

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

REPLY COMMENTS OF MOBILE SATELLITE VENTURES SUBSIDIARY LLC

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files these Reply Comments in support of the Commission’s proposal to preempt state-specific truth-in-billing rules applicable to Commercial Mobile Radio Service (“CMRS”) providers, which include providers of Mobile Satellite Services (“MSS”). Such action would preserve the effectiveness of the Commission’s carefully-crafted truth-in-billing regulations, while ensuring that states do not frustrate the ability of CMRS carriers in general, and MSS providers in particular, to offer innovative services to the public on a nationwide basis.

Background

MSV. MSV is the entity authorized by the Commission in 1989 to construct, launch, and operate an MSS system in the L-band. MSV’s licensed satellite (“AMSC-1”) was launched in 1995, and MSV began offering service in 1996. MSV is also the successor to TMI Communications and Company, Limited Partnership (“TMI”) with respect to TMI’s provision of L-band MSS in the United States. Today, MSV offers a full range of land, maritime, and aeronautical satellite services, including voice and data, using both its own U.S.-licensed satellite and the Canadian-licensed L-band satellite licensed to Mobile Satellite Ventures (Canada) Inc. In November 2004, the Commission authorized MSV to supplement its satellite service with in-

band terrestrial facilities, called an Ancillary Terrestrial Component (“ATC”).¹ MSV is committed to developing ATC in an expeditious manner, and is currently developing Requests for Proposal for vendors for the construction of its terrestrial network.

FNPRM. In its recent *Truth-in-Billing Order*, the Commission extended its wireline truth-in-billing requirements to CMRS carriers,² and preempted all state regulations requiring or prohibiting the use of line items for CMRS customer bills.³ The Commission’s rules provide that certain MSS offerings qualify as CMRS.⁴ Accordingly, MSV is potentially subject to the Commission’s truth-in-billing requirements. The Commission also issued an *FNPRM*, which tentatively concluded that all state truth-in-billing regulations that are more specific than those adopted by the Commission should be preempted.⁵ The Commission reasoned 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

¹ See *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 04-3553 (Chief, International Bureau, November 8, 2004).

² *Truth-in-Billing and Billing Format, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, FCC 05-55, at ¶ 16 (March 10, 2005) (“*Truth-in-Billing Order and 2nd FNPRM*”) (“We conclude that CMRS carriers should no longer be exempt from 47 C.F.R. § 64.2401(b)’s requirement that billing descriptions be brief, clear, non-misleading and in plain language.”).

³ *Id.* at ¶ 30 (“We find that state regulations requiring or prohibiting the use of line items – defined here to mean a discrete charge identified separately on an end user’s bill – constitute rate regulation and, as such, are preempted under section 332(c)(3)(A) of the Act.”).

⁴ Section 20.9(a)(10) of the Commission’s Rules provides that “[a]ny mobile satellite service involving the provision of commercial mobile radio service (by licensees or resellers) directly to end users,” with the exception of certain leased non-common carrier services, shall be regulated as CMRS. See 47 C.F.R. §20.9(a)(10).

⁵ *Truth-in-Billing Order and 2nd FNPRM* at ¶¶ 49-54.

across the country, making nationwide service more expensive for carriers to provide and raising the cost of service to consumers.”⁶

Comments. In response to the *FNPRM*, a diverse array of wireless and wireline carriers requested that the Commission preempt state truth-in-billing regulations. These carriers noted that (i) the existing patchwork of conflicting state regulations is limiting the ability of carriers to serve their customers effectively on a nationwide basis, in contravention of Congress’s vision in issuing its deregulatory mandate for CMRS; and (ii) the Commission has ample authority to preempt state truth-in-billing regulations in the public interest.⁷ Conversely, a number of state commissions and affiliated organizations urged the Commission to allow states to both enforce federal truth-in-billing regulations and to promulgate state truth-in-billing regulations. These commenters focused on the need for states to protect their citizens, even if such protection placed burdens on service providers.⁸

Discussion

MSV supports both the Commission’s proposal to preempt state-specific truth-in-billing rules applicable to CMRS carriers as well as the comments of the numerous wireless and wireline carriers that support such preemption. MSV notes that the Commission’s authority to

⁶ *Id.* at ¶ 52.

⁷ *See, e.g.*, Comments of CTIA at 17-47 (June 24, 2005); Comments of Cingular Wireless LLC at 4-45 (June 24, 2005); Comments of Verizon Wireless at 4-27 (June 24, 2005); Comments of Nextel Communications, Inc. at 21-40 (June 24, 2005); Comments of T-Mobile USA, Inc. at 11-23 (June 24, 2005); Comments of Sprint Corporation at 3-8 (June 24, 2005); *see also* Comments of BellSouth Corporation at 3-4 (June 24, 2005); Comments of AT&T Corp. at 13-17 (June 24, 2005); Comments of MCI, Inc. at 12 (June 24, 2005); Comments of Verizon at 14-17 (June 24, 2005); Comments of Dobson Communications Corporation at 6-7 (June 24, 2005); Comments of Coalition for a Competitive Telecommunications Market at 2-8 (June 24, 2005).

⁸ *See, e.g.*, Comments of Missouri Public Service Commission (June 24, 2005); Comments of Oklahoma Corporation Commission (June 24, 2005); Comments of the National Association of Regulatory Utilities Commissions (June 24, 2005); Comments of the National Association of Attorneys General (June 24, 2005).

preempt such regulations extends beyond the authority granted by Section 332(c)(3)(A) of the Communications Act, which preempts state regulation of the rates and entry of CMRS carriers.⁹ Where there is a conflict between state law and federal law, federal law must prevail.¹⁰ State law is preempted not only where there is an outright or actual conflict between federal and state law,¹¹ but also where state law “stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”¹² or of federal agencies.¹³

In extending truth-in-billing obligations to CMRS providers in the *Truth-in-Billing Order*, the Commission recognized Congress’s mandate that CMRS billing practices be governed “by the mechanisms of a competitive marketplace,” and not dictated by federal or state regulators.¹⁴ The Commission carefully crafted regulations that reflect this policy preference, while also protecting consumers from fraudulent billing practices. More stringent state regulations serve only to upset this balance by frustrating “the mechanisms of a competitive marketplace,” and necessarily standing as an obstacle to the objectives of the Commission and Congress. Accordingly, the Commission should preempt all such state-specific truth-in-billing regulations.

Moreover, subjecting CMRS carriers to fifty disparate state regulatory schemes would be unduly burdensome, and would conflict with the federal government’s exclusive jurisdiction over interstate communications. First, many of the services provided by CMRS carriers, and in

⁹ 47 U.S.C. § 332(c)(3)(A).

¹⁰ U.S. CONST., art. VI, cl. 2.

¹¹ *Free v. Bland*, 369 U.S. 663 (1962).

¹² *De La Cuesta*, 458 U.S. 141, 153 (1982) (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

¹³ *See City of New York*, 486 U.S. at 64; *U.S. v. Shimer*, 367 U.S. 374, 381-382 (1961).

¹⁴ *Truth-in-Billing Order and 2nd FNPRM* at ¶ 35.

particular those provided via satellite such as MSS, are fundamentally interstate in nature.¹⁵ CMRS carriers have generally structured their offerings on a nationwide basis, without regard to state borders.¹⁶ States presumptively lack jurisdiction to impose truth-in-billing regulations on these fundamentally interstate services in the first instance.¹⁷ Second, any attempt to apply state-specific truth-in-billing regulations solely to intrastate communications would require CMRS carriers to modify their technical and administrative infrastructures in order to (i) identify which communications are purely intrastate; and (ii) allow these communications to be regulated without interfering with any interstate communications, or intrastate communications occurring in other states. Such restructuring would not only substantially raise carrier costs and customer rates, but would also undermine efforts to introduce innovative nationwide CMRS offerings to the public.¹⁸ Moreover, in MSV's case, it is simply not possible to determine whether a call is purely intrastate in nature. MSV uses two satellites to provide service, each of which uses five slightly overlapping satellite beams that generally cover the North American region. While MSV can tell which beam is being utilized on a particular call, each of these beams covers thousands of square miles, and MSV therefore cannot determine a user's exact location. The Commission recently found preemption appropriate where the application of state regulations

¹⁵ *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 2 FCC Rcd 485, at ¶ 41 (1987).

¹⁶ *Truth-in-Billing Order and 2nd FNPRM* at ¶ 35.

¹⁷ *See* 47 U.S.C. §152.

¹⁸ *Truth-in-Billing Order and 2nd FNPRM* at ¶ 52.

would require carriers to alter their services in a manner that would effectively undermine the utility of those services.¹⁹ The Commission should reach the same conclusion in this proceeding.

Conclusion

For the reasons discussed above, MSV urges the Commission to preempt state-specific truth-in-billing rules applicable to CMRS carriers.

Respectfully submitted,

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¹⁹ See *Vonage Holdings Corporation*, FCC 04-267, at ¶ 23 (Nov. 9, 2004) (“[T]he significant costs and operational complexities associated with modifying or procuring systems to track, record and process geographic local information as a necessary aspect of the service would substantially reduce the benefits of using the Internet to provide the service, and potentially inhibit its deployment and continued availability to consumers.”).