendment problems.
- (d) *Sprint does not oppose point of sale disclosures.* Sprint will provide disclosure of rates, taxes and surcharges to the extent the information is available.

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**SPRINT COMMENTS**

Sprint Corporation, on behalf of its local, long distance and wireless divisions, submits the following comments in response to the *Second Further Notice of Proposed Rulemaking* in the above-captioned matter.<sup>1</sup> Sprint recognizes that both the FCC and the States have an important role to play in the protection of consumer welfare. With respect to billing regulations, however, Sprint supports the FCC's tentative conclusion that it should preempt state billing practices regulation with respect to Commercial Mobile Radio Services ("CMRS") and the services offered by interexchange wireline carriers ("IXCs"). Sprint notes that the current success of the wireless industry is based upon a national regulatory framework which has produced economies of scale, cost savings and other benefits to consumers. Likewise, state regulation of IXC rate structures through billing requirements would increase costs and deprive IXCs of the flexibility necessary to respond to an already intensely competitive market. Accordingly, Sprint urges the Commis-

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<sup>1</sup> See *Truth-in Billing and Billing Practices*, CC Docket No. 98-170, *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CG Docket No. 04-206, *Second Further Notice of Proposed Rulemaking*, FCC 05-66, 20 FCC Rcd 6448 (March 10, 2005), summarized in 70 Fed. Reg. 30044 (May 25, 2005) ("Second FNPRM"). The *Second FNPRM* was issued as part of the Commission's *Second Report and Order* in this proceeding ("*Second Truth-in-Billing Order*").

sion to implement a uniform federal regime which preserves the greatest flexibility for carriers to offer competitive products and prevents the imposition of “balkanized” state regulation.

**I. THE FCC SHOULD ESTABLISH A UNIFORM FEDERAL REGIME FOR BOTH WIRELESS AND IXC BILLING PRACTICES**

Sprint agrees with the Commission’s tentative conclusion that it should preempt “state billing practices regulations” with respect to CMRS carriers and IXCs.<sup>2</sup> As the Commission explains, “limiting state regulation of CMRS and other interstate carriers’ billing practices, in favor of a uniform, nationwide federal regime, will eliminate the inconsistent state regulation that is spreading across the country, making nationwide services more expensive for carriers to provide and raising the cost of service to consumers.”<sup>3</sup> Sprint further agrees with the Commission that the line between federal and state authority is “properly drawn to where states only may enforce their own generally applicable contractual and consumer protection laws, albeit as they apply to carriers’ billing practices.”<sup>4</sup>

These tentative conclusions are consistent with Congress’ instruction that the Commission establish “a Federal regulatory framework to govern the offering of all commercial mobile services,” with the “appropriate level of regulation.” They are also justified in the context of IXCs that compete in a similarly competitive national market. Further, giving states the ability, through billing practices regulation, to prevent IXCs from using surcharges to recover the non-traffic sensitive costs of providing interstate services would effectively cede to the states rate

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<sup>2</sup> *Second FNPRM* at ¶ 50.

<sup>3</sup> *Id.* at ¶ 52.

<sup>4</sup> *Id.* at ¶ 53.

structure regulation of interstate services, which the Commission cannot do without Congressional directive.<sup>5</sup>

**A. CONGRESS HAS ESTABLISHED A POLICY OF NATIONAL WIRELESS REGULATION**

In 1993, Congress charged the FCC with establishing “a Federal regulatory framework to govern the offering of all commercial mobile services.”<sup>6</sup> Congress deemed a national framework necessary to “foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.”<sup>7</sup> In order to permit the FCC to establish this federal framework for CMRS, Congress expanded FCC authority to include jurisdiction over intrastate wireless services by amending Section 2(b) of the Act – the statutory source for state authority over telecommunications carriers.<sup>8</sup>

As the Commission later explained:

[I]n the 1993 Budget Act, Congress also added an exception to section 2(b) of the Communications Act. Section 2(b) generally reserves to the states jurisdiction over intrastate communication service by wire or radio of any carrier. The 1993 Budget Act amended section 2(b) to exempt section 332 from its provisions.<sup>9</sup>

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<sup>5</sup> See *USTA v. FCC*, 359 F.3d 554, 565-68 (D.C.Cir. 2004). Allowing the states to regulate the rate structures of IXCs by regulating their billing practices would also conflict with the Commission’s long standing policy that when carriers lack market power – and in the extremely competitive interexchange marketplace, no carrier can exercise any market power – direct regulation of the rate structure of such carriers makes no sense and is contrary to the Commission’s mandate under the Act to promote competition.

<sup>6</sup> H.R. CONF. REP. NO. 103-213, 103d Cong., 1<sup>st</sup> Sess. at 490 (1993).

<sup>7</sup> H.R. REP. NO. 103-111, 103d Cong., 1<sup>st</sup> Sess. at 260 (1993).

<sup>8</sup> As amended, Section 2(b) now provides, “Except as provided in . . . section 332 of this title . . . , nothing in this chapter shall be construed to apply or to give the [FCC] jurisdiction with respect to . . . intrastate communication service by wire or radio.” 47 U.S.C. § 152(b).

<sup>9</sup> *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd 9610, 9640 ¶ 84 (1991). See also H.R. CONF. REP. NO. 103-213, 103d Cong., 1<sup>st</sup> Sess. at 497 (1993)(Congress amended Section 2(b) to “clarify that the Commission has the authority to regulate commercial mobile services.”).

In other words, Congress gave the FCC plenary authority over “all commercial mobile services,” including intrastate wireless services, by eliminating the statutory barrier to FCC control of intrastate services.

As the FCC has recognized, this Congressional action was taken with a sound public policy goal in mind. “As the legislative history of [the 1993 Budget Act] makes plain, Congress intended those building blocks to establish a *national* regulatory policy for CMRS, not a policy that is balkanized state-by-state.”<sup>10</sup> Through the *Second Truth-in-Billing Order* the FCC has taken the appropriate steps to protect this public policy focused on a federal regulatory regime.

Congress not only directed the FCC to establish a “Federal regulatory regime” for CMRS, it also directed the FCC to establish an appropriate level of regulation for the CMRS industry. To that end, Congress gave the Commission forbearance authority to exempt wireless carriers from traditional utility regulation.<sup>11</sup> In implementing the 1993 amendments, the FCC observed that Congress wanted to “ensure that an appropriate level of regulation be established and administered for CMRS providers”:

Congress acknowledged that neither traditional state regulation, nor conventional regulation under Title II of the Communications Act, may be necessary in all cases to promote competition or protect consumers in the mobile communications marketplace. \* \* \* [W]e establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers.<sup>12</sup>

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<sup>10</sup> *Connecticut Rate Regulation Denial Order*, 10 FCC Rcd 7025, 7034 ¶ 14 (1995 (emphasis in original)). See also, FCC Amicus Curiae Brief, *Verizon Wireless v. Hatch*, No. 04-3198, at 4 (8<sup>th</sup> Cir., filed Nov. 12, 2004)(the 1993 Budget Act amendments established “a uniform national regulatory policy for CMRS, not a policy that is balkanized state-by-state.”).

<sup>11</sup> See 47 U.S.C. § 332(c)(1)(A).

<sup>12</sup> *Second CMRS Order*, 9 FCC Rcd 1411, 1418 ¶¶ 14-15 (1994).

And, as the FCC stated more recently, “[i]n place of traditional public utility regulation, the 1993 Budget Act sought to establish a *competitive nationwide market* for [CMRS] with limited regulation.”<sup>13</sup>

**B. THE NATIONAL WIRELESS REGULATORY REGIME HAS BEEN A SUCCESS**

As Chairman Martin recently observed, this federal deregulatory approach to a competitive market has resulted in “an amazing story.”<sup>14</sup> At the time the 1993 Budget Act was enacted, wireless was an “elite or niche service,” it was used by “only 16 million people,” it was “primarily a local service,” and this “local service was expensive.”<sup>15</sup> Today, in contrast, wireless has become “a more national service” and “the poster child for competition”:

Wireless carriers offer all-distance plans, where there is no additional fee for long distance. Pricing has come down. Today, the average monthly bill is about \$36 [as compared to \$61 in 1993], with an average of 507 minutes of use a month. And the average price per minute is about 10 cents [a 13% reduction from the previous year alone]. And wireless provides far more than voice today. Mobile phones also provide text messaging, Internet access, pictures, ring tones, and video games.<sup>16</sup>

Indeed, CTIA – The Wireless Association, estimates there are now more than 182 million wireless subscribers.<sup>17</sup> More than 93 percent of the United States population has access to four or more wireless competitors.<sup>18</sup>

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<sup>13</sup> *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd at 9640 ¶ 84 (emphasis added).

<sup>14</sup> See Presentation of Commissioner Kevin J. Martin, *Wireless and Broadband: Trends and Challenges*, Dow Lohnes-Comm Daily Speaker Series, at 1 (Oct. 14, 2004)(“Martin Dow Lohnes Presentation”).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1-2 and 6-7.

<sup>17</sup> See CTIA Semi-Annual Wireless Industry Survey (Dec. 2004).

<sup>18</sup> Martin Dow Lohnes Presentation at 2.

This success has been achieved in large measure due to the Commission's policies of forbearance and reliance on market forces, and "because of a consistent regulatory treatment throughout the country."<sup>19</sup> As Chairman Martin has noted, this consistent national treatment has allowed wireless carriers to develop "uniform service plans, customer service training, billing systems, and 'back office' management tools."<sup>20</sup> This, in turn, has enabled wireless carriers to develop and use their "economies of scale and scope to offer lower costs to more consumers."<sup>21</sup>

The Commission has recognized in other contexts that there are "vast scale economies" in the wireless industry,<sup>22</sup> and has found that "mobile telephony service providers with nationwide service areas can achieve certain economies of scale and increased efficiencies compared to operators with smaller service areas."<sup>23</sup> These economies enable wireless carriers to "lower the cost per unit of producing and distributing a product as the volume of output expands."<sup>24</sup> One former FCC Chief Economist has determined that as "an empirical matter, wireless telephony exhibits strong economies of scale and scope, and national networks have proven crucial to industry development."<sup>25</sup>

In summary, Congress has directed the Commission to establish a "Federal regulatory framework" for CMRS with the "appropriate level of regulation" in order to "foster the growth

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<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Ninth Annual CMRS Competition Report*, 19 FCC Rcd 20597 at ¶ 106 (2004).

<sup>23</sup> *Spectrum Cap Biennial Review Order*, 16 FCC Rcd 22668, 22688 ¶ 38 (2001). *Compare AT&T Wireless/Cingular Merger Order*, 19 FCC Rcd 21522 at ¶ 231 (2004)(Cingular estimates annual cost savings of "more than \$2 billion in subsequent years due to new economies of scale and scope created by the acquisition of AT&T Wireless.").

<sup>24</sup> *Ninth Annual CMRS Competition Report*, 19 FCC Rcd 20597 at ¶ 104.

<sup>25</sup> Thomas W. Hazlett, *Is Federal Preemption Efficient in Cellular Phone Regulation*, 56 FED. COMM. L.J. 155, 156-57 (Dec. 2003).

and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national infrastructure.”<sup>26</sup> The wireless industry over the past decade has transformed itself from a local to a national service, and the American consumer has enjoyed enormous benefits as a result, both from resulting economies of scale and from individual carrier responses to customer needs in the marketplace.<sup>27</sup> The FCC should protect these advances in telecommunications by maintaining the federal regulatory regime established by Congress and by preventing states from disrupting that national regime with balkanized state by state billing regulation.

**C. THE FCC SHOULD RECOGNIZE THE SIMILAR FEDERAL NATURE OF IXC SERVICES**

The Commission recently held that the fastest growing competitor to “traditional” long distance service – long distance services using the Voice over Internet Protocol (“VoIP”) – is exempt from state regulation because VoIP services are inherently interstate and state regulation would negate valid federal policies and rules.<sup>28</sup> Subjecting “traditional,” but not VoIP, long distance services to state regulation would distort competition in the marketplace. Courts have held that the FCC may preempt state regulation of intrastate services if the state regulation “could interfere with the Commission's achievement of its valid goal of providing interstate telephone users with the benefits of a free market and free choice.”<sup>29</sup> Disparate regulation of competing services would have precisely this effect.

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<sup>26</sup> See H.R. REP. NO. 103-111, 103d Cong., 1<sup>st</sup> Sess. at 260 (1993).

<sup>27</sup> See Thomas W. Hazlett, *Is Federal Preemption Efficient in Cellular Phone Regulation*, 56 FED. COMM. L.J. at 193 (“The U.S. [wireless] market has gravitated to national networks because of economic efficiency.”).

<sup>28</sup> See *Vonage Declaratory Order*, 19 FCC Rcd 22404, 22405 (2004).

<sup>29</sup> *NARUC v. FCC*, 880 F.2d 422, 430-31 (D.C. Cir. 1989).

As with wireless carriers, IXCs face an intensely competitive marketplace that demands the efficiencies of national regulation. With the introduction of VoIP services as well as other integrated products, IXCs now face even more intense competition from carriers not subject to the patchwork of state regulatory practices. In this context, the FCC should recognize the federal nature of the IXC marketplace and preempt state regulation of IXC billing practices as well as CMRS billing practices.

## **II. STATES STILL HAVE AN IMPORTANT ROLE TO PLAY IN THE PROTECTION OF WIRELESS AND IXC CUSTOMERS**

While Sprint strongly supports the establishment of a single set of uniform national rules for telecommunications services, Sprint acknowledges that States have an important role, through their laws of general applicability, in protecting consumer rights. Nothing in the Commission's *Second FNPRM* would prevent states from prosecuting carriers for false or misleading statements under principles of general contract law or consumer protection statutes. However, this general enforcement authority should not be used to establish state-by-state regulation of telecommunications billing practices. Moreover, both States and consumers will continue to have the ability to bring section 201 and 202 complaints under section 208 against carriers at the FCC.

With the establishment of a single uniform regime governing telecommunications billing practices, the Commission must preempt all state regulation involving such billing practices, including state rules that arguably are consistent with the FCC rules. The Supreme Court has made clear that otherwise valid state laws may be preempted if the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."<sup>30</sup> Indeed, as

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<sup>30</sup> *Fidelity Federal Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141 153 (1982); *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 368-69 (1986) ("Pre-emption occurs . . .

the Commission recognized in implementing the 1993 Budget Act, it has both the authority and obligation to preempt state regulation of “other terms and conditions” if the state regulation “thwarts or impedes a valid Federal policy.”<sup>31</sup>

The Commission in its *Second Truth-in-Billing Order* adopted national rules that it deemed were appropriate for the competitive wireless industry and proposed additional regulation on specific aspects of telecommunications billing.<sup>32</sup> Further additional state regulation of wireless and IXC billing practices, including supplemental regulation that may be consistent with these FCC rules, necessarily would thwart and impede valid federal policies.<sup>33</sup> Such carriers would no longer be subject to a “Federal regulatory framework” if states begin to enact their own set of supplemental billing practices rules. And a federal regime supplemented by disparate state

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where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.”). In this regard, the Supreme Court has recognized that FCC orders and regulations can have the same preemptive effect as a federal statute. *See City of New York v. FCC*, 486 U.S. 57, 64 (1988); *Louisiana Public Service Comm’n v. FCC*, 476 U.S. 369. Given the FCC’s clear authority to preempt state laws regulating the other terms and conditions of CMRS, it is unnecessary for the FCC to address “the proper boundaries of ‘other terms and conditions’ under section 332(c)(3)(A) of the Act.” *Second FNPRM* at ¶ 52.

<sup>31</sup> *Second CMRS Order*, 9 FCC Rcd 1411, 1506 nn. 515, 517 (1994). *See also Second Truth-in-Billing Order* at ¶ 35 (“Even setting aside the preemptive effect of section 332(c)(3), we note that the type of state regulations described above may be subject to preemption because they conflict with established federal policies. It is recognized widely that federal law preempts state law where, as here, the state law would ‘stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,’ or of federal regulations.”)(supporting citations omitted).

<sup>32</sup> Wireline IXCs have, since the FCC’s 1999 *First Truth-in-Billing Order*, been subject to the comprehensive framework for regulating their billing practices that the FCC has now applied to wireless carriers.

<sup>33</sup> As the FCC has previously noted, “While we recognize that states have a legitimate interest in protecting the interests of telecommunications users in their jurisdictions, we also believe that competition is a strong protector of these interests and that state regulation in this context could inadvertently become as [sic] a burden to the development of this competition.” *Second CMRS Order*, 9 FCC Rcd at 1421 ¶ 23.

rules is, as a practical matter, not materially different than a regime established solely by disparate state rules.

Additional state regulation in this area would also mean that wireless carriers are no longer subject to the “appropriate level of regulation.” This Commission has already established the appropriate level of regulation for these carriers. Accordingly, without preemption, each state would be free to supplement these federal rules by adding additional layers of rules and regulation (which almost always differ by each state). In this regard, the Commission has already recognized that “supplemental” state regulation of the billing practices of wireless carriers and IXC’s would “undermine” clearly discernible federal objectives:

We believe that limiting state regulation of CMRS and other interstate carriers’ billing practices, in favor of a uniform, nationwide, federal regime, will eliminate the inconsistent state regulation that is spreading across the country, making nationwide service more expensive for carriers to provide and raising the cost of service to consumers.<sup>34</sup>

Chairman Martin has recognized that supplemental state regulation for consumer protection purposes, though well intended, could result in “a single state . . . establishing a *de facto* national standard” for wireless service:

Or, even worse, wireless carriers may be faced with conflicting state regulations, which make maximizing scale and scope quite difficult. . . . [W]e need to re-

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<sup>34</sup> *Second FNPRM* at ¶¶ 50 and 52. *See also Second Truth-in-Billing Order* at ¶ 24 (“We also recognize that overbroad state regulations in this area may frustrate our federal rules and the federal objective of minimizing regulatory burdens on the competitive CMRS industry.”); *id.* at ¶35 (“Efforts by individual states to regulate CMRS carriers’ rates through line item requirements thus would be inconsistent with the federal policy of a uniform, national and deregulatory framework for CMRS. Moreover, there is the significant possibility that state regulation would lead to a patchwork of inconsistent rules require or precluding different types of line items, which would undermine the benefits derived from allowing CMRS carriers the flexibility to design national or regional rate plans.”).

member that wireless is a robustly competitive field and respect the national nature of the service being provided.<sup>35</sup>

Sprint submits that the Commission, in order to discharge its Congressional obligations to establish a federal regulatory framework with the appropriate level of regulation, must preempt all state laws seeking to regulate wireless and IXC carrier billing practices.

### **III. ENFORCEMENT AUTHORITY WITHOUT FCC REVIEW MAY NOT BE LAWFULLY SUBDELEGATED TO THE STATES**

The Commission asks whether states can enforce any national wireless billing practices rules that it may adopt, noting that “our rules against ‘slamming’ . . . provide that state commissions may elect to administer our slamming rules.”<sup>36</sup> While the Commission may view this as a means of engaging the states in process, the Commission does not possess the legal authority to subdelegate to state regulators the authority to enforce any rules that it may adopt in this proceeding. Furthermore, experience shows that such delegation of authority can result in uneven and frequently conflicting enforcement proceedings which exceed the original delegation grant and undermine the Commission’s stated goal of establishing uniform rules.

The D.C. Circuit Court of Appeals held last year, in vacating a portion of the *Triennial Review Order*, that this Commission may “not subdelegate to outside entities – private or sovereign – absent affirmative evidence of authority to do so”:

[S]ubdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization. . . . A general delegation of decision-making authority to a federal administrative agency does *not*, in the ordinary

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<sup>35</sup> Martin Dow Lohnes Presentation at 6-7.

<sup>36</sup> *Second FNPRM* at n. 152. *See also id.* at ¶ 45 (“If we establish national rules, can we have states enforce them?”); *id.* at ¶ 51 (“[W]e seek comment on . . . whether we should . . . adopt an enforcement regime where states are permitted to enforce rules developed by the Commission.”).

course of things, include the power to subdelegate that authority beyond federal subordinates.<sup>37</sup>

The Court explained that subdelegation of FCC authority to a state regulator or another non-federal entity would “increase[] the risk that these parties will not share the [FCC’s] ‘national vision and perspective,’ and thus may pursue goals inconsistent with those of the [FCC] and the underlying statutory scheme.”<sup>38</sup>

The Commission is correct that it permits state regulators to enforce its slamming rules.<sup>39</sup> This delegation, however, has never been challenged in court and, in light of the *USTA* decision, may well be *ultra vires*. Moreover, in contrast to the provisions of Section 258, which contemplate limited state enforcement activities associated with FCC prescribed rules for intrastate services only, there is nothing in the Communications Act even suggesting that Congress envisioned that state regulators would enforce national FCC rules governing wireless and IXC carrier billing practices. To the contrary, as discussed above, Congress amended the Act to give the Commission plenary authority over wireless carriers precisely so the FCC could establish “a Federal regulatory framework to govern the offering of all commercial mobile services” and, thereby, “foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.”<sup>40</sup> Subdelegation to states of authority to enforce FCC rules would risk inconsistent inter-

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<sup>37</sup> *USTA v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir.), *cert. denied*, 125 S. Ct. 345 (2004)(emphasis in original).

<sup>38</sup> *Id.* at 565-66 (internal citations omitted).

<sup>39</sup> *See* 47 C.F.R. §§ 64.1100 *et seq.*

<sup>40</sup> H.R. CONF. REP. NO. 103-213, 103d Cong., 1<sup>st</sup> Sess. at 490 (1993); H.R. REP. NO. 103-111, 103d Cong., 1<sup>st</sup> Sess. at 260 (1993).

pretation of the national rules – the very balkanized, patchwork of conflicting obligations that the federal regime was designed to avoid.<sup>41</sup>

Any subdelegation of enforcement authority will necessarily include the ability to interpret rules and their meanings. It is almost inevitable that 50 different state jurisdictions will reach differing and frequently conflicting interpretations of the FCC's rules. Indeed, the FCC's decision to grant enforcement authority over its slamming rules to the states is a demonstration of the manner in which purportedly unified federal rules can be interpreted and applied with vastly different results in various jurisdictions.<sup>42</sup> Given the experience with state enforcement of the FCC's slamming rules, it is unlikely that national billing regulations would be enforced with any consistency.

Sprint appreciates the Commission's desire to establish a federal-state partnership. State commissions are well equipped to resolve factual disputes and states will continue to have the ability to enforce their laws of general applicability. Both states and consumers will also have

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<sup>41</sup> As the FCC stated earlier this week in preempting states from enforcing technical standards implementing the Hearing Aid Compatibility Act, which contains a delegation provision to the states, "If the States were to assume this [enforcement] role, we predict that the standards would be applied unevenly, which would disrupt the certainty and uniformity of regulation necessary to realize economies of scale in manufacturing and distribution, and to market phones on a national basis." *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, *Order on Reconsideration*, FCC 05-122 (June 21, 2005).

<sup>42</sup> Several states have interpreted the FCC's rules as allowing them to impose additional slamming requirements, including prescribing more generous "reimbursement" payments to end users found to have been slammed. At least one state has prescribed that carriers may only use one of the verification options allowed under FCC rules. Other states have found that a carrier is guilty of a slam if the complaining party alleges that the person verifying the change was not authorized to do so, even though the D.C. Circuit Court found that the FCC had no authority under section 258 of the Act to impose forfeitures on a carrier for failing to comply with the "virtually impossible task" of "guaranteeing" that the person who verifies the change was in fact authorized to do so. *AT&T v. FCC*, 323 F.3d 1081,1086-1087 (D.C. Cir. 2003). Other states will refuse to issue a decision denying a slamming complaint, with the result that carriers are unable to collect charges properly owed to them.

the ability to seek enforcement of any alleged abuses of the FCC's rules through section 208 complaints. In the end, however, national services will be significantly hampered by multiple interpretations of the rules, which will invariably occur if 50 different states are allowed to interpret and apply the same federal law requirements.

In connection with the wireless industry, Congress has been unmistakably clear: it expects the FCC to establish "a Federal regulatory framework to govern the offering of all commercial mobile services." Indeed, "wireless is a more national service" and a single state should not be able to establish "a *de facto* national standard,"<sup>43</sup> Similarly, IXCs simply cannot be expected to develop state-specific bills for their customers resident in the each of the 50 states, especially given the fact that IXCs are subject to the rate averaging and rate integration provisions of Section 254(g) of the Act.

#### **IV. SPRINT'S COMMENTS ON SPECIFIC RULE PROPOSALS**

Sprint below addresses certain of the specific rule proposals that the Commission has included in the *Second FNPRM*. Sprint supports many of the Commission's proposed billing regulations. It should be understood, however, that Sprint only believes these proposed billing regulations can be found to be in the public interest if they are enacted as part of a single federal regime that preempts all state supplemental regulation in this area. Without such preemptive action, these proposed rules would result in unwieldy state-by-state interpretations and supplemental rules that would increase operational burdens and costs to consumers, reduce competition and undermine the federal regime established by Congress.

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<sup>43</sup> *Martin Dow-Lohnes Presentation at 6-7.*

**A. THE FLEXIBILITY OF CARRIER BILLING SYSTEMS MAY BE LIMITED AND MODIFICATIONS MAY TAKE SUBSTANTIAL TIME**

Sprint urges the Commission to be mindful of its prior observations that “all regulation, necessarily implicates costs, including administrative costs, which should not be imposed *unless clearly warranted*.”<sup>44</sup> These costs may be particularly burdensome with respect to billing platforms which are notoriously difficult to modify and which are not always within the direct control of the carrier. Sprint’s wireless division alone processes approximately 1.2 billion call detail records (CDRs) a month or roughly 15 billion records per year. The internal management systems necessary to process, rate and bill these records monthly are both complex and expensive. Any modification to such billing platforms requires months if not years of lead time. The FCC should be aware that every detailed regulation that touches these complex systems can have millions of dollars of potential cost, all of which must ultimately be paid by consumers.

The Commission must also be sensitive to the fact that not all billing platforms are directly in the control of a carrier. Sprint’s long distance operation, for example, relies in part on the billing platforms provided by third parties. Sprint does not know at this time what these third parties may attempt to charge Sprint to accommodate the FCC’s proposed billing modifications or how quickly these changes can be made. Again, Sprint cautions the FCC that substantial changes to billing protocols may have the unintended effect of increasing costs to consumers and should be carefully reviewed before implementation.

Sprint recognizes that problems with various billing practices have arisen in the past. Competition, however, has been, and continues to be, a powerful force in modifying carrier behavior, and indeed, many of the complaints made against the wireless industry have resulted in

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<sup>44</sup> *CMRS Interconnection and Resale Obligations*, 11 FCC Rcd 18455, 18463 ¶ 14 (1996)(emphasis added).

substantial new plans and billing structures. It has been the flexibility of the market that has permitted carriers to develop new billing structures and rate plans that more precisely meet the demands of their customers. Any Commission rules regarding billing practices must be sufficiently flexible to allow carriers to develop new and alternative rate structures, billing formats and descriptions. Any attempt by the Commission to dictate such specifics to the industry will have the inevitable result of reducing customer choice and quashing carrier innovation.

Sprint recognizes that wireless carriers, particularly during the nascent stages of the industry, experienced billing practice issues that generated customer complaints. Sprint notes, however, that far from expanding, these complaints have remained small as a relative matter, demonstrating the market's proper response to these issues. The evidence the Commission cites in support of new, detailed rules is that it received last year (in 2004) approximately 18,000 billing practices related complaints against wireless carriers.<sup>45</sup> However, given that there were over 182 million wireless customers at the end of last year,<sup>46</sup> this constitutes a complaint rate of 0.01 percent – or one complaint per every 10,100 wireless customers. Sprint respectfully submits that a complaint rate this miniscule does not suggest a problem in need of substantial new rules. Rather, it demonstrates that the market is resolving the issues that appear to concern the Commission.

It also bears emphasis that the issue currently before the Commission is not the existence of line item descriptions that mislead customers. The Commission has already ruled that misleading line item descriptions are unlawful,<sup>47</sup> and it possesses ample tools, including its forfeiture

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<sup>45</sup> See *Second Truth-in-Billing Order* at ¶ 16.

<sup>46</sup> See CTIA Semi-Annual Survey of the Wireless Industry (Dec. 2004).

<sup>47</sup> See *NASUCA Declaratory Order* at ¶ 25 (“[W]e reiterate here that all carriers are prohibited from including misleading information on their telephone bills.”).

authority, to prosecute any carrier that misleads its customers. Consumers and States also have the ability to bring enforcement actions under section 208 against carriers they believe to be taking misleading or unlawful actions in violation of sections 201 and 202 of the Act. The issue rather is whether the Commission should impose new regulation on carriers that are already providing truthful and accurate bills and prevent additional state specific regulation.

Congress has made clear that the Commission's job is to "promote competition and reduce regulation."<sup>48</sup> Yet, the detailed billing rules being considered would have the opposite effect – by adding regulation (and costs) to competitive markets and by reducing the ability of carriers to compete with each other and respond to customer demands. Under these circumstances, it is especially important that the Commission not proceed with its new rule proposals without some demonstration that the new rules are "clearly warranted" and without some confidence that the benefits of the new regulation would exceed the costs of implementation.

**B. SPRINT DOES NOT OPPOSE THE COMMISSION'S TENTATIVE CONCLUSION THAT "MANDATED" AND "NON-MANDATED" CHARGES BE LISTED SEPARATELY**

The Commission tentatively concludes that government "mandated" charges should be listed separately from "non-mandated" charges.<sup>49</sup> Sprint does not oppose a regulatory requirement that such charges be separated in a manner that makes clear to consumers which charges are mandated and which charges are not. Indeed, Sprint's wireless operations are already subject to such an obligation pursuant to the AVC and the CTIA Model Code. Sprint encourages the Commission, however, to provide carriers the maximum flexibility in the manner in which this requirement is implemented. Invoice structures vary by carrier and billing platforms and carriers

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<sup>48</sup> See Preamble, Telecommunications Act of 1996, PUB. L. NO. 104-104, 110 Stat. 56 (1996). This Congressional intent is further evidenced by Sections 10 and 11 of the Act, which give the FCC to tools to reduce regulation in markets as they become competitive.

<sup>49</sup> *Second FNPRM* at ¶39.

must be given the flexibility to accommodate these systems, while complying with the intent of the Commission's proposed obligation. In addition, and as discussed further below, it is imperative that carriers be given the freedom to structure their bills, including line items, in a manner they believe is most appropriate for the market.<sup>50</sup> This freedom is necessary to allow carriers to react to customer demands, while continuing to provide full disclosure – and in the process, improve their billing practices and reduce customer complaints (which are costly to handle).

If this obligation is to be imposed on all telecommunications carriers, Sprint repeats the cautionary note above that carriers are not always in complete control of the invoices generated on their behalf. The Commission must provide significant lead time to permit carriers to adjust billing platforms. With these caveats, however, Sprint does not oppose the Commission's suggested division of mandated and non-mandated charges.

**C. “MANDATED” CHARGES SHOULD BE DEFINED AS CHARGES A CARRIER IS REQUIRED TO COLLECT DIRECTLY FROM CUSTOMERS**

The Commission seeks comment on two possible definitions of “mandated” charges:

1. Those charges that a carrier is “*required* to collect directly from customers, and remit to federal, state or local governments;”<sup>51</sup> or
2. Those charges that are “remitted directly to a governmental entity or its agent,” whether or not carriers are required to collect these taxes or fees directly from customers.<sup>52</sup>

Sprint's wireless division, has agreed to abide by the terms of the AVC with the State Attorneys General and has already invested resources to accommodate those definitions. The AVC provides that Sprint will separate:

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<sup>50</sup> For medium to large business customers that negotiate and enter into individual contracts with carriers, disclosures should continue to be permitted through contract language.

<sup>51</sup> *Second FNPRM* at ¶ 40 (emphasis in original).

<sup>52</sup> *Id.* at ¶ 41.

(i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges.<sup>53</sup>

Sprint would encourage the Commission to adopt a definition of mandated charges which is consistent with this language. The first of the two proposed definitions would appear to be the most similar to this obligation. Once again, however, Sprint also encourages the Commission to provide carriers the greatest flexibility possible regarding the implementation of such new obligations and to provide carriers significant lead time for billing platform modification. Finally, Sprint must necessarily reserve the right to describe the charges on its bills in a manner it deems appropriate. Accordingly, while a charge may not be “mandated” within the Commission’s definition, carriers must be free to disclose that the surcharge is designed to recover the cost of government imposed requirements, such as telecommunication carrier gross receipts taxes and universal service fees.

**D. THE COMMISSION SHOULD NOT DICTATE THE LINE ITEM DESCRIPTIONS THAT CARRIERS MAY UTILIZE OR OTHERWISE RESTRICT THE ABILITY OF CARRIERS TO RECOVER COSTS THROUGH LINE ITEMS OR COMBINE COSTS IN A SINGLE FEE**

The Commission asks whether it should require carriers to use “standardized labels” that it adopts or whether it should prohibit carriers from combining regulatory charges into a single fee.<sup>54</sup> While Sprint would not oppose Commission adoption of “safe harbor” descriptions, it strongly opposes any proposal that all carriers be required to utilize the Commission’s descriptions or restrict the ability of carriers to choose the manner in which it structures its rates. Cus-

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<sup>53</sup> AVC at p. 14.

<sup>54</sup> See *Second FNPRM* at ¶ 44.

tomers would be affirmatively harmed by rigid, prescriptive labels which would reduce competitive pressures and preclude carriers from innovation that may better meet customer needs (and be more effective in reducing complaints). Indeed, detailed prescriptions would have the adverse effect of limiting free and full disclosure and presentation of meaningful information.

It is again important to emphasize that the issue is not a choice between accurate line item descriptions and misleading line item descriptions. As the Commission correctly noted in its *First Truth-in-Billing Order*, there are “typically many ways to convey important information to consumers in a clear and accurate manner” and that “more prescriptive rules” would “increase [carrier] costs” and would “prevent competing carriers from differentiating themselves on the basis of the clarity of their bills.”<sup>55</sup>

Billing, including the format of billing statements, is an important part of the competition that currently exists among carriers. Requiring carriers to use FCC-developed line item label descriptions would thus reduce competition among carriers – because the Commission would be imposing a “one-size-fits-all” approach on all carriers. In addition, FCC prescription of label descriptions would prevent experimentation and innovation, as the FCC descriptions would be firmly cemented in the rules. Even if the Commission could divine a set of descriptions that cus-

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<sup>55</sup> *First Truth-in-Billing Order*, 14 FCC Rcd at 7499 ¶ 10. See also *id.* at 7501 ¶ 15 (“[W]e reject the detailed regulatory approach urged by some commenters, because we envision that carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers.”); *id.* at 7515 ¶ 36 (“[W]e do not mandate any particular means of complying with the guidelines set forth herein, but rather permit and contemplate that carriers will employ a variety of practices that would be consistent with this Order.”); *id.* at 7526 ¶ 55 (“[S]o 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.”); *id.* at 7527 ¶ 56 (“[C]arriers should have broad discretion in fashioning their additional descriptions, provided only that they are factually accurate and non-misleading.”).

tomers would mostly easily understand today, it certainly does not have access to a crystal ball to be confident that descriptions it develops for today will meet the needs of customers tomorrow.

The Commission additionally asks whether the First Amendment constitutes “any legal impediment” to requiring all carriers to use the identical description of line item surcharges.<sup>56</sup> The Commission notes that in its *First Truth-in-Billing Order*, it concluded that standardized labels would not contravene the First Amendment “so long as we do not mandate or limit specific language that carriers utilize in their descriptions of the charges.”<sup>57</sup>

Sprint does not share the Commission’s view that FCC prescription of standardized labels would survive a First Amendment challenge. While Sprint does not agree with all of the points made by Commissioner Furchgott-Roth in his extensive dissenting Separate Statement,<sup>58</sup> Sprint notes that the Commission’s analysis did not address many of the points that the Commissioner made. In particular, the Supreme Court has rejected the very rationale that the Commission relied upon in its First Amendment analysis – namely, that content-based restrictions become permissible when other speech alternatives exist. The Supreme Court has stated unequivocally that “[w]e have consistently rejected the suggestion that a government may justify a content-based prohibition by showing that speakers have alternative means of expression.”<sup>59</sup> And the speech at issue that the Commission is contemplating controlling would implicate more than commercial speech only. Labels describing government taxes and fees also have a political element. Sprint believes that its customers have a right to know the taxes and fees that government is imposing

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<sup>56</sup> See *Second FNPRM* at ¶ 45.

<sup>57</sup> *Id.*

<sup>58</sup> See *First Truth-in-Billing Order*, 14 FCC Rcd at 7569-92 (Dissenting Statement of Commissioner Harold Furchgott-Roth).

<sup>59</sup> *Consolidated Edison v. New York*, 447 U.S. 530, 541 (1980).

on their service providers – whether or not the government dictates that these taxes and fees be collected from customers directly or indirectly.

#### **E. SPRINT DOES NOT OPPOSE POINT OF SALE DISCLOSURES**

The Commission tentatively concludes that “carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale.”<sup>60</sup> As the Commission correctly observes, Sprint PCS is a signatory to the AVC which obligates carriers to disclose material terms to consumers at the point of sale. As a result, Sprint does not oppose the obligation to provide its rates and the fact that “monthly taxes, surcharges, and other fees apply, including a listing of the name or type and amount (or, if applicable, a percentage formula as of a stated effective date) of any monthly discretionary charges that are generally assessed” by Sprint.

Sprint cautions the Commission, however, not to expand this obligation beyond the information reasonably available to carriers. Government taxes and fees can change substantially, and carriers cannot be expected to forecast government action. Thus, a requirement that carriers provide estimates of future government taxes would be unreasonable. Given the wide range of charges imposed by various local jurisdictions, Sprint also encourages the FCC to provide carriers with flexibility in the manner in which these charges are described or combined for purposes of disclosing the total rate.

#### **V. CONCLUSION**

For the foregoing reasons, Sprint Corporation respectfully suggests that the Commission establish a single uniform federal structure for billing practices that affirmatively preempts state regulation, including consistent state regulation, of CMRS and IXC billing practices. In estab-

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<sup>60</sup> *Second NPRM* at ¶ 55.

lishing this regime, the Commission should create maximum flexibility for carriers to respond to the market and provide customers the rate structures and billing practices they require.

Respectfully submitted,

**SPRINT CORPORATION**

*/s/ Luisa L. Lancetti*

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