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

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

BELLSOUTH REPLY COMMENTS

BellSouth Corporation, on behalf of itself and its wholly owned affiliates ("BellSouth"), by its attorneys, files these replies to comments filed in response to the *Second Further Notice of Proposed Rulemaking* issued with the Commission's *Second Report and Order* denying the National Association of State Utility Consumer Advocates' ("NASUCA's") Petition for Declaratory Ruling.[1]

While most of the commenters supported rules that promote lower cost and simpler bills for consumers, NASUCA and the National Association of Attorneys General ("NAAG") focused on perpetuating more government regulation that will ultimately lead to higher prices and more complex bills. They asked the Commission to increase the federal rules governing carriers' billing and at the same time strongly oppose the Commission preempting state rules over the same matters. These entities cannot have it both ways; either they support a uniform system that

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 & CG Docket No. 04-208, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, 20 FCC Rcd 6448 (2005) ("*Notice*").

will allow for comparable bills among providers of telecommunications services or they want the industry thrown into billing chaos by requiring providers to adhere to 51 different sets of rules.

I. The Commission Should Not Adopt Any of the Proposed Billing Rules

NASUCA's comments are indeed an interesting demonstration of supporting two opposing views at the same time. The beginning of the comments is devoted to what the Commission should do to ensure a uniform set of rules while the remainder argues extensively against preemption, thus leaving states the ability to dismantle whatever uniform rules the Commission may put in place.

Regardless of costs to carriers, which will ultimately be passed on to consumers, NASUCA encourages the Commission to create a separate section of the bill dedicated to government mandated charges, to create a separate section of the bill for what it terms to be carrier imposed charges, and to create government mandated terms that all carriers must use to label charges on their bills.[2] Of course, under NASUCA's theory all of these requirements would only be effective if, and only if, a state did not implement its own rules that differed from the Commission's. Under those circumstances, the Commission's rules would submit to the state's rules and a carrier would have to follow that state's rules, but only for customer billings in that particular state. Thus, NASUCA pushes for a highly regulated national billing process that exists on top of whatever rules that a state may implement. Not only is this impracticable, it will harm the very consumers that NASUCA is attempting to protect by further complicating the billing process and increasing consumer prices.

NASUCA argues in favor of the Commission's option to define government mandated charges as only those costs that are authorized by the government and are remitted directly to

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2 NASUCA Initial Comments at 12-16.

government, as opposed to those charges that have been authorized by the government and collected from the carrier but which the carrier is permitted, but not required, to collect from consumers.[3] NASUCA then contends that the Commission should require carriers to break these charges out and place them in a separate section of the bill.[4] NASUCA claims this will cause less consumer confusion.[5] BellSouth disagrees. First, a separate bill section should not be a carrier requirement under any circumstances. As BellSouth described in its comments, a separate section will cause significant overhauls in the BellSouth's billing systems. Re-writing computer code to move line item fees from their current place on the bill to an entirely new section would require significant resources. Many of these systems pull data from other systems, and thus a billing change could require not only a billing system change but also an interface change to a supplying system. These significant costs would ultimately be passed on to consumers in the form of higher prices.

Second, there is no guarantee that creating a separate section for mandated charges would even reduce consumer confusion, but could actually lead to consumer confusion and frustration. Today, fees are typically grouped with the service to which they correspond. For example, taxes usually follow the service upon which the taxes apply. Moreover, customers understand that taxes apply to services; however, they may not understand that a telephone bill sometimes includes multiple taxing jurisdictions and that each jurisdiction could have different rates. Because different tax rates apply based on the jurisdiction being taxed, including these fees in the section of the bill following the applicable services is a logical placement for these charges. If

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3 *Id.* at 3-4.

4 *Id.* at 12-13.

5 *Id.* at 4.

these charges were removed from the applicable service section and moved to a separate section, this will not only lengthen the overall bill but will cause customers to be confused and to question what these charges are. Thus, carriers will be faced with including lengthy explanations of why different taxes apply and why the rates may be different. They will also likely have to increase their staff of customer representatives to field the numerous calls that will be placed by customers to inquire about the new section of the bill. Thus, carriers will incur a double cost whammy – significant systems changes and increased work force expense. The fact that such expense would be the result of government intervention in a competitive industry – indeed, in a section of the industry that the Commission "deregulated" long ago – is unfathomable.

In addition to requiring a separate section for mandated government fees, NASUCA also supports a separate section on the bill for what it proposes should be labeled "Carrier Imposed Charges." NASUCA contends that carriers should be required to place all fees that are government-authorized which carriers may, but are not required to, impose on customers. The charges that NASUCA states should go in this section are such charges as universal service fund ("USF") assessment, local number portability, and other charges that cover a carrier's operating costs. The only justification given by NASUCA for his proposal is the assertion that the number and source of fees that appear on consumers' bills confuse them.[6] NASUCA, however, does not explain why separating the fees into a separate section will reduce the confusion. NAAG advocates that the Commission completely prohibit separate line items all together but in the event the Commission fails to make such a prohibition, then they too support a separate section on the bill for these charges.[7]

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6 *Id.* at 13-14.

7 NAAG Comments at 7-9.

The commenters supporting regulation of line item charges are inconsistent with their positions. On the one hand they argue that other entities that bill for services do not break out charges into separate line items and neither should telecommunications carriers, but on the other hand they are seeking heavy-handed regulation over almost all aspects of carriers' billing practices, something with which no other industry has to contend. First, BellSouth agrees with the premise that telecommunications carriers should be treated like other entities in their billing practices. These entities are free to bill as they wish and typically do so with practices that are consistent with their industry. Thus, any expense that an entity incurs that is outside of its control and has nothing to do with the quality or quantity of the product or service is usually added as a line item charge. Shipping, for example, is many times broken out as a line item on most entities' bills. Comparatively, telecommunications carriers have an extraordinary number of fees that are not within their control. USF and other forms of regulatory costs are all costs that are set by a regulatory agency and are not incurred by the carrier as a cost to provide a better quality of or a greater quantity of service. Just as with shipping in other industries, they should not be added to the cost of the service when they have nothing to do with the provision of that service. Thus, while carriers are required to pay governmental agencies fees that increase the carriers' costs but do not enhance the customer's service, such fees should be broken out on the customer's bill to reflect the fact that the carriers' costs have increased but not because of the carriers' inefficiencies or poor management.

Second, heavy regulation of billing practices of telecommunications carriers makes very little sense in the current competitive environment. Indeed, when the Commission issued its first Truth-in-Billing Order it did not set specific rules to govern billing but instead established broad guidelines. The market has become increasingly more competitive since the issuance of that order. Logic dictates that less regulatory oversight is needed, not more. Today, customers can choose from many different providers of telecommunications services; a key factor in making such a decision is the customer's satisfaction with the services provided by the carrier. In many ways, billing is the most noticeable interface that the customer has with the carrier. That is, short of having outage problems, one of the few times that a customer may actually think about and engage with the carrier is when the customer receives his or her bill. If the customer does not like the presentation or the amount of information on the bill, the customer may well view that as a reason to search for a carrier that better fits his or her needs. Free market competition will guide carriers to fill those needs in an effort to retain existing customers or gain new ones. The Commission has moved more and more toward de-regulation as competition has increased in the telecommunications market; it would be an extreme reversal in policy to now implement heavy-handed regulation over an area of telecommunications that the Commission saw fit to deregulate years before.

II. The Commission Should Preempt the States on All Matters Related to Billing, Including Any Laws of General Applicability that Conflict with the Commission's Billing Rules

Interestingly, while both NASUCA and the NAAG strongly support the Commission implementing uniform national rules, they equally oppose the Commission preempting states over the regulation of billing practices. Indeed, most of their comments are devoted to arguments discussing why they believe that the Commission either lacks authority for such preemption or why, if such authority exists, the Commission should not exercise it. NASUCA and NAAG are wrong on both accounts.

Regardless of their claims to the contrary, there is no doubt that the Commission has the authority to preempt states on these matters. As BellSouth explained in its comments, preemption over billing practices is well within the Commission's preemption authority.[8] The only legitimate question for the Commission to determine is whether it will choose to exercise that authority. BellSouth believes that preemption is necessary for the Commission to stabilize the destructive effects of dual regulation.

Without preemption, carriers will be placed in the untenable position of having to comply with as many sets of rules as the number of states in which they sell services. The expense of such a Byzantine billing system would have a negative effect on costs as well as stifling competition. The implementation of any state regulation, no matter whether it was in addition to or in conflict with the Commission's rules, would require carriers to change their billing systems to comply with the state rules. While many national and regional carriers have updated or made makeshift changes to their billing systems to accommodate various sets of rules, changes, like those proposed by the Commission or any number of state added rules, if there is no preemption, would place an extraordinary strain on these systems. And, while these carriers will likely continue to pump the necessary money into their billing systems to keep them capable of performing in compliance with all applicable rules, this added cost is an extreme price to pay to remedy alleged customer confusion. This is especially true considering that there is no suggestion that state regulation is capable of protecting customers or eliminating confusion any better than could a Commission-established set of national rules. Moreover, any potential new carrier will have to weigh the costs of entering a new market, including the cost of complying

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8 *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, *Memorandum and Order*, 19 FCC Rcd 22404, 22414, ¶ 19 (2004) (recognizing the Commission's "authority to preempt state regulation that would thwart or impede the lawful exercise of federal authority over the interstate component of the communications"); *see also Louisiana Pub. Serv. Comm'n*, 476 U.S. 355 (1986); *Maryland v. FCC*, 909 F2d 1510 (D.C. Cir. 1990).

with yet another set of billing regulations. New carriers have limited capital and requiring them to invest in billing systems to comply with a set of state rules that would exist in addition to federal rules is a waste of needed resources.

It is truly disconcerting to imagine multiple sets of rules governing the billing of services to customers in a competitive free market. As the Commission recognized when it deregulated billing and collection, long before competition had taken hold in the wireline and wireless markets, "because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection services for an indefinite period."[9] It is, therefore, puzzling that the Commission would now be contemplating implementing a regulation-intensive scheme over billing practices. It is even more puzzling considering that the Commission has deregulated tariffing for interexchange carriers. Thus, the rates that IXCs are essentially free to charge whatever rate they want to a customer free of even tariffing regulation but will be subject to intense burdensome regulation over how they bill for those rates.

The Commission should therefore preempt states from regulating the billing practices of telecommunications carriers. Such preemption should be complete and thus not allow states to make an end-run around the preemption through enforcement of their laws of general applicability. As BellSouth noted in its comments, state laws of general applicability, such as those that prohibit deceptive trade practices, are in place and act to protect consumers over such matters in the states. Through preemption, however, the Commission's rules regarding billing

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9 *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, *Report and Order*, 102 F.C.C. 2d 1150, 1170, ¶ 37 (1986).

would be and must be absolute. Thus, to the extent that the Commission's billing rules conflict with a state's laws of general applicability, the Commission rules should govern and preempt the state law. Unless the Commission makes clear that its rules preempt all state laws, including those laws of general applicability that conflict with the Commission's rules, states could use this as a backdoor approach to regulating the very area that the Commission determined to be exclusively within federal jurisdiction.

III. The Commission Should Not Adopt Any Requirements Related to Point of Sale Disclosure

The Commission should not adopt its proposed point of sale disclosures. For example, despite the suggestion that point of sale disclosures regarding the amount of government imposed charges can be implemented with certainty, the fact remains that many such charges are based on a customer's usage. An accurate estimate of these charges therefore could not be made, especially when the carrier has no historical usage on which to base the estimate. While BellSouth opposes the adoption of any new rules or regulations, it does agree with NASUCA that enforcement of any regulations that the Commission may implement should be left to the Commission and not delegated to the states. This should be for point of sale disclosures as well as any truth-in-billing rules that may result from this proceeding.

The Commission cannot operate with its head in the sand, oblivious to the complexity and cost of the rules that it establishes and the impact they have on carriers. Past experience has shown that the implementation of new rules rarely leads to less complexity. The new rules contemplated in this proceeding will do nothing to break that trend. They will potentially add new sections to the bill that BellSouth contends will serve to confuse more than explain. Indeed, BellSouth has found that in interviews with its customers on bills, they want fewer pages and more simplicity instead of more sections, more pages, and a further breakdown of the charges that they currently receive.

Moreover, the Commission must learn from the past. In implementing the Telecommunications Act of 1996, the Commission established many rules that failed to consider the competitive market only to have those rules overturned by the courts or subsequently changed by the Commission. While the subsequent decisions properly rectified the situation, carriers that had to implement the rules while the litigation was pending or while the Commission reconsidered the issue incurred enormous costs. Carriers should not be expected to incur significant costs on the basis that the rule being implemented *may* provide a benefit to a limited group of users. This does not benefit the public interest considering that the cost of this rule will ultimately result in higher costs.

Conclusion

Based on the discussion presented herein and in BellSouth's comments, the Commission should not implement any new rules related to billing or point of sale disclosures and should preempt the states on all matter related to billing.

Respectfully submitted,

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Dated: July 25, 2005
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CERTIFICATE OF SERVICE

I do hereby certify that I have this 25th day of July 2005 served the parties to this action with a copy of the foregoing **BELLSOUTH REPLY COMMENTS** by U. S. Mail or by electronic filing.

/s/ Lynn Barclay
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+ VIA ELECTRONIC FILING
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