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 Advocates' Petition for Declaratory Ruling Regarding Truth-in Billing	)))	CG Docket No. 04-208

AT&T COMMENTS

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Dated: June 24, 2005

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AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's rules (47 C.F.R. § 1.415), AT&T Corp. ("AT&T") submits these comments in response to the Commission's *Second FNPRM* in these proceedings, proposing further revisions to the Commission's truth-in-billing ("TIB") policies and rules.[1]

INTRODUCTION AND BACKGROUND STATEMENT

In its *Second Report & Order* accompanying this further phase of its truth-in-billing rulemaking, the Commission reemphasized several aspects of its existing policies and rules, and also adopted certain modifications to those regulations. Notably, among those revisions the Commission eliminated its exemption from its truth-in-billing

[1] *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 and CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, FCC 05-55, rel. March 18, 2005 ("*Second Report & Order*" and/or "*Second FNPRM*"), *published at* 70 FR 30044, May 25, 2005.

regulations for Commercial Mobile Radio Service ("CMRS") carriers that it had originally adopted in its 1999 *Truth-in-Billing Order*.[2] Additionally, the Commission clarified that state regulations that require or prohibit the use of line item charges by CMRS carriers constituted rate regulation that is preempted under Section 332(c)(3)(A) of the Communications Act, 47 U.S.C. § 332(c)(3)(A).[3]

Equally important, the Commission also emphasized that "[t]here is no general prohibition against the use of line items on telephone bills under our [truth-in-billing rules or the [Communications] Act," and that "nothing in the *Truth-in-Billing Order* prohibits carriers from using non-misleading line items."[4] Accordingly, the Commission denied the petition filed in March, 2004 by the National Association of State Utility Consumer Advocates ("NASUCA"), requesting a declaratory ruling that the Commission's current TIB regulations and policies preclude carriers from assessing any line item "unless such charges" – including their amount – "have been expressly mandated by a regulatory agency."[5] In reaching this conclusion, the Commission

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2 *See Second Report & Order* at ¶¶ 14-20, *citing Truth-in Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, 14 FCC Rcd 7492 (1999) ("*Truth-in-Billing Order*" and/or "*Further NPRM*").

3 *See Second Report & Order* at ¶¶30-36.

4 *Id.* at ¶23 (footnote omitted). *See also id.* ("If carriers choose to offer descriptions of various charges in the form of line items . . . there is nothing in the existing [TIB] requirements to prevent them from doing so"); ("in sum, we reiterate that carriers are not prohibited per se from including non-misleading items on telephone bills") (footnotes omitted).

5 *See* National Association of State Utility Advocates "Petition for Declaratory ruling Regarding Truth-in-Billing and Billing Format," filed March 30, 2003 ("*NASUCA Pet.*") at 1.

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confirmed the showing in comments by AT&T and other parties that NASUCA's petition was simply an ill-disguised request for a *de facto* ban on *all line* item charges representing a radical and wholly unjustifiable departure from prior law and regulatory policy governing customer billing.[6]

Regrettably, having taken that salutary step, the Commission in the *Second FNPRM* goes on to propose a wide variety of highly specific obligations and restrictions on carriers' use of line item charges that are irreconcilable with the core tenet of the *Truth-in-Billing Order* that the Commission's regulatory framework for customer billing should prescribe broad, binding principles rather than detailed, comprehensive rules. These ill-conceived proposals ignore the fact that, as the Commission concluded earlier in this docket, "there are typically many ways to convey important information to consumers in a clear and accurate manner."[7] So long as carriers adhere to their duty to present their charges to customers in a non-misleading manner, there is no need to single out line item charges and related carrier sales practices for special treatment. Doing so will only inevitably embroil the Commission in a host of difficult policy and legal issues (including substantial First Amendment questions), as well as create onerous operational problems for carriers and very likely create significant customer confusion where it does not now exist.

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6 *See* AT&T Comments on *NASUCA Pet.* filed July 14, 2004 ("AT&T NASUCA Comments"); AT&T Reply Comments on *id.*, filed August 13, 2004 (AT&T NASUCA Reply Comments"); *see also, e.g.,* SBC Communications Reply Comments on *id.,* filed August 13, 2004.

7 *See Truth-in-Billing Order*, ¶ 10.

The *Second FNPRM*'s proposal for this detailed, unnecessary and counterproductive regulatory regime for line item charges is all the more unfortunate because it deflects attention from a critical concern that is properly framed in this phase of the Commission's truth-in-billing rulemaking. As the *Second FNPRM* recognizes, particularly in light of the Commission's ruling substantially displacing state regulation of CMRS carriers' billing practices, it is all the more imperative that the Commission act promptly to adopt its tentative conclusion in this proceeding that it should also preempt states from enacting and enforcing *all* telecommunications carrier-specific truth-in-billing rules that are inconsistent with the Commission's regulatory regime for billing practices for wireline as well as CMRS carriers. Failure by the Commission to implement such preemption expeditiously will, as the *Second FNPRM* recognizes, lead to the "balkanization" of wireline carrier billing obligations through myriad, differing state requirements that will seriously impair those carriers' ability to provide nationwide services at reasonable cost to customers. Permitting the competitive marketplace to be skewed in this fashion is clearly bad public policy and is manifestly detrimental to the public interest.

ARGUMENT

I. THE COMMISSION'S PROPOSED REQUIREMENTS FOR LINE ITEM FEES AND OTHER CARRIER PRACTICES ARE UNNECESSARY TO PROTECT CONSUMERS AND WILL DISSERVE CONSUMER WELFARE.

In its *Truth-in-Billing Order*, the Commission adopted "minimal basic guidelines that explicate carriers' binding obligations" to satisfy "broad binding principles" that bills to consumers must contain full and non-misleading descriptions, and clear and conspicuous disclosures, regarding the carrier's fees.[8] In so doing, the Commission declined to mandate specific labels or language in carrier bills, and annunciated a clear preference for general, non-prescriptive guidelines:

> "Through 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 the more detailed regulatory approaches 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]."[9]

In that same order, the Commission considered and flatly rejected adoption of a more prescriptive approach for carrier billing to customers:

> "Our 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."

Simply put, none of the *Second FNPRM*'s proposals to single out line item fees for highly specific obligations and prohibitions can be squared with the Commission's pronouncements above.

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8 *Id.* at ¶ 9.

9 *See Truth-in-Billing Order* at ¶ 9.

A. "Government Mandated" and "Non-Mandated" Charges: The *Second FNPRM* seeks comment on developing definitions of line item fees that are "government mandated" and "non-mandated," with the objective of articulating a distinction between the two terms and of obligating carriers to present "government mandated" charges in a section of a customer's bill separate from all other charges. As a threshold matter, the *Second FNPRM*'s suggested alternatives for defining "government mandated" line item charges are seriously problematic.[10] But, more fundamentally, the *Second FNPRM* fails to provide a reasoned explanation why "government mandated" fees must be segregated in a separate portion of a carrier's bill statement, or how such measures will meet any legitimate objective of the Commission's truth-in-billing policies. The *Second FNPRM* instead merely asserts that "such separation will discourage a carrier from misleading consumers by recovering other operating costs as government mandated charges."[11]

This *ipse dixit* does not explain why such separation is required if the carrier's description of a line item charge is accurate and non-misleading as required by the Commission's current TIB rules and policies. Indeed, the proposed separation could actually create, rather than obviate, customer confusion. For example, placing a carrier

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[10] For example, the proposal to limit "government mandated" fees to those that a carrier "is *required* to collect directly from customers" (*Second FNPRM* at ¶ 40 (emphasis in original)) is plainly too narrow. As the *Second FNPRM* itself recognizes (*id.*), under that definition there would be essentially no qualifying "government mandated" fees other than federal, state and local taxes (which in all events are already required by law to be separately set forth from other carrier charges) and certain state E911 fees. In this respect, the *Second FNPRM*'s proposed definition is little different from the NASUCA petition's chimerical definition of a "mandatory fee."

[11] *See Second FNPRM* at ¶ 43.

fee to recover Universal Service Fund ("USF") costs, which would qualify as a "government mandated" fee under one of the Commission's alternative proposed definitions, in a separate portion of the carrier's bill from a permissible line item charge to recover administrative costs associated with collecting and remitting the USF could actually make it more difficult for customers to understand the relationship between the two charges and the basis for assessing the latter of these two fees. Because such separate placement of "government mandated" charges, however defined, is therefore unnecessary to accomplish the policy objectives of the *Truth-in-Billing Order* and is potentially counterproductive, the Commission should decline to adopt the *Second FNPRM*'s proposal.

B. Standardized Labeling of Line Item Charges. In addition to the ill-advised proposal to separate government mandated and non-mandated charges, the *Second FNPRM* resurrects the Commission's long dormant initiative in the 1999 *Further NPRM* to adopt standardized labeling of categories of charges. However, as some members of the Commission itself recognized then, and as AT&T and many other commenters also noted at that time, adopting standardized labels for carrier line item charges raises difficult First Amendment issues in light of the heightened constitutional scrutiny relating to matters involving commercial speech.[12] In addition to that issue, prescription of

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12 *See* Dissenting Statement of Commissioner Furchtgott-Roth, in *Truth-in-Billing Order and Further NPRM*, p. 2 ("Regulation of descriptions for charges when there is nothing factually inaccurate about the carriers' statements – but their description does not reflect the government's preferred explanation of charges – raises grave First Amendment questions"). *See also* AT&T Comments on Further Notice of Proposed Rulemaking, filed July 9, 1999; AT&T Reply on Further Notice of Proposed Rulemaking, filed July 16, 1999; AT&T Petition for

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standardized labeling raises important policy questions regarding the Commission's appropriate role in regulating carriers in competitive telecommunications markets. The validity of those concerns is underscored in the *Second FNPRM* itself, where the Commission solicits comment whether its labeling proposals "address satisfactorily these legal and policy considerations."[13]

But as AT&T also showed in earlier comment rounds in this docket, there is no necessity for the Commission to embroil itself in these complex issues. In competitive telecommunications markets, carriers have strong incentives to satisfy their customers by providing readily comprehensible bills to their subscribers.[14] It is therefore in the public interest to allow carriers the freedom to design and develop their own bills, including the labeling of individual charges, in a manner that is consonant with the Commission's previously enunciated truth-in-billing principles. Accordingly, the Commission should

(Footnote continued from preceding page)

Reconsideration, filed July 26, 1999; AT&T Comments, filed September 14, 1999; AT&T Reply, filed September 24, 1999.

13 *See Second FNPRM* at ¶ 45.

14 Billing is an important attribute by which carriers differentiate themselves in the marketplace, and one which customers experience monthly. Thus, so carriers naturally look to clear and readily understandable billing as one way to make their services attractive to users. Additionally, by providing customers with understandable bills and billing terminology, a carrier can also reduce customer calls to the carrier's service centers seeking explanations of terms, providing operational cost savings.

not prescribe mandatory labels for these charges, but instead allow carriers that operate in these markets to determine the best way to inform their customers about those fees.[15]

In this regard, the *Second FNPRM* also presents troubling proposals to prohibit carriers from including costs such as regulatory compliance and property tax costs in certain line items that include the term "regulatory" in their title.[16] For example, the Commission questions whether it is misleading to include property taxes in such line items "given that property taxes are not related to regulation under the [Communications] Act of a telecommunications company's provision of services." But the Commission's view of the term "regulatory" as applied to such property taxes is unduly narrow.

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15 While standardized labeling should not be adopted for these legal and policy reasons standing alone, the *Second FNRPM* (¶ 46) also recognizes that this proposal raises serious "pragmatic considerations" of its economic impact on carriers' billing systems and other related procedures. The *Second FNPRM (id.)* questions whether, in light of these associated costs, its proposed standardized labeling requirement should be applied to "small entities, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. § 503).

The Commission's solicitude for such small entities, while commendable, ignores that its proposal is calculated to have even more drastic effects on larger carriers that would be required to make wholesale changes in their billing systems and procedures to comply with those new obligations when billing millions (or, in AT&T's case, tens of millions) of customers. This militates even more strongly against the adoption of standardized labeling of carriers' end user billed charges.

16 *See Second FNPRM* at ¶ 47. The *Second FNPRM* makes particular reference to the term "regulatory assessment fee," which AT&T formerly used in its residential customer bill statements. However, AT&T also prominently disclosed in its bills and related customer information material that "This fee is not a tax or charge required by the government." *See* AT&T NASUCA Comments, *supra*; AT&T NASUCA Reply Comments, supra. In all events, effective July 1, 2005 AT&T is changing the same of this line item to the "Carrier Cost Recovery Fee" but it continues to provide the express disclaimer that this fee is governmentally mandated. *See http://serviceguide.att.com/ACS/ext/mcs.cfm.*

Nothing in the term "regulatory" connotes that it is – or should be –solely related to the Commission's administration of the Act. Both as a legal term of art and in common parlance, the term "regulatory" is more broadly defined and encompasses property taxes paid by carriers.

For example, *Black's Law Dictionary* has defined the term "regulation" as a "rule or order having [the] forces of law issued by "?executive authority of government."[17] State and local property taxes are clearly within the ambit of this definition. This same definition is ascribed to the term in lay sources.[18] This is especially significant in the context of truth-in-billing, which requires carriers to use plain language terminology in their customer bills.[19] In sum, there is no legal, logical or factual basis for the Commission to conclude that line items described as recovering "regulatory" costs may not legitimately include property taxes among those costs.

C. Combination of Federal Regulatory Charges.

The *Second FNPRM* also seeks comment on whether it is unreasonable under Section 201(b) of the Communications Act for line items to combine federal regulatory charges.[20] But, as in previous Commission pronouncements on this subject in this

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17 *See Black's Law Dictionary* (5th ed. Abridged) (West Pub. Corp. 1983), p. 668.

18 *See, e.g., Webster's Ninth New Collegiate Dictionary* (Merriam-Webster, Inc. 1990), p. 992; *accord, Webster's New World Dictionary,* (World Publishing Co. 1968), p. 1225.

19 In addition to designing those plain language descriptions of charges in their bill statements, AT&T and other carriers also routinely provide additional information and explanation in their publicly available web sites, so that customers who seek more information can obtain it easily and conveniently.

20 *See Second FNPRM* at ¶ 48.

docket, the *Second FNPRM* fails to provide any reasoned explanation why such charges must be set forth in separate line items if their description in a line item combining those charges is clear, accurate and non-misleading in compliance with the Commission's existing TIB rules and policies. Moreover, unnecessarily separating such combined charges into multiple line items will necessarily impose superfluous costs on carriers to reconfigure their billing systems and re-educate their customers to understand their new bill formats. Given the lack of any justification for requiring carriers to indulge in that needless exercise, the Commission should withdraw its proposal to require separation of federal regulatory charges in this manner.

D. Point of Sale Disclosure.

Possibly the most unwarranted aspect of the *Second FNPRM* is the proposal that carriers be obligated at the "point of sale" to disclose to customers "the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges" for their offerings *before* the customer signs any contract for the carrier's services.[21] This requirement would apply regardless of whether the "point of

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[21] *See Second FNPRM* at ¶¶ 55-56.It is, at best, unclear how carriers subject to such a requirement could provide a "reasonable estimate" of surcharges to the extent that those fees are directly dependent on such variables as the customer's monthly usage. For example, when embodied in a line item charges for USF recovery are generally expressed as a percentage of the customer's monthly calling charges and other service revenues that are subject to USF contribution, and these expenditures and the related surcharge may fluctuate from month to month.

sale" is a retail location, the carrier's Web site, or an inbound or outbound telemarketing call between the carrier and consumer.[22]

At the outset, it must be recognized that this proposal is not even within the ambit of truth-in-billing, but rather is an entirely new and wide-ranging initiative to regulate carrier sales practices. Indeed, the *Second FNPRM* makes no attempt to link this proposal to the *Truth-in-Billing Order*, but instead contends that this obligation is warranted because delaying such disclosure for customers of CMRS carriers until after they have signed long-term contracts with significant early termination fees would defeat the ability of customers to comparison shop before subscribing.

Whatever applicability it may have in the CMRS context, the *Second FNPRM's* stated rationale does not support extending this "point of sale" disclosure obligation across-the-board to all carriers. Unlike CMRS customers, residential consumers who subscribe to wireline carriers' offerings typically are not subject to such long-term commitments and large early termination penalties, but instead may cancel those services on minimum notice (generally one billing cycle) and either change without penalty to another offering by that carrier or migrate to an entirely different carrier.

In this much different context, the substantial burden that the point of sale disclosure obligation would impose on carriers and customers alike offers no correspondingly significant benefits, and the proposal therefore cannot be justified as a

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22 *Id.*, ¶ 55. The *Second FNPRM* (*id.*, ¶ 56) once again seeks comment on whether and to what extent "small entities" should be exempted from the proposed point of sale disclosure obligation. But if that obligation were deemed to have any value warranting its adoption (and AT&T submits that it does not), then there is no apparent reason why customers of small entities are any less entitled to receive such rate disclosures prior to ordering service.

matter of sound regulatory policy. Customers through long experience have become used to the ease and convenience of ordering services from telecommunications carriers without unnecessarily elaborate disclosures of rates and terms that may often have minimal, if any, importance for those consumers. Requiring carriers to "force feed" such information to customers against their will can only cause serious dissatisfaction on the part of those subscribers, for which they may mistakenly blame the carrier.

Indeed, it is predictable that a significant number of customers may abandon placing an order rather than be bombarded with undesired detailed disclosures. That this could well occur is confirmed by AT&T's own experience with third party verification of carrier presubscription orders. Even though AT&T's representatives carefully explain to affected customers that their presubscription orders cannot be implemented unless the verification process is successfully completed, an appreciable number of such subscribers decline to take part in the verification process at all, or abandon it before completion, because they deem it superfluous or unacceptably time-consuming. Disclosure of the type of information that the *Second FNPRM* apparently contemplates would be an even lengthier process, and would likely result in even more customers failing to complete the order taking process.

II. THE COMMISSION SHOULD PREEMPT STATE BILLING REGULATIONS THAT ARE INCONSISTENT WITH ITS RULES, GUIDELINES AND PRINCIPLES.

In the *Truth-in-Billing Order* the Commission announced that it would allow states "to continue to enact and enforce additional [truth-in-billing] regulation consistent with the general guidelines and principles set forth in this Order."[23] The Commission there allowed states to adopt "rules that are more specific than the general guidelines" promulgated in the *TIB Order*.[24] However, in light of its determination in the *Second Report & Order* with respect to state regulation of CMRS carriers' line item charges, the Commission in the *Second FNPRM* has revisited its earlier pronouncement and has tentatively concluded that it should reverse that finding and preempt state regulation of *all* carriers billing practices where those rules are inconsistent with the Commission's truth-in-billing regime.

The Commission's tentative conclusion is manifestly sound regulatory policy. As the *Second FNPRM* explains:

> "[L]imiting 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."[25]

These serious adverse impacts to the public interest and the preservation of a full competitive interstate marketplace can only be avoided if the Commission adopts the *Second FNPRM*'s tentative conclusion as a final order in this docket. Absent such action, CMRS carriers will continue operating under the aegis of Commission regulation of their billing practices, while wireline carriers will be relegated to increasingly operating under a "patchwork quilt" of differing state requirements for those same practices. As the

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23 *See Truth-in-Billing Order*, ¶ 26.

24 *Id.*

25 *See Second FNPRM* at ¶52.

Second FNPRM recognizes, this will inevitably lead to "balkanization" of billing disclosure obligations for the wireline marketplace. This untenable framework would also necessarily skew intermodal competition between CMRS carriers and other competitors based on artificial regulatory factors that have nothing to do with the technological, qualitative, price or service characteristics of participants in the market, and which should be the relevant criteria for consumers' selection among competitors. To foreclose this result that is clearly at odds with maintenance of a "level playing field" in which the marketplace determines the success of particular competitors, the Commission should preempt states from adopting any telecommunications regulation of carrier billing practices that is inconsistent with the Commission's truth-in-billing rules, guidelines and principles.[26]

Additionally, to avoid the same "balkanization" of carrier billing requirements under another guise, the Commission should reject any enforcement regime that cedes to states the ability to enforce rules developed by the Commission. In this regard, experience with the Commission's rules against "slamming" (the unauthorized change in a consumer's selection of a telecommunications service provider) is instructive. In 2000, the Commission adopted Section 64.1110 of its rule (47 C.F.R. § 64.1110) permitting states to enforce the Commission's prescribed procedures for resolving slamming complaints and providing appropriate relief to consumers where slamming is found.

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[26] As the Commission noted both in the *Second Report & Order* (¶ 33) and in the *Second FNPRM* (¶ 53), this determination will not preclude states from enforcing their own generally applicable contractual and consumer protection law and rules, even as applied to carries' billing practices. It will, however, preclude state promulgation of carrier-specific billing practices that are not subject to those other, broadly applicable state legal requirements.

AT&T's experience with subsequent state enforcement under that rubric has shown that in numerous cases states have adopted formal and informal glosses on the Commission's regime that are inconsistent with the applicable Commission rules.[27] In all events, the states' application of the slamming rules often differ markedly from other states' interpretations of those same rules, leading to disparate adjudications on factual records that are materially indistinguishable. The Commission should not permit this same untoward result to be replicated in the context of enforcement of its truth-in-billing regime.

The need to avoid this result is further underscored by the Commission's recent order concluding that it has exclusive jurisdiction over determinations whether particular digital wireless handsets comply with its hearing aid compatibility standards.[28] There the Commission pointed out the serious adverse consequences that inappropriate state enforcement efforts could have upon the market for those instruments:

> "If one state commission were to find that a particular handset is not compliant with the Commission's rules, that state would effectively be making a determination for the entire nation. Even worse, if different states came to different conclusions on whether

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27 For example, under the Commission's slamming regime it is settled law that carriers acting in good faith may implement properly verified carrier change orders from persons with apparent – but not actual – authority to request such changes. *See AT&T v. FCC*, 323 F.2d 1081 (2003). Nevertheless, state agencies purporting to enforce the Commission's regime pursuant to Section 64.1120 have routinely entered findings of carrier slamming based on the submitting carrier's lack of actual authority from the subscriber to request a change in their presubscribed service provider.

28 *See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 05-122 (rel. June 21, 2005).

> a particular handset complies with our rules, manufacturers and carriers might have difficulty continuing to provide services at all.[29]

The Commission's pronouncements in that decision are also clearly applicable to enforcement of its truth-in-billing principles for carriers' interstate charges, and likewise militate strongly against according states any role in enforcing those requirements.

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29 *Id.*, ¶ 57 (footnotes omitted).

CONCLUSION

For the reasons stated above, the Commission should decline to adopt the various additional carrier-specific revisions to its truth-in-billing rules described in the *Second FNPRM*, but should preempt all state regulation of carrier billing practices that are inconsistent with its truth-in-billing rules, guidelines and principles.

Respectfully submitted,

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Dated: June 24, 2005