

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

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

**REPLY COMMENTS OF VERIZON¹ TO THE
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

There is overwhelming agreement that the Commission should not adopt additional truth-in-billing rules. The Commission already has a federal framework in place to protect consumers against nontruthful and misleading bills. Neither the Commission nor commenters have demonstrated that the proposed additional rules will enhance the clarity of telephone bills, nor that the costs and burdens placed on carriers' ability to compete is justified. Given the relatively small number of complaints, particularly against wireline carriers, and the legal infirmity of the Commission's proposals, the Commission should not adopt additional rules, but should instead enforce the rules already in place. The Commission should, however, preempt state billing regulations to ensure that the federal framework it has established is not negated by inconsistent state requirements or interpretations.

¹ The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. identified in the list attached as Exhibit A hereto.

The Commission recognized in the *Truth-in-Billing Order*² that among the ways carriers compete is based on the clarity of their bills and in their responsiveness to customer demands. *Truth-in-Billing Order* ¶ 9. Accordingly, the Commission determined that in crafting rules to protect consumers against untruthful and misleading bills, it would eschew rigid prescriptions in favor of broad principles, recognizing that there were many ways for carriers to convey truthful information. *Id.* Verizon explained in its Initial Comments that billing format and content are highly competitive areas that carriers use to differentiate themselves. Verizon Comments at 3-5. Virtually every carrier filing comments agrees that the Commission must refrain from constraining competition by regulating the format and editorial content of carriers' bills.

These commenters agree that the Commission already has sufficient truth-in-billing rules to protect consumers against untruthful and misleading bills. SBC explains, “[t]he Commission’s existing rules already directly speak to the accuracy and clarity required for all billed charges, whether mandated by a governmental entity or not. To the extent individual carriers have ignored these rules, the Commission should exercise its enforcement authority – which it committed to do six years ago – rather than subject the industry as a whole to more onerous billing requirements.” SBC Comments at 4. As Verizon and these commenters have emphasized, rather than adopt more rules that constrain the ability of legitimate and conscientious businesses to compete based on the clarity of their bills, the Commission should instead enforce the rules against individual bad actors. *See, e.g.*, Qwest Comments at 3 (“An enforcement approach makes the most sense given the fact that the Commission already regulates carrier billing practices”).

² *Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492 (1999) (“*Truth-in-Billing Order*”).

Conversely, any additional rules to restrict the content and format of carriers bills is antithetical to the Communication Act's goal of deregulating in the face of robust competition and the Commission's policy of providing flexibility to carriers to compete through differentiation and superior customer service. While a handful of commenters support the proposed additional rules,³ and indeed some propose even additional rules, they give scant regard to the Commission's existing rules and fail to explain why enforcement of the current truth-in-billing rules would not address their concerns. In addition, commenters generally agree that there is no basis for concluding that the Commission's proposed regulations — requiring that “mandated” charges be separated from other charges, that specific labels be used or that point of sale disclosures be made — will make bills any clearer. For example, regardless of whether certain commenters favor one definition of “mandated” over the other, “[t]he very fact that the Commission feels the need to solicit comment of the meaning of the word ‘mandated’ indicates that consumers will not find much, if any, use in an invoice section labeled with the confusing term.” Coalition for a Competitive Telecommunications Market (“CCTM”) Comments at 16. In the case of required separations, “the proposed separation could actually create, rather than obviate, customer confusion.” AT&T Comments at 6-7.⁴ NASUCA's proposal to have the Commission require a further category called “Carrier Imposed Charges” and the National Association of Attorneys General (“NAAG”) proposal that carriers create a pre-tax subtotal consisting of monthly service and discretionary charges are similarly flawed. NASUCA Comments at 13-14; NAAG Comments at 9. These commenters and the Commission are not experts in bill format and design. Having devoted considerable resources to conforming bills to

³ See, e.g., AARP et al. Comments at 6-11; NASUCA Comments at 3-20.

⁴ See also BellSouth Comments (“Adding such a section provides no value to the customer, and could make it more difficult to review and validate charges”).

what customers want and find desirable, Verizon and other carriers⁵ should not have to surrender their competitive advantages by being forced to conform to rigid billing prescriptions that will not enhance billing clarity. Nor should they be subjected to the substantial expense and burden of modifying their billing systems for changes that have no measurable benefit. See Verizon Comments at 9-10; BellSouth Comments at 8-9 (“forcing carriers to restructure their bills would be extremely expensive”).

The proposed additional regulations would also implicate serious First Amendment concerns. The Commission’s proposal to govern the format and content of telephone bills by requiring specific labels, separation by categories and point of sale disclosures violates the First Amendment because it both restricts and compels speech. See Verizon Comments at 10-13. As Qwest explained, “Customer bills are the primary and most important communication between carriers and their customers,” and the “editorial discretion that carriers ... currently enjoy over their bills is consistent with sound First Amendment and intellectual property values.” Qwest Comments at 5-7. Although AARP asserts that commercial speech is entitled to less protection than non-commercial speech, they have failed to even articulate how the Commission’s proposed rules would meet the test for restrictions governing commercial speech established by the Supreme Court in *Central Hudson*.⁶ See AARP et al. Comments at 10. To the contrary, the proposed regulations do not directly advance any substantial governmental interest, nor are they no more extensive than necessary. See Verizon Comments at 13-15. Verizon thus fully agrees with United States Cellular Corporation (“USCC”) that “such micromanagement of wireless bill wording would be ruled unconstitutional by the courts.” USCC Comments at 5-6.

⁵ See also SBC Comments at 8 (describing SBC’s revisions to its bills in response to consumer surveys).

⁶ *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n*, 447 U.S. 557 (1980).

Moreover, there is no justification for more prescriptive rules for wireline carriers. First, the Commission has not shown that that wireline carrier bills are in fact unclear and misleading. Although the Commission recounts anecdotally that consumers are confused, the facts provided by commenters tell a different story. For Verizon, the total number of complaints in 2004 relating in any way to taxes and surcharges (regardless of whether the complaint was directed at the clarity of the charges) is only 757 and accounts for less than one percent of the total complaints recorded by Verizon. Verizon Comments at 5. Other carriers similarly report that the level of complaints is small. See, e.g. Qwest Comments at 7 (“Qwest currently processes approximately 126 million bills annually without material customer dissatisfaction”). Even with respect to wireless carriers, the Commission’s numbers show that the ratio of complaints to wireless customers is less than 0.01%. See Sprint Comments at 16.

In particular, the Commission should not adopt its proposed rule to require wireline carriers to disclose at the point of sale the “full rate,” including any non-mandated line items and a reasonable estimate of government mandated surcharges. Carriers already have competitive incentives to communicate clear and accurate information about their products to customers at the point of sale. See Verizon Comments at 8. BellSouth agrees that “competition ensures that competitors are providing customers with the proper information to allow them to shop and compare services. . . . Regulation in a competitive market only adds unnecessary costs to the service and limits what competitors can provide to the customer.” BellSouth Comments at 14. Like Verizon, BellSouth already informs customers at the point of sale of the fact that additional charges, such as fees and taxes will apply, but it does so because it “desires to provide the best customer service available in sales and support.” *Id.* at 15.

Conversely, a point of sale disclosure requirement, in addition to compelling speech in contravention of the First Amendment, would be impossible to meet and will impose costs and burdens on both carriers and customers. As Verizon explained in its Initial Comments, because taxes and fees vary widely based on usage, location, customer identity, product mix and other factors, it would be extremely impractical and unworkable for wireline carriers to provide even an estimate of taxes and fees that might apply to any individual customer, much less to ensure their accuracy in the future. *See Verizon Comments at 7-8.* In addition, the increased costs of engaging in complicated sets of calculations at the point of sale in order to meet such a requirement, regardless of whether the customer desires the information, would be highly burdensome. *Id.* The effect will not only be to increase significantly the cost of sales transactions for carriers, and thereby increase the cost of service for customers, but will also complicate the process for consumers and create further confusion.

The majority of other carriers agree. For example, AT&T states that “the substantial burden that the point of sale disclosure obligation would impose on carriers and customers alike offers no correspondingly significant benefits.” AT&T Comments at 12-13. BellSouth agrees that “[i]n many cases, such charges are usage-based and impossible to estimate.” BellSouth Comments at 15-16. United States Cellular Corporation confirms that “the ‘full rate’ would be impossible to know in advance or disclose to a prospective customer.” USCC Comments at 8. And, the Coalition for a Competitive Telecommunications Market explains that the point of sale disclosure requirement would harm consumers by making it more difficult to switch service and competitively disadvantage wireline carriers against their intermodal competitors who are not subject to such regulations. CCTM Comments at 10-12.

Although a few wireless carriers do not object to a point of sale disclosure rule that is no more extensive than the Assurance of Voluntary Compliance (“AVC”) entered into between 33 States Attorneys General and three wireless carriers,⁷ Verizon has explained that calculations of the specific amount of fees and taxes for wireline carriers are more complicated than for wireless companies because wireline services are offered in significantly more combinations than the bundled offerings typically provided by wireless carriers. See Verizon Comments at fn 9. Moreover, even were the Commission contemplating only requiring the same terms for a point of sale disclosure as those that are contained in the AVC, it would be inappropriate to impose the framework of litigation-based, bilaterally negotiated, private settlement terms on an entire industry. See also Qwest Comments at 16. The Commission’s proposal to do so is particularly troubling given the fact that the Attorneys General sought to focus on the billing practices of only three wireless carriers and did not investigate the billing practices of wireline or other telecommunications carriers. The Commission therefore should not impose voluntary settlement obligations upon other carriers who were neither investigated, nor a party to the private litigation.

Finally, all carriers agree that the Commission must preempt state billing regulations to ensure that the federal goals of promoting a competitive marketplace while protecting consumers are maintained. As BellSouth explained, “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.” BellSouth Comments at 3. State regulation of billing requirements would increase costs and deprive carriers of the flexibility necessary to respond to an already intensely competitive market. Sprint Comments at 1.

⁷ See Comments of Cingular Wireless, Verizon Wireless, Sprint.

Carriers also agree with the Commission's tentative conclusion that it has ample authority to preempt state regulation of all carriers' bills.⁸ Although a handful of commenters contend that the Commission cannot prove that Congress had a clear and manifest intent to preempt the states in this matter, and that there is a presumption against preemption,⁹ these commenters ignore the well established authority of the Commission to preempt state law on matters within its authority. As the Supreme Court explained:

Thus we have emphasized that in a situation where state law is claimed to be pre-empted by federal regulation, a narrow focus on Congress' intent to supersede state law is misdirected, for a pre-emptive regulation's force does not depend on express congressional authorization to displace state law. Instead, the correct focus is on the federal agency that seeks to displace state law and on the proper bounds of its lawful authority to undertake such action. The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof. Beyond that, however, in proper circumstances the agency may determine that its authority is exclusive and pre-empts any state efforts to regulate in the forbidden area.

New York v. FCC, 486 U.S. 57, 64 (U.S. 1988) (internal cites, alterations and quotations omitted). Thus, contrary to these commenters arguments, Congress' intent to preempt need not be express, so long as the Commission is acting within its statutory authority. As these same commenters are the ones seeking to have the Commission adopt truth-in-billing rules, they have unequivocally acknowledged that the Commission has statutory authority to govern billing matters. The Commission may thus conclude that its authority is exclusive and that state regulation of billing matters would conflict with or frustrate the

⁸ See generally *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, 20 FCC Rcd 6448, ¶ 50 (2005); BellSouth Comments at 4-8; Nextel Comments at 20-30; T-Mobile Comments at 11-20; and CCTM Comments at 3-6.

⁹ See AARP et al. Comments at 19, 21; NARUC Comments at 11; NASUCA Comments at 28; NAAG Comments at 23.

purposes of the pro-competitive federal policy it has established. *See also* Verizon Comments at 17.

While carriers urge the Commission to preempt states, they generally oppose the enforcement of federal rules by the states using the Commission's slamming rules as a model.¹⁰ First, with respect to slamming, Congress both indicated its intent to promote a federal-state partnership for deterring slamming in Section 258 of the Act and authorized state enforcement for intrastate service. Unlike the slamming rules, there is no similar authority in the truth-in-billing context to provide for state enforcement. Even NASUCA concedes that allowing states to enforce the Commission's truth-in billing rules would be an unlawful subdelegation of the Commission's authority. NASUCA Comments at 17. Second, the slamming framework and the truth-in-billing framework are fundamentally different and the truth-in-billing framework does not translate well to state enforcement. This is because slamming rules are procedurally based and set out in specific detail carriers' obligations with respect to verification procedures. Thus, states can more readily determine whether a procedure has or has not been followed. The truth-in-billing rules, on the other hand, are a set of principles. The Commission expressly rejected rigid rules to allow carriers flexibility to differentiate themselves. Thus, enforcement of the truth-in-billing rules should remain with the Commission in order to ensure that a uniform federal interpretation is preserved.

However, preemption should not affect the states' ability to enforce their own generally applicable contractual and consumer protection laws. *See, e.g.*, Sprint Comments at 1-2; Nextel Comments at 31-32. In addition, states may continue to and maintain an active role in

¹⁰ *See, e.g.*, T-Mobile Comments at 22; *see also* USA Mobility at 8.

partnership with the Commission by receiving and referring complaints to the Commission for investigation.

Conclusion

For the reasons stated above, the Commission should not impose additional truth-in-billing rules on carriers. In addition, the Commission should preempt state regulation and repeal section 64.2400(c), which authorizes states to enact and enforce more specific truth-in-billing rules.

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.