

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

SEP 19 2007

Before Commissioners: Thomas E. Wright, Chairman  
Michael C. Moffet  
Joseph F. Harkins

 Docket  
Room: 3

In the Matter of a General Investigation into )  
The Commission's Telephone Billing ) Docket No. 06-GIMT-187-GIT  
Practices Standards )

**POST-HEARING BRIEF OF THE CITIZENS' UTILITY RATEPAYER BOARD**

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COMES NOW the Citizens' Utility Ratepayer Board (CURB) and pursuant to the Commission's April 2, 2007, Order Adopting Procedural Schedule, files its Post-Hearing Brief on the disputed portion of Staff's Proposed Revised Billing Practices Standards. In support of its Post-Hearing Brief, CURB states as follows:

**I. INTRODUCTION.**

1. On August 31, 2005, the Commission opened this general investigation docket to review and, if necessary, revise the Commission's telephone billing practices standards (billing standards).<sup>1</sup> The Commission's billing standards have remained unchanged since 1983.<sup>2</sup>

2. Beginning with the Order Opening Docket and Scheduling Comments, the focus of the docket has been to address revisions to the billing standards proposed by Staff.<sup>3</sup> The

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<sup>1</sup> Order Opening Docket and Scheduling Comments, ¶¶ 1-3.

<sup>2</sup> While some references in the record indicate 1986, Staff witness Christine Aarnes clarified the billing standards have remained unchanged since 1983. (Aarnes, Tr. Vol. 1 at 17).

<sup>3</sup> "The Commission finds it appropriate to grant Staff's request and opens this docket to take comments *on the revisions to the standards suggested by Staff.*" Order Opening Docket and Scheduling Comments, ¶ 3.

evidentiary hearing held on August 20-21, 2007, was set by the Commission for “taking evidence and hearing argument on the disputed portions of Staff’s proposed revisions.”<sup>4</sup>

3. In the two years the general investigation has been proceeding, the parties have participated in numerous workshops, conducted discovery, and submitted initial comments, reply comments, a second round of comments, briefs and reply briefs.

4. On December 11, 2006, Staff filed its Proposed Revised Billing Practices Standards and Proposed Procedural Schedule (Staff Procedural Motion), reporting to the Commission that following the completion of the workshops, parties to the docket had been able to agree on large portions of revisions to the Commission’s billing standards, but that certain portions of the proposed billing standards remained in dispute.

5. On April 2, 2007, the Commission determined that “a procedure for taking evidence and hearing argument *on the disputed portions of Staff’s proposed revisions* is appropriate.” The Commission issued its Order Adopting Procedural Schedule, scheduling direct testimony, responsive testimony, and an evidentiary hearing to resolve “the remaining issues in this docket *concerning the substance of Staff’s proposed revisions*.”<sup>5</sup>

6. In two tariff dockets, KCC Docket Nos. 06-SAGT-1031-TAR (Sage tariff docket) and 06-CCIC-016-TAR (CIMCO tariff docket), CURB sought to intervene and file complaints with regard to line-item surcharges imposed by providers. In both dockets, CURB and Staff expressed opinions that the surcharges imposed were deceptive and misleading and made it difficult for consumers to compare rates among providers. (Aarnes, Tr. Vol. 1 at 27-28).

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<sup>4</sup> Order Adopting Procedural Schedule, ¶ 3.

<sup>5</sup> Order Adopting Procedural Schedule, ¶¶ 3-5 (emphasis added).

7. In the CIMCO tariff docket, Staff specifically recommended that the Commission address the issues raised by CURB in a “broader and more appropriate generic proceeding such as a general investigation of the Commission's billing practices standards.”<sup>6</sup>

8. The Commission specifically stated in both the CIMCO and the Sage tariff dockets that it would address CURB’s concerns about deceptive and inappropriate surcharges *in this docket*.<sup>7</sup>

## **II. THE COMMISSION SHOULD NOT CONSIDER ADOPTING THE FEDERAL TRUTH-IN-BILLING RULES AT THIS STAGE IN THE PROCEEDING.**

9. On August 20, 2007, at the start of the technical hearing, Commissioner Moffet suggested that witnesses should be prepared to respond to the following question: “What would your concerns be if the KCC were to simply adopt the FCC’s Truth-in-Billing Standards as our standards and then enforce them rather than a separate set of standards.” (Commissioner Moffet, Tr. Vol. 1, at 12).

10. CURB will demonstrate in the arguments below that the parties were given insufficient notice of Commissioner Moffet’s proposal; the Commission lacks substantial competent evidence to adopt the Federal Truth-in-Billing rules in lieu of the Kansas Billing Practices Standards; and rescinding the consumer protections contained in the Kansas Billing Practices Standards is anti-consumer, not in the public interest, and not sound policy.

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<sup>6</sup> *In the Matter of CIMCO Communications, Inc. Filing Tariff Revisions Introducing a New Access Recovery Charge*, Order Denying Intervention and Closing Docket, ¶ 3 (September 12, 2005), KCC Docket No. 06-CCIC-016-TAR.

<sup>7</sup> *Id.*, Order Denying Intervention and Closing Docket, ¶ 5 (September 12, 2005); *In the Matter of Sage Telecom, Inc. Filing Tariff Revisions Adding a Public Switched Network Recovery Charge, Adding More Plan Minutes to Specified Plans, and Making Rate Changes*, Order Addressing Citizens’ Utility Ratepayer Board’s Complaint, Petition to Intervene, and Motion to Defer the Effective Date of Proposed Public Switched Network Recovery Charge and Suspend Proceeding and Closing Docket, ¶ 5 (May 1, 2006), KCC Docket No. 06-SAGT-1031-TAR.

**A. The Parties Were Given Insufficient Notice Of Commissioner Moffet's Proposal To Adopt The Federal Truth-In-Billing Rules In Lieu Of The Kansas Billing Practices Standards.**

11. The Commission opened this docket on August 31, 2005, to review and if necessary, revise the Commission's telephone billing standards that have remained unchanged since 1983. The general investigation docket has been proceeding for over two years, and the entire focus of the docket has been, *at the direction of the Commission*, to address revisions to the Commission's telephone billing practices standards proposed by Staff.

12. In its Order Opening Docket and Scheduling Comments, the Commission specifically held: "The Commission finds it appropriate to grant Staff's request and opens this docket *to take comments on the revisions to the standards suggested by Staff.*"<sup>8</sup>

13. The parties have spent the past two years participating in numerous workshops, conducting discovery, and submitting for the Commission's review initial comments, reply comments, a second round of comments, briefs and reply briefs. As reported by Staff and noted by the Commission, parties to the docket have been able to agree on large portions of revisions to the Commission's billing standards.<sup>9</sup>

14. It is noteworthy that prior to Commissioner Moffet's suggestion on August 20, 2007, no party to this proceeding had suggested that the Commission adopt the Federal Truth-in-Billing Standards rather than revise the Kansas Telephone Billing Practices Standards the parties have been working on for over two years.<sup>10</sup>

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<sup>8</sup> Order Opening Docket and Scheduling Comments, ¶ 3.

<sup>9</sup> Order Adopting Procedural Schedule, ¶ 1.

<sup>10</sup> AT&T witness Cyndi Gallagher suggested there was no need for the Commission to apply Kansas billing standards to *business accounts*, given the current Federal Truth-in-Billing Standards. (Gallagher, D. Test., at 8-9). Embarq recommended that the Commission leave the current billing standards in place. (Idoux, Tr. Vol 2, 304-305).

15. In fact, the evidentiary hearing held on August 20-21, 2007, was specifically scheduled by the Commission for “taking evidence and hearing argument *on the disputed portions of Staff’s proposed revisions.*”<sup>11</sup>

16. With all due respect, Commissioner Moffet’s proposal to completely change the focus of this general investigation at the beginning of the evidentiary hearing scheduled to resolve the disputed portions of Staff’s proposed revisions to the billing standards is patently unfair and denies the parties due process of law. For this reason alone, the Commission should not consider adopting the Federal Truth-in-Billing rules in lieu of the Kansas billing standards.

**B. The Commission Lacks Substantial Competent Evidence To Support A Decision To Adopt The Federal Truth-In-Billing Rules In Lieu Of The Kansas Billing Practices Standards.**

17. The record before this Commission is completely lacking both evidence and analysis of the specifics of the Federal Truth-in-Billing rules. The reason for this dearth of evidence and analysis is obvious. The Commission’s August 31, 2005, Order Opening Docket and Scheduling Comments unequivocally states that the Commission opened “this docket to take comments on the revisions to the standards suggested by Staff.” Further, the Commission’s April 2, 2007, Order Adopting Procedural Schedule clearly states that the Commission was scheduling direct testimony, responsive testimony, and the evidentiary hearing to resolve “the remaining issues in this docket concerning the substance of Staff’s proposed revisions.”

18. Prior to this hearing, no party proposed adopting the Federal Truth-in-Billing rules in lieu of the Kansas Billing Practices Standards. This also explains why the record fails to contain any evidence or analysis of the Federal Truth-in-Billing rules.

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<sup>11</sup> Order Adopting Procedural Schedule, ¶ 3.



19. Lacking any evidence of the specific provisions contained in the Federal Truth-in-Billing rules, this Commission has no substantial competent evidence to support Commissioner Moffet's proposal to adopt the Federal Truth-in-Billing rules in lieu of the Kansas Telephone Billing Practices Standards.

**C. Rescinding The Consumer Protections Contained In The Kansas Telephone Billing Practices Is Anti-Consumer, Not In The Public Interest, And Not Sound Policy.**

20. Beyond the denial of due process and lack of substantial competent evidence issues discussed above, rescinding the consumer protections contained in the Kansas Telephone Billing Practices Standards is anti-consumer, not in the public interest, and not sound policy for the reasons discussed below.

21. First, Commission Staff testified that state specific rules are needed to address issues relevant to Kansas consumers. (Aarnes, D. Test., at 21; Tr. Vol. 1 at 20). Staff noted that even the FCC has recognized that its Truth-in-Billing rules have not solved all consumer issues and that consumers still experience a tremendous amount of confusion regarding their bill, which inhibits their ability to compare carriers' service and price offerings, in contravention of the pro-competitive framework of the 1996 Act. (Aarnes, D. Test., at 20-21. Tr. Vol. 1 at 112).

22. Commission Staff has also stressed the need for consumer protection as the industry continues to receive less rate regulation: "As the industry continues to move towards a less strict regulation of rates, consumer protection through billing practices becomes a very important issue for the Commission to address." (Lura, R. Test., at 4).

23. Even with the extremely short notice (late in the night before he testified) provided to consider Commissioner Moffet's proposal, CURB witness Michael Lura was able to identify numerous concerns with adopting the Federal Truth-in-Billing rules:

- The Federal Truth-in-Billing rules are more guidelines than the Telephone Billing Practices Standards in effect in Kansas (Lura, Tr. Vol. 2 at 157-158);
- The Federal Truth-in-Billing rules are not really “implementable,” and are, in fact, more directed towards long distance service (Lura, Tr. Vol. 2 at 158);
- The Federal Truth-in-Billing rules and the FCC don’t address some of the issues that traditionally have been given to the states who are charged with regulating local service and universal service, such as deposits and disconnections (Lura, Tr. Vol. 2 at 158);
- The Federal Truth-in-Billing rules don’t address the following billing issues contained in Staff’s Proposed Revised Billing Practices Standards:
  - Section I.A.1 billing issues, including billing frequency, advance billing, billing period and due date, alternative billing formats, third party collect call billing, high long distance pre-billing, refunds for service outages, carrier selection, notification of change, and negative selection (Lura, Tr. Vol. 2 at 159);
  - Section II billing issues, including payment due dates, weekend holiday payment due dates, partial payments, payment arrangements, and delayed billing (Lura, Tr. Vol. 2 at 159);
  - The entire Section III billing issues, including security deposits and credit limit standards (Lura, Tr. Vol. 2 at 159);
- The FCC Truth-in-Billing rules are not adequate, and would require additional workshops and time to determine how to implement them. (Lura, Tr. Vol. 2 at 159).

24. CURB witness Michael Lura further testified that the FCC Truth-in-Billing rules are virtually unenforceable, because the FCC typically does not act on individual consumer complaints in the manner the Kansas Commission does. Mr. Lura subscribes to the FCC Daily

Digest and has never seen the FCC respond to an individual consumer billing complaint. (Lura, R. Test., at 4-5; Tr. Vol. 2 at 179-180).

25. AT&T witness Cyndi Gallagher acknowledged that the existing Kansas Billing Practices Standards are more comprehensive than the FCC Truth-in-Billing Standards, and cover more billing issues such as bill due dates and when bills must be mailed. (Gallagher, Tr. Vol. 2 at 245-246). Ms. Gallagher was unaware of how the FCC enforces violations of the FCC Truth-in-Billing standards, but thinks “possibly” there are violations of those standards. (Gallagher, Tr. Vol. 2 at 245).

26. Based on the foregoing, CURB submits that rescinding the consumer protections contained in the Kansas Telephone Billing Practices Standards is anti-consumer, not in the public interest, and not sound policy.

**III. THE COMMISSION SHOULD ADOPT STAFF’S PROPOSED REVISED TELEPHONE BILLING PRACTICES STANDARDS, WITH THE CHANGES PROPOSED BY CURB.**

27. Consistent with the purpose announced by the Commission in opening this docket “to take comments on the revisions to the standards suggested by Staff” and in scheduling direct testimony, responsive testimony, and an evidentiary hearing to resolve “the remaining issues in this docket concerning the substance of Staff’s proposed revisions,” CURB urges the Commission to adopt Staff’s proposed revisions to the Kansas Telephone Billing Practices Standards with the changes proposed by CURB. CURB will only address the changes proposed by CURB below, but otherwise supports the revisions proposed by Staff on December 11, 2006.

**A. Section I.A.3.c. Should Be Amended To Prohibit Line Item Surcharges Not Authorized or Mandated By Law.**

28. The overall pricing strategy of carriers that implement line item surcharges that are not authorized or mandated by federal, state, or local government is misleading and deceptive and should be prohibited by this Commission. (Lura, Tr. Vol. 2 at 196). These surcharges are simply devices designed to increase the carriers' revenues without raising their monthly or usage-based rates for the telecommunications services provided. In the competitive market, where consumers typically pick their carriers based on rate information, these surcharges mask or disguise the true cost of a carrier's service and make it difficult if not impossible for consumers to make an "apples-to-apples" comparison of the cost of carrier service. (Lura, D. Test., at 5). As a result, the surcharge regime implemented and adopted by certain carriers is inherently misleading and deceptive and should be prohibited by this Commission.

29. Take, for example, Sage's "Public Switched Network Recovery Charge." Sage represents that this fee is "intended to recover costs to access the public switched network for local service." However, Sage admits that although it had incurred a \$1.00 per line per month increase in the wholesale rate it pays AT&T, it originally intended not to increase retail rates. However, because the company's margins became squeezed several months later and "a retail rate increase became necessary," and further because "some of Sage's *other costs had increased in 2006*," Sage chose to increase its retail per-line rate by \$1.33 per month. (Lura, D. Test., at 8-9). Clearly, this surcharge and similar surcharges imposed by other carriers are misleading in that the names of the charges are vague and fail to allow customers to readily identify what they are paying for. Costs that are the normal cost of doing business (caused by "margin squeeze," "other costs," etc.) should be included in the carriers' monthly rates or usage charges because they are simply revenue increases to the company. (Lura, D. Test., at 6-9).

30. These deceptive and misleading surcharges are generating significant amounts of revenue from Kansas ratepayers, with several companies reporting revenues in 2006 of over \$450,000 for these line items and surcharges. It is significant to note that only one company was able to identify corresponding costs on a Kansas basis. (Lura, D. Test., at 10-11).

31. Many of the carrier surcharges appear to have been named in a way calculated to mislead or confuse consumers about the origin of the charge in question. For example, “Regulatory Surcharge,” or “Regulatory Program Fee” (Lura, D. Test., at 6), create the impression that it is the result of regulatory action, an impression reinforced by the nature of the costs the fee is intended to recover (*e.g.*, costs of regulatory compliance and property taxes). “Regulatory and Admin Fee” (Lura, D. Test., at 6) implies regulation, something only the government does, yet confuses the issue with the word “Admin.” Similarly, a “Fraud Protection Fee” is a normal cost of doing business and should be covered in the carriers’ monthly rates or usage charges. Most if not all of these carrier-imposed surcharges appear to be recovering government-authorized charges and only close examination – usually by those regularly engaged in telecommunications regulation – establishes that they are not.

32. CURB is not opposed to carriers recovering their costs of doing business nor opposed to carriers making a profit. CURB is, however, opposed to the inherently misleading means by which carriers are recovering those costs and making their profits – by imposing ever-increasing line items, surcharges and fees on customers, while at the same time advertising low monthly and per-minute rates for their service offerings. Such practices are inherently deceptive, misleading, and unreasonable, and no amount of explanation on the bill can change this basic fact. CURB therefore respectfully asks this Commission to disallow the use of such monthly fees, line items and surcharges as a means of recovering ordinary operating costs under the guise

of government mandated or imposed charges. If the charges are not authorized or mandated by federal, state, or local governments, the Commission should prohibit carriers from including them as line-item surcharges. Carriers will still be allowed to recover these costs in their monthly or usage-based rates, but consumers will not be misled by misleadingly low service rates.

33. Staff agrees with CURB that the practice of some carriers to include cost increases in their subscriber line charge or other miscellaneous itemized charges is misleading for consumers and makes it difficult for consumers to compare rates among providers. (Aarnes, D. Test., at 10; Tr. Vol. 1 at 27-29).

34. Staff's June 30, 2006 proposed language for Section I.A.3.c., Governmental Tax, Fees, and Surcharges, required all charges other than those authorized by federal, state, and local governments be included in service rates. (Aarnes, D. Test., at 9-10; Tr. Vol. 1 at 26, 29). Staff changed this recommendation in its Proposed Revised Billing Practices Standards filed on December 11, 2006, because of its interpretation of the FCC's Second Report and Order, which stated that "state regulations requiring or prohibiting the use of line items...constitutes rate regulation and, as such, are preempted under section 332(c)(3)(A) of the [Federal] Act." Staff believed that the prior language may have been prohibited by K.S.A. 66-2005(w) (telecommunications carriers shall not be subject to price regulation) and Section 332(c)(3)(A) of the Federal Act, as interpreted in the FCC's Second Report and Order (Aarnes, D. Test., at 11; Tr. Vol. 1 at 26, 29).

35. However, Staff acknowledges that the above referenced portion of the Second Report and Order relied upon by Staff in revising its proposed language to Section I.A.3.c. was overturned by the 11<sup>th</sup> Circuit Court of Appeals in *National Association of State Utility*

*Consumer Advocates v. F.C.C.*, 457 F.3d 1238 (11<sup>th</sup> Cir. 2006) (*NASUCA v. FCC*), which unambiguously preserved the ability of states to regulate the use of line items. (Aarnes, R. Test., at 1-2; Tr. Vol. 1 at 30).

36. The July 31, 2006, *NASUCA v. FCC* decision states in part:

On the key issue, we grant the petitions for review because we conclude that the Commission exceeded its authority when it preempted the states from requiring or prohibiting the use of line items. The scope of federal authority to regulate "rates" or "entry" does not include the presentation of line items on cellular wireless bills. 47 U.S.C. § 332(c)(3)(A). This *billing practice* is a matter of "other terms and conditions" that Congress intended to be regulable by the states. *Id.*

...  
The language of section 332(c)(3)(A) *unambiguously preserved the ability of the States to regulate the use of line items* in cellular wireless bills. Although the term "rates charged" is not defined in the Communications Act, the meaning of this term is clear in this context. A straightforward reading of the complementary phrases "regulate entry of or the rates charged" and "other terms and conditions," 47 U.S.C. § 332(c)(3)(A), *evidences the "clear and manifest purpose of Congress" to leave the regulation of line items to the states...*

...  
*The prohibition or requirement of a line item affects the presentation of the charge on the user's bill, but it does not affect the amount that a user is charged for service. State regulations of line items regulate the billing practices of cellular wireless providers, not the charges that are imposed on the consumer. Because the presentation of line items on a bill is not a "charge or payment" for service, Oxford English Dictionary (2d ed.1989), it is an "other term or condition" regulable by the states, 47 U.S.C. § 332(c)(3)(A).*

...  
The Commission asserts that the state regulation of line items affects "rate structures," *but these regulations do not require a carrier to recover nor prohibit a carrier from recovering a particular cost. These regulations pertain only to the presentation of that cost on customer bills.*<sup>12</sup>

37. The Eleventh Circuit has therefore determined the states have the authority to impose billing standards, including the ability to require or prohibit the use of line items on bills, as an "other item and condition" that Congress intended to be "regulable" by the states.

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<sup>12</sup> 457 F.3d at 1242, 1254-1255 (emphasis added).

38. Staff witness Christine Aarnes agrees that the original language which CURB proposes to reinsert, “all other charges shall be included in service rates,” would more effectively enable consumers to compare rates among carriers. (Aarnes, Tr. Vol. 1 at 35).

39. As a result, CURB requests that the Commission amend the last sentence in Section I.A.3.c. as follows:

Section I.A. 3.c.

Government Taxes, Fees and Surcharges. Any federal, state, local government and/or regulatory taxes, fees and/or surcharges, shall be itemized on a subscriber’s bill and shall be clearly identified. Current examples of such federal charges include: “Subscriber Line Charge,” “Federal Universal Service Fund,” “Local Number Portability,” and Federal Tax. Current examples of such state and local governmental charges include; city and county taxes, city franchise fee, Kansas Universal Service Fund and 911 taxes and fees. The Subscriber Line Charge cannot exceed the rate permitted by law. *Only those taxes, fees and surcharges authorized by federal, state or local governments may be itemized. All other charges shall be included in service rates.*

(Lura, D. Test., at 17-18; Tr. Vol. 2 at 227-228; Exhibit 1).

40. Staff witness Christine Aarnes testified that CURB’s proposed language (above) could help eliminate the confusing and misleading surcharges that Staff and CURB have expressed concerns about. (Aarnes, Tr. Vol. 1 at 38-40).

**B. The Definition of Local Service Charges Should Not Include Vertical Services Because Vertical Services Should Not Be A Deniable Charge.**

41. CURB urges the Commission to revise the definition of local service charges in Staff’s Proposed Revised Billing Practices Standards to state:

*A local service provider’s charge for service which allows the customer to complete calls within the local service area (dial tone).*

(Lura, D. Test., at 15-16; Tr. Vol. 2 at 197-200).



42. Vertical services are optional services that are not required to access the local network. (Aarnes, Tr. Vol. 1 at 51).

43. Basic local service is the cornerstone of universal service. Massive amounts of federal and state funds are expended each year to guarantee and protect universal service, and this Commission should ensure that consumers that *continue to pay for basic local service* continue to receive the benefits universal service is intended to provide –the consumer’s lifeline to emergency services, doctors, schools, hospitals, family, etc. Basic local service should not be used as a bargaining tool to ensure payment of vertical services and miscellaneous charges such as paging, caller ID, ring tones, internet service, etc. (Lura, R. Test., at 5-7; Tr. Vol. 2 at 210-211).

44. CURB isn’t asking the Commission to require carriers to continue to provide basic local service to ratepayers who don’t pay for basic service, only to preserve their right to receive basic local service - and the universal service it provides, as long as they continue to pay for basic local service. Failure to pay for vertical services and other miscellaneous charges should not result in termination of basic local service as long as the consumer has paid for basic local service. If a consumer fails to pay for vertical services, the provider can discontinue or shut off those vertical services. (Lura, R. Test., at 6; Tr. Vol. 2 at 165, 197; Idoux, Tr. Vol. 2 at 307-308).

45. Some carriers argue there are costs of making certain services, such as long distance and vertical services, non-deniable services rather than deniable services. While some costs will increase, Embarq operates in 18 states and in about half of those states Embarq has experience and IT programming to allow them to handle non-deniable charges for toll. Embarq also has other non-deniable charges in Kansas that it cannot shut off local

service for if the customer doesn't pay, as required by the Kansas current billing standards. Embarq has experience and IT programming to handle those non-deniable charges in its billing process. (Idoux, Tr. Vol. 2 at 310-311).

46. Likewise, AT&T has processes in place to handle non-deniable charges for toll. AT&T has for some time had procedures in place in Kansas for Lifeline customers that treat toll as a non-deniable charge. (Starks, Tr. Vol. 2 at 258-260, 272).

**C. The Application of Standards Section Should Be Amended To Eliminate The Provision Allowing Providers To Opt-Out Of The Kansas Telephone Billing Practices Standards.**

47. CURB opposes both the language in Staff's December 11, 2006, Proposed Revised Billing Practices Standards, as well as the ever-evolving proposals by wireless carriers and Staff to amend the December 11, 2006, language.

48. Staff's December 11, 2006, proposed language could be interpreted to simply allow an opt-out proviso in the middle of lengthy mass marketed adherence contracts that customers are required to sign to obtain service, and that few people are likely to read or understand. Allowing providers to opt-out of the Kansas billing standards by simply inserting language in an adherence contract is anti-consumer, not in the public interest, and not sound policy. (Lura, R. Test., at 7-8; Tr. Vol. 2 at 193-195).

49. Moreover, the language "consistent with the FCC's Truth-in-Billing Standards" is vague and ambiguous; it fails to specify exactly what, if any, other "separate billing standards" may qualify as "consistent with" the FCC's Truth-in-Billing Standards. Staff witness Christine Aarnes, who did not attend the workshops or participate in the drafting of this language, is not sure why this language was chosen. (Aarnes, Tr. Vol. 1 at 18-19).

50. The problematic last sentence of the Application of Standards Section of Staff's December 11, 2006, Proposed Revised Billing Practices Standards states that "these standards *are not applicable* when the provider has a written and executed contract with a subscriber in which the contract specifies that separate billing standards apply that are consistent with the FCC's Truth-in-Billing Standards."

51. Nothing in Staff's December 11, 2006, Proposed Revised Billing Practices Standards gives the KCC jurisdiction to enforce the FCC's Truth-in-Billing Standards for any provider that utilizes the opt-out provision. As a result, under the language proposed by Staff, any provider that has effectively opted-out of the Kansas billing standards will effectively avoid the jurisdiction of the Kansas Corporation Commission, since "these standards *are not applicable*" to that provider. As a result, the Application of Standards Section, if approved by this Commission, will effectively deny Kansas ratepayers the consumer protections they have had under Commission rules for nearly 25 years. (Aarnes, Tr. Vol. 1 at 22-23; Lura, Tr. Vol. 2 at 226-227).

52. If the Commission refuses to approve the problematic provision in the Application of Standards Section, as CURB urges, any provider that has a valid reason may still seek a "Waiver of Requirements" under the proposed rules. (Lura, R. Test., at 7-8).

53. The above demonstrates that the Application of Standards Section allowing providers to opt-out of the Kansas billing standards is anti-consumer, not in the public interest, and not sound policy. As a result, CURB urges the Commission to remove the last sentence of the "Application of Standards" Section.

**D. Section I.A.1. Should Be Amended To Clarify That Customers Cannot Be Charged For Choosing A Monthly Billing Option.**

54. CURB proposes that the Section I.A.1. Billing Frequency provision be amended to clarify that customers cannot be charged for choosing a monthly billing option. (Lura, D. Test., at 16). Staff does not oppose CURB'S proposal. (Aarnes, R. Test., at 35; Tr. Vol. 1 at 48).

55. As written, Section I.A.1 does not explicitly state that monthly billing must be provided if a customer chooses monthly billing and that no additional charges should be imposed on customers that choose monthly billing. The amended language proposed by CURB is emphasized in the language below:

Section I.A.1.

Billing Frequency. The standard billing period is monthly from billing date up to and including the day before [the] next billing date. Long distance providers may deviate from this standard upon notice to subscribers, but must provide a monthly bill if a customer requests. *Under no circumstances shall a customer be charged extra for choosing a monthly billing option.*

**E. Section I.A.3.k. Should Be Amended To Clarify That A Bundle Or Package Must Include Basic Local Service To Become A Deniable Charge.**

56. CURB recommends that Section I.A.3.k, be amended to clarify that a bundle or package that consists solely of non-deniable charges, such as a vertical service package consisting of caller ID, call forwarding, and voice mail but without basic local service, does not become a deniable charge simply because the non-deniable services are sold together at a bundled price. (Lura, D. Test., at 18-19).

57. While CURB compromised by agreeing to allow bundled services that *include* basic local service to be considered a deniable charge because of the realities of the marketplace (Lura, Tr. Vol. 2 at 190), CURB did not agree that bundles consisting solely of vertical or other

services, but *not* including basic local service, would be considered a deniable service. Staff agrees that CURB's recommendation to amend this section would clarify the intent of the parties that the bundled services must include basic local service in order for the entire bundle to be a deniable charge. (Aarnes, R. Test., at 34-35; Tr. Vol. 1 at 42).

58. As a result, the following sentence in Section I.A.3.k. should be amended to read:

The charge for a bundle or package of services *that contains basic local service* shall be considered a deniable charge.

59. Inclusion of the above inserted language clarifies that a bundle or package that consists solely of non-deniable charges does not become a deniable charge merely by the bundling or packaging of non-deniable services.

**F. Section I.B. Should Be Amended To Clarify That In The Event Of A Billing Dispute, Providers Must Provide A Complete Paper Copy Of The Bill At No Cost.**

60. CURB encourages the Commission to amend Section I.B. to require providers to provide a complete paper copy of the bill at no cost in the event of a billing dispute. While Staff witness Christine Aarnes' testimony indicates the parties agreed to eliminate the "at no cost" language from this section, CURB did not agree to this and Ms. Aarnes testified she was not present during the workshops and was not aware of CURB's position on the issue. (Aarnes, D. Test., at 15; Tr. Vol. 1 at 42).

61. Staff witness Christine Aarnes also agreed that in the event of a billing dispute, a customer should be entitled to a free copy of their bill that they could present in court if there was not another way to obtain it, such as getting it off the Internet. (Aarnes, Tr. Vol. 1 at 44).

62. AT&T witness Angela Winchester opposes CURB's proposal to require providers to provide a free copy of their bill in case of billing disputes, even though she testified that:

AT&T's current general exchange tariff already provides for a replacement copy of the customer's bill at no charge *if they ask for it within 60 days*. (Winchester, R. Test., at 4;Tr. Vol. 2, at 286).

...  
“...we do provide a duplicate copy of a bill *within the 60 days* if there is a dispute on the bill if they do not have their copy.” (Winchester, Tr. Vol. 2, at 286).

However, when asked if a customer who receives their bill electronically asked for a hard copy within 60 days, AT&T witness Angela Winchester responded that, “We would provide a hard copy *most likely*. We would refer them back to the bill on their account which they have access to.” (Winchester, Tr. Vol. 2, at 287).

63. CURB simply asks the Commission to give consumers the right to receive a complete paper copy of their bill at no cost *in the event of a billing dispute*. (Lura, D. Test., at 19; Tr. Vol. 2 at 296). AT&T seems to indicate it does that already, but the testimony of its witness indicates that it could become difficult for a consumer to get that free copy, in the event “most likely” becomes a “no” in their billing dispute with the company.

**G. Section I.D. Should Be Amended To Reinsert The \$100 Threshold Required For High Long Distance Pre-Billing.**

64. CURB recommends that the Commission reinsert the \$100 threshold originally proposed by Staff for Section I.D. High Long Distance Pre-Billing. It is not unusual for consumers to use cell phones for much of their long distance calling, which results in low average monthly toll usage. If long distance usage is needed on a landline or a consumer exceeds their allotted long distance, a consumer may exceed the average monthly usage level and a provider will be entitled to implement high long distance pre-billing under the standard as proposed. The \$100 threshold prevents needless customer high toll pre-billing while still allowing providers the ability to control unusually high toll bills. (Lura, D. Test., at 20).

65. Staff witness Christine Aarnes acknowledged that under Staff's Proposed Revised Telephone Billing Practices Standards, a provider could implement high long distance pre-billing on a consumer who had incurred only \$20 in long distance toll charges if the consumer had little or no long distance in the previous three months. When asked whether such a result is reasonable, Ms. Aarnes replied that "I would *hope* carriers would use discretion for when they would use high toll pre-billing and something like your case would not occur." Ms. Aarnes was not able to tell the Commission exactly why the original \$100 threshold requirement was removed from Section I.D., since she wasn't at the workshops. (Aarnes, Tr. Vol. 1 at 45-46) (emphasis added).

66. CURB submits the better practice would be to reinsert the \$100 threshold so the Commission does not have to rely upon provider discretion to avoid consumers being pre-billed for amounts under \$100 in long distance toll. CURB witness Michael Lura provided the Commission with the following proposed amendment which would accomplish this:

Section I.D.

High Long Distance Pre-Billing.

1. A Telecommunications provider may utilize high long distance pre-billing only when:
  - ...
  - b. *Long distance usage is above the amount of deposit held and (i) at least double the previous 3-month average levels or (ii) above the subscriber's provided estimate, but in no event if usage is less than one hundred dollars (\$100).*

(Lura, D. Test., at 20).

**H. Section I.E. Should Be Amended To Define An Interruption To Include Other Recurring Problems Such As Unacceptable Noise Levels, Slow Dial Tone And Dropped Or Disconnected Calls.**

67. CURB recommends that the Commission amend Section I.E. to define an interruption to include other recurring problems such as unacceptable noise levels, slow dial tone

and dropped or disconnected calls. Each of these recurring problems can effectively render phone usage unacceptable. Since these measurements are subjective, CURB also recommends the Commission order the Commission Staff to work with parties to this docket to develop the actual standards. (Lura, D. Test., at 20-21; Tr. Vol. 2 at 201-203).

68. It should be noted that Staff's current proposed language provides for a refund in the event of an "outage." However, "outage" is never defined. CURB's proposal recommends a method and some guidelines for defining an "outage."

**I. Section I.G.1. Should Be Amended To Provide A Five-Day Minimum Notice Before Rates Are Increased.**

69. CURB recommends a five-day minimum notice before rates are increased. Customers need timely, accurate data to make wise purchasing decisions. Getting notice of a rate change on the day the bill is delivered does not give consumers adequate time to price compare with other providers. (Lura, D. Test., at 21-22; Tr. Vol. 2 at 205-207).

70. As noted by CURB witness Michael Lura, consumers have no remedy under this section if they are given notice *at any time before the rate increase is implemented*. (Lura, Tr. Vol. 2 at 206-207). If a consumer receives notice of a rate increase on day one, and the rate increase is effective on day two, the consumer will end up incurring the rate increase with no effective remedy. CURB's proposal to require at minimum a five-day notice of rate increases is a reasonable proposal and should be implemented by the Commission.

**J. Staff's Prior "Billing During Suspension of Service" Provisions Should Be Reinserted Into The Billing Practices Standards.**

71. Staff's prior "Proposed Billing During Suspension of Service" provisions, previously labeled Section II.G. and included in Staff's earlier proposed revisions to the billing



standards, should be reinserted into the billing standards. It was removed from Staff's Proposed Revised Billing Practices Standards, despite CURB's position that consumers should not be required to pay for service that is suspended.

72. CURB urges the Commission to re-insert the language below in the revised billing standards. (Lura, D. Test., at 22-23).

**Billing During Suspension of Service.** During the time a subscriber's service is suspended, the charges associated with the suspended services cease and resume only upon restoration or reconnection of service.

**IV. THE CHANGES IN STAFF'S PROPOSED REVISED BILLING PRACTICES STANDARDS WILL POSITIVELY IMPACT THE PUBLIC INTEREST AND UNIVERSAL SERVICE.**

73. CURB witness Michael Lura provided substantial reasons why the changes in Staff's Proposed Revised Billing Practices Standards will positively impact the public interest and universal service.

74. The Kansas Corporation Commission is charged by the State Telecommunications Act with protecting the public interest. K.S.A. §66-2001 requires the Commission to ensure, "excellent services at an affordable price," "increased services," "improved telecommunications facilities and infrastructure at reduced rates" and "telecommunications services that are comparable in urban and rural areas." The proposed billing standards address, among other things:

- Billing frequency
- Billing periods, mailing dates and due dates
- Clear, itemized service charges
- Taxes and fees
- Notice of late payment charges
- Non-deniable charges
- Alternative billing formats
- Refunds for interruptions
- Notifications of service changes

- Subscriber rate information
- Subscriber notices
- Due dates/Delinquency dates
- Late payment charges
- Billing during suspension of service
- Delayed billing
- Payment of deposits in installments
- Suspension in special circumstances
- Information included in suspension/disconnection notices

Consistency in the application of each of these items is in the public interest and is required for consumers to make informed choices among all competitive providers. Vague, misleading, and/or deceptive billing practices prevent ratepayers from accurately assessing: (1) what they are being billed for; (2) whether the amounts charged conform to the price charged for the service; (3) when and why their service may be suspended or disconnected; (4) when and how late-payment penalties may be assessed; (5) when their payments are due or delinquent; and (6) when service or rates will be changed. These are vital consumer protections, directly impacting the provision of universal service for Kansas ratepayers. (Lura, D. Test., at 25-26; R. Test., at 4-5, 7; Tr. Vol. 2 at 221).

75. Additionally, Staff witness Christine Aarnes provided testimony and reference to FCC statements indicating “...as competition evolves, the provision of clear and truthful bills is paramount to efficient operation of the marketplace.” (Aarnes, D. Test., at 19-20).

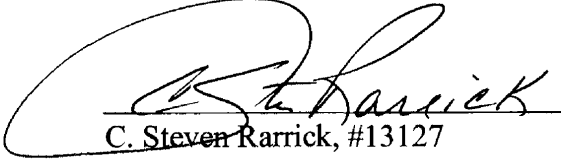
76. As a result, CURB urges the Commission to implement the Staff’s Proposed Revised Billing Practices Standards, with the changes recommended by CURB.

## **V. CONCLUSION.**

77. On behalf of Kansas small business and residential ratepayers, CURB urges the Commission to decline to adopt the Federal Truth-in-Billing rules in lieu of the Kansas billing

standards and adopt Staff's Proposed Revised Billing Practices Standards with the changes proposed by CURB.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the beginning.

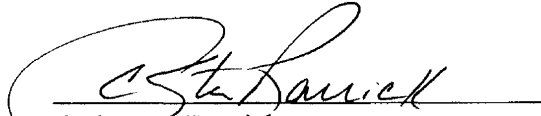
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**VERIFICATION**

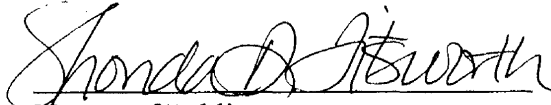
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 ) ss:  
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C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of September, 2007.

  
Notary of Public

My Commission expires: 8-03-2009.



**CERTIFICATE OF SERVICE**

06-GIMT-187-GIT

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