

**Before The
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition of Gregory Manasher, Frida Sirota and NECC Telecomm)	CG Docket No. 98-170
)	
On Referral by the United States District Court for the Eastern District of Michigan)	
)	
For Declaratory Ruling Concerning Unjust and Unreasonable Practices Under 47 U.S.C. § 201(b))	

**REPLY COMMENTS OF
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) hereby responds to the Consumer and Public Affairs Bureau’s (Bureau) request for comments on a Petition for Declaratory Ruling concerning the applicability of the Communications Act and the Commission’s rules regarding Truth-in-Billing to the billing practices of a specific telecommunications company.¹

The Petition arises from litigation pending in the United States District Court for the Eastern District of Michigan, in which the plaintiffs allege, *inter alia*, that the defendant, NECC Telecom violated Section 64.2401 of the Commission’s Rules, 47 C.F.R. § 64.2401, and Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), by billing, charging, and collecting monies from Plaintiffs that were unjustly, unreasonably, and deceptively billed as “recurring fees” and “other fees.” The petitioners ask the Commission to issue a declaratory ruling on

¹ See Public Notice, DA-12-1651 (released Oct. 16, 2012), Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling of Gregory Manasher, *et al.*, on the Applicability of the Communications Act and Commission Rules Regarding Truth-in-Billing, CG Docket No. 98-170 (“Petition”).

whether NECC Telecomm’s billings for several specific charges noted in the Petition are unclear, misleading and/or deceptive within the meaning of the Commission’s Truth-in-Billing rules, and, if so, whether a violation of the Commission’s Truth-in-Billing rules is an unreasonable practice under Section 201(b) of the Act.²

The Commission’s Truth-in-Billing rules require telecommunications carriers to provide customers with “a brief, clear, non-misleading, plain language description of the service or services rendered.” 47 C.F.R. § 64.2401(b). While this language is relatively straightforward, it encompasses a variety of bill formats and presentations, as the Commission itself noted: “[B]y implementing these principles through broad, binding guidelines . . . , we allow carriers considerable discretion to satisfy their obligations in a manner that best suits their needs and those of their customers.”³ Accordingly, the Commission recognized that there are many ways in which a carrier can fulfill its Truth-in-Billing obligations, and that variation in bill design, format and presentation are potential competitive differentiators.⁴ In other words, bills for telecommunications services can vary on a variety of parameters, including length, names of charges, order of charges, and level of detail, and still meet a carrier’s obligations under Section 64.2401(b).

As a result, assessing compliance with the Truth-in-Billing rules requires consideration of many factors beyond the labels that appear on a bill face. For example, the agreement between the carrier and customer may explicate terms used on the bill face. The format of the bill or information provided by the carrier outside the bill may clarify labels that in isolation may be unclear. Context can be key to understanding, as the Commission has recognized with respect to

² See *Global Crossing Telecomm., Inc. v. Metrophones Telecomm., Inc.*, 550 U.S. 45 (2007).

³ *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7497, ¶ 6 (1999).

⁴ *Id.* (“Thus, carriers who wish to distinguish themselves through creative and consumer-friendly billing formats have wide latitude to compete in this manner . . .”).

carrier disclosures: “Both academic research and the Commission’s experience with consumer issues have demonstrated that the manner in which providers display billing and other information to consumers can have as much impact on consumer decisions as the information itself.”⁵

In short, much of what the Commission is being asked to do by Petitioners is to make a fact-specific determination in the absence of a complete set of facts. The Petition for the most part just identifies names of charges in isolation, with no explanation of the parties’ agreement as to what services were being rendered, no discussion of what the agreement between the parties required, or of the bill format, or of what sources of information may have been available to explicate the customers’ questions. Accordingly, there is insufficient basis to answer the questions posed in the Petition – at least without substantial additional information.

The Commission should not attempt to answer the questions in the Petition without first obtaining additional information on the context in which the charges were rendered. Moreover, when and if the Commission has sufficient information, it should answer the questions with respect to the specific facts, rather than in general terms that might impact bill presentations not before the Commission. Without being placed in the appropriate context, answers to the Petition’s questions may have the unintended consequence of limiting the flexibility and competitive incentives that carriers have in designing bills “in a manner that best suits their needs and those of their customers.”

⁵ *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380, 11395, ¶ 46 (2009).

Respectfully submitted,

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