

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

STATE CORPORATION COMMISSION

OCT 10 2007

 Docket
Room

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

POST-HEARING REPLY 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 September 12, 2007, Order Modifying Procedural Schedule and Scheduling Reply Briefs, files its Post-Hearing Reply Brief on the disputed portion of Staff’s Proposed Revised Billing Practices Standards. In support of its Post-Hearing Reply Brief, CURB states as follows:

I. INTRODUCTION.

1. The Kansas telephone billing standards, unchanged in nearly twenty-five years, are outdated and do not reflect current technology or business practices. It is in the public interest for the Commission to review and revise the Kansas telephone billing standards now. Some parties to this proceeding are actually urging the Commission to do nothing. Other parties have wholeheartedly embraced the proposal suggested by Commissioner Moffet to scrap the Kansas billing standards and adopt the Federal Communications Commission (FCC) Truth-in-Billing (TIB) Standards – even though the proposal came on the first day of hearings scheduled

specifically to take evidence and hear argument “*on the disputed portions of Staff’s proposed revisions.*”¹

2. After over two years of time and expense working on *revisions to the standards suggested by Staff* at the direction of the Commission,² the Commission should not abandon the hard work, cooperation, and difficult compromises by parties to this docket that led to the revised billing standards submitted by Staff and litigated on August 20-21, 2007. Kansas consumers deserve the consumer protections Staff, CURB, and other parties to this docket have worked diligently to craft to protect Kansas ratepayers while considering, to the greatest extent possible, the business considerations of the telecommunications industry.

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

3. It is noteworthy that only one carrier is even remotely concerned with the timing of Commissioner Moffet’s proposal to consider adopting the federal TIB rules.³ Had a Commissioner asked the parties at the outset of the evidentiary hearing to consider providing *greater consumer protections* than proposed by Staff, carriers would have been outraged by the timing of such a proposal and denial of due process. Unfortunately, the prospect of abandoning over 25 years of consumer protection to Kansans and erasing over two years of work on the revisions to the Kansas Standards proposed by Staff evokes little concern by any parties other than CURB,⁴ Staff,⁵ and Worldnet.⁶

¹ Order Adopting Procedural Schedule, ¶ 3.

² Order Opening Docket and Scheduling Comments, ¶ 3.

³ Initial Post-Hearing Brief of Embarq, ¶ 2.

⁴ Post-Hearing Brief of CURB, ¶¶ 1-26.

⁵ Commission Staff’s Post-Hearing Brief, ¶¶ 4-11.

⁶ Brief of Worldnet, L.L.C., ¶¶ 2, 6.

4. Embarq does raise the legitimate question of whether the Commission has provided sufficient notice to the parties of the possibility it may adopt the FCC TIB rules. CURB urges the Commission to stay the course and adopt the revisions to the Kansas Telephone Billing Standards proposed by Staff after two years of work, with the changes proposed by CURB.

5. Verizon states in its brief, without explanation or factual support, that adopting the FCC TIB standards “would have no discernible effect on Kansans...”⁷ Verizon’s statement is completely without support and is contrary to the evidence in the record. CURB witness Michael Lura demonstrated that adopting the FCC TIB rules would deny Kansas ratepayers:

- All of the Section I.A.1 billing protections related to 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);
- All of the Section II billing protections related to payment due dates, weekend holiday payment due dates, partial payments, payment arrangements, and delayed billing (Lura, Tr. Vol. 2 at 159); and
- All of the Section III billing protections related to security deposits and credit limit standards (Lura, Tr. Vol. 2 at 159).

6. Embarq acknowledges the FCC TIB rules do not address issues related to payment, security deposits, and suspension/disconnection.⁸ AT&T acknowledges 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).

7. Alltel, Sprint, Verizon, and AT&T all argue that the number of complaints filed with the KCC does not justify the revisions to the billing standards proposed by Staff. However, since competition was introduced in 1996, complaints have increased, not decreased, and are still

⁷ Post-Hearing Brief of Verizon, p. 2 (Because Verizon failed to number its paragraphs as required by K.A.R. 82-1-219(c), CURB will reference only the page number).

at levels greatly exceeding the level prior to competition. Specifically, telecom complaints have increased 279% from fiscal year 1993 to fiscal year 2003, and are up 85% from 1993 to 2006. Telecom complaints remain higher than historical levels, and are currently almost double what they were in 1993 prior to the introduction of competition. (Aarnes, R. Test., at 15-16; Tr. Vol. 1, at 71-72). Billing complaints in particular are currently more than double the number filed in 1993, before the introduction of competition. (Aarnes, R. Test., at 16-17; Chart CA2: KCC PACP Billing Complaints). Telephone companies subject to federal and/or state regulation have made the top ten lists of the most complained about industries to the Better Business Bureau for the past five years. (Aarnes, R. Test., at 20). According to the FCC Consumer and Government Affairs Bureau data, telephone billing and rate complaints for Cable and Satellite, Wireless Telecommunications and Wireline Telecommunications providers are consistently in the top five complaint subjects. (Aarnes, Tr. Vol. 1, at 118).

8. In addition, the record demonstrates that the data compiled by the KCC regarding wireless carriers does not accurately represent consumer complaints about wireless carriers:

- Most wireless customers haven't been trained to contact the KCC for complaints because they've always been sent away in the past because the KCC didn't have jurisdiction over wireless complaints. (Aarnes, Tr. Vol. 1, at 84-85, 117).
- Before the KCC granted wireless carriers ETC designation, the KCC referred all wireless complaints to the FCC. (Aarnes, Tr. Vol. 1, at 84).
- "Cellular telephone service and supplies" has been the most complained about industry to the Better Business Bureau for four of the past five years, with one year (2003) as the second most complained about industry behind automobile dealers. (Aarnes, R. Test., at 20).

9. In support of its position that the federal TIB rules are sufficient protection for Kansas consumers, Sprint cites the testimony of Mr. Wood concerning "the FCC's action to ensure compliance with its rules".⁹ However, the testimony of Mr. Wood cited by Sprint only

⁸ Initial Post-Hearing Brief of Embarq, ¶ 5.

⁹ Post-Hearing Brief of Sprint, ¶ 29.

gives examples of informal contacts to resolve complaints, but fails to provide even one example of a formal enforcement action by the FCC. Mr. Wood's testimony likewise fails to rebut Mr. Lura's testimony that the FCC does not act on individual complaints like the KCC does. (Wood, Tr. Vol. 2, at 329-333; Lura, Tr. Vol. 2 at 179-180).

10. As noted by Staff in testimony and its brief, even the FCC has recognized that its TIB rules have done little to solve consumer issues and 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; Commission Staff's Post-Hearing Brief, ¶ 6).

11. Finally, carriers have failed to provide any evidence to rebut CURB's position that the CTIA is a voluntary, unenforceable agreement among wireless industry members. RCC/USCOC witness Don Wood admitted the CTIA code isn't a government enacted statute or regulation, but is merely a voluntary agreement among wireless carriers. (Wood, Tr. Vol. 2, at 342-343). Staff witness Christine Aarnes testified that the CTIA code isn't a code or law, but instead is simply voluntary guidelines agreed to by wireless carriers without any enforcement mechanism or investigative unit. Ms. Aarnes was unaware of any ability of the KCC or the FCC to enforce the CTIA code. (Aarnes, Tr. Vol. 1 at 52-53). Ms. Aarnes was also unaware of any real consequences for violation of the voluntary code, or of any company that has ever been sanctioned or fined by the CTIA or the FCC or any governmental body for violating the CTIA code. (Aarnes, Tr. Vol. 1 at 53).

12. Alltell cites the broad general requirements of the FCC TIB standards and concludes that these general requirements "clearly address the broad general concerns of this

Commission.”¹⁰ It is difficult to speculate on what Alltel believes the “broad general concerns” of the Commission are, since Alltel fails to specify what is intended with this statement and the Commission has not publicly expressed any general concerns in this docket. Even more difficult to understand is Alltel’s conclusion that, “any specific need for Kansas specific billing standards is alleviated by the carrier’s adherence to the Federal TIB *guidelines*,”¹¹ since Alltel fails to provide any detail to this unsupported conclusion. However, CURB agrees with Alltel’s description of the FCC TIB rules as “guidelines,” since FCC TIB rules are more akin to guidelines and fall far short of the Kansas specific rules that have protected Kansas consumers on billing issues for nearly 25 years.

13. Unfortunately, both the FCC TIB rules and the CTIA Code are much like the Pirates Code in the movie PIRATES OF THE CARIBBEAN, described by Captain Barbossa as, “*more what you'd call 'guidelines' than actual rules.*”¹²

14. Sprint would have the Commission believe the multi-state prosecution of Sprint and other wireless carriers for misleading advertising and disclosures actually supports its position that the Commission should not require wireless ETCs to comply with Kansas billing standards.¹³ A more reasonable interpretation is that this multi-state prosecution by 32 state attorneys general demonstrates that competition¹⁴ failed to curb the use of deceptive and misleading advertising and disclosures by wireless carriers. As a result, the Commission should

¹⁰ Post-Hearing Brief of Alltel Communications, Inc., ¶10.

¹¹ Post-Hearing Brief of Alltel Communications, Inc., ¶11 (emphasis added).

¹² PIRATES OF THE CARIBBEAN (Walt Disney Pictures 2003). See, <http://www.imdb.com/title/tt0325980/quotes>; <http://www.moviesoundclips.net/sound.php?id=58>; <http://www.wordplayer.com/archives/PIRATES.script.html>.

¹³ Post-Hearing Brief of Sprint, ¶¶ 36-37.

¹⁴ Curiously, Sprint argues that the competitive marketplace is sufficient to prevent misleading billing practices by wireless carriers immediately after admitting wireless carriers were prosecuted by 32 state attorneys general for misleading advertising and disclosures concerning terms and conditions of service and the provision of an estimate or percentages of other charges that may apply in addition to the monthly recurring rate. *Id.*

provide customers of wireless ETCs with the consumer protections that have been afforded Kansas ratepayers for nearly 25 years.

15. AT&T states that it “is on record as being supportive of this Commission adopting and enforcing as its own, the ‘truth-in-billing’ standards previously adopted by the Federal Communications Commission (“FCC”).”¹⁵ To the contrary, at no time prior to the hearing did AT&T (or any other party) propose or suggest that this Commission *adopt and enforce* the FCC TIB standards. The direct and reply testimony of AT&T witness Cyndi Gallagher, cited by AT&T, does not propose that this Commission adopt and enforce as its own the FCC TIB standards. What Ms. Gallagher suggested was her opinion that there was *no need for the Commission to apply Kansas billing standards to business accounts*, given the current federal TIB standards; at no time did she propose that the Commission adopt and enforce as its own the FCC TIB standards.¹⁶

16. Significant legal issues exist as to whether the Commission can lawfully adopt the FCC TIB rules, or whether to do so would constitute an unlawful delegation of the Commission’s authority. Even assuming the Commission has the authority to adopt the FCC TIB rules, regulatory disparity will still exist because the FCC TIB rules are currently in flux, with further changes under consideration. Each time the FCC amends the TIB rules, this Commission would need to open a new general investigation or re-open this docket, hold additional workshops, schedule comments, testimony, hearings, and briefs, and either adopt or reject the amendments to the FCC TIB rules made by the FCC. Adopting the FCC TIB rules,

¹⁵ Post-Hearing Brief of Southwestern Bell Telephone Company, AT&T Communications of the Southwest, Inc. and SBC Long Distance, LLC (Post-Hearing Brief of AT&T), p. 1 (Because AT&T failed to number its paragraphs as required by K.A.R. 82-1-219(c), CURB will reference only the page number).

¹⁶ “Accordingly, it is AT&T’s position that there is no need for this Commission to apply state billing standards to business accounts given the current federal Truth in Billing standards”. Gallagher, D. Test., at 8-9. “AT&T would encourage the Commission to find that the current federal rules provide adequate protections for all telephone customers; or, at a minimum, business customers.” Gallagher R. Test., at 3.

including future revisions and amendments by the FCC, would constitute an unlawful delegation of authority. *See, People v. Kruger*, 48 Cal. App.3d Supp. 15, 19, 121 Cal.Reptr. 581 (1975).

17. It would likewise constitute an unlawful delegation of agency authority for the Commission to decide in this proceeding to be bound by future FCC interpretations of the FCC TIB rules. Because the Commission cannot legally incorporate future FCC interpretations or agree to be bound by those interpretations, carriers will again be left with regulatory disparity - intrastate TIB rules interpreted by this Commission and interstate TIB rules interpreted by the FCC. Assuming the carriers have accurately portrayed the costs they incur with conflicting billing regulation, this will result in additional regulatory costs on carriers. Should parties wish to obtain clarity on issues of FCC interpretation, the Commission would (again) need to open a new general investigation or re-open this docket, hold additional workshops, schedule comments, testimony, hearings, and briefs, and either adopt or reject the interpretation by the FCC. Depending on the decision by the Commission, this could once again lead to regulatory disparity, with additional corresponding regulatory costs.

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

18. CURB agrees with the response of the Independent Telecommunications Group, Columbus et al. (Columbus) and State Independent Alliance (SIA) to arguments made by other carriers that Kansas specific billing standards impose an unreasonable burden on multi-state telephone providers. Columbus and SIA correctly note that: Congress has not prohibited state regulation of billing standards; multi-state telephone providers have been complying with Kansas

billing standards for 25 years; and nothing has intervened to render less important the continuing protection of Kansas consumers in the area of billing practices.¹⁷

19. Sprint attempts to criticize CURB witness Michael Lura's testimony supporting the need for Kansas specific billing practices, but fails to acknowledge the complaints referenced in the National Association of State Utility Consumer Advocates (NASUCA) Petition totaling 19,000 consumer complaints on billing issues. (Lura, Tr. Vol. 2 at 163). Even Alltel admits in its brief that there were over 17,400 complaints regarding wireless companies in 2006.¹⁸

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

20. Verizon and Sprint take great pains to criticize CURB witness Michael Lura's testimony that "there is nothing [under the current regulations] to prevent a company from recovering virtually all, or even all, their costs through line items and surcharges."¹⁹ However, it is noteworthy that Verizon and Sprint do not dispute the basic premise of Mr. Lura's testimony: *such a practice is permissible* under current billing standards.

21. It is also noteworthy that Verizon and Sprint fail to dispute CURB's position that these surcharges are misleading and prevent consumers from accurately comparing rates among competitors. Sprint merely emphasizes that *its own* surcharges are lawful and not misleading, which it somehow equates with all carrier surcharges being lawful and non-misleading. Contrary to Sprint's statement, the record is not lacking in evidence that these line-item surcharges are misleading to consumers and make it difficult for consumers to compare rates among providers. In fact, when CURB requested data regarding the costs being covered by these carrier-imposed

¹⁷ Brief of Independent Telecommunications Group and State Independent Alliance, ¶¶ 4-6.

¹⁸ Post-Hearing Brief of Alltel Communications, Inc., ¶ 5; Aarnes, Tr. Vol. 1, p. 119.

¹⁹ Post-Hearing Brief of Verizon, p. 4; Post-Hearing Brief of Sprint Communications Company, L.P., Sprint Spectrum, L.P. and Nextel West Corp. (Post-Hearing Brief of Sprint), ¶¶ 15-16.

surcharges, only one company could specify the corresponding costs on a Kansas specific basis. (Lura, D. Test., at 10-11). CURB demonstrated this in its initial Post-Hearing Brief.²⁰

22. Staff agrees 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). The brief filed by Columbus and SIA correctly notes that while unlikely, it is possible under present standards for a carrier to advertise a rate of \$0.00 for its service and recover its business costs and profits by itemizing a number of “surcharges,” and that the practice of self-originated surcharges billed separately from a carrier’s stated and promoted rate is anticompetitive and confusing at best and makes it difficult for consumers to compare rates among competitors.²¹

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

23. As noted by Columbus and SIA, allowing carriers to opt-out of the Kansas Billing Standards through written contracts, or even through a mere customer notice as proposed by some parties, would impose competitive bias in favor of certain carriers and competitive disadvantage on other carriers operating in Kansas.²² Columbus and SIA also note that allowing carriers to opt-out of the Kansas billing standards by “mere notice” to customers would effectively render the Kansas billing standards null and void as all carriers would opt out under such a provision.²³

²⁰ Post-Hearing Brief of CURB, ¶¶ 28-40.

²¹ Brief of Independent Telecommunications Group and State Independent Alliance, ¶¶ 4-6.

²² Brief of Independent Telecommunications Group and State Independent Alliance, ¶¶ 13-14.

²³ Brief of Independent Telecommunications Group and State Independent Alliance, ¶ 15.

24. Verizon argues that the opt-out provision should be retained. “Because the federal TIB standards already provide *adequate protection* for any telecommunications contract that would be subject to the Prefatory Language written contract exclusion, the provision should be retained and CURB’s objection rejected.”²⁴ Verizon provides no support for its statement that the federal TIB standards provide adequate protection.

25. To the contrary, CURB witness Michael Lura specified numerous protections under Kansas billing standards that are not provided under the FCC TIB standards.²⁵ As noted previously, Embarq acknowledges the FCC TIB rules do not address issues related to payment, security deposits, and suspension/disconnection,²⁶ and AT&T acknowledges 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). More importantly, even the FCC has recognized that its TIB rules have done little to solve consumer issues and consumers still experience a tremendous amount of confusion regarding their bill, which inhibits their ability to compare carriers’ service and price offerings. (Aarnes, D. Test., at 20-21; Tr. Vol. 1 at 112; Commission Staff’s Post-Hearing Brief, ¶ 6).

C. Toll and Vertical Services Should Not Be Deniable Services.

26. CURB wholeheartedly agrees with the position expressed in Staff’s brief regarding non-deniable services:

Staff is concerned that *carriers not be able to disconnect local service for non-payment of unrelated services* being more and more frequently provided by the same carriers. Staff believes *basic local service is too important for a consumer to risk losing it even if the consumer fails, for whatever reason, to pay for other*

²⁴ Post-Hearing Brief of Verizon, p. 7 (emphasis added).

²⁵ See, Post-Hearing Brief of CURB, ¶¶ 23-24.

²⁶ Initial Post-Hearing Brief of Embarq, ¶ 5.

*services from the same provider, and it should be only when a consumer fails to pay for basic local service that basic local service be terminated.*²⁷

27. While CURB agrees with Staff that toll has been separated from basic local service and should be a non-deniable charge, CURB believes vertical services are likewise not essential to basic local service or universal service and should likewise be characterized as a non-deniable charge. (Lura, D. Test., at 15-16; R. Test., at 5-7). Vertical services are optional services that consumers are not required to have to access the local network, and vertical services are not included in the statutory definition of universal service. (Aarnes, Tr. Vol. 1, at 51).

28. Embarq correctly states that to date, there has been no prohibition against terminating local service for the nonpayment of toll. CURB submits this is just one of the many reasons the billing standards need revised. Toll is separate from basic local service, is not essential to basic local service or universal service, and should be characterized as a non-deniable charge.

D. The Commission Should Disregard Un-sworn Evidence Submitted By AT&T That Is Not In The Record.

29. In arguing against Staff's recommendation to classify toll charges as a non-deniable charge,²⁸ providing rate information to customers,²⁹ and delinquent payments related to the "postmark,"³⁰ AT&T attempts to bootleg into its brief un-sworn estimated amounts not contained in the record. AT&T references Chairman Wright's request for specific cost information, but fails to acknowledge that Chairman Wright qualified his request to be confined to evidence "within the record": "All I'm asking is address the issue, I mean, if you're going to be as specific as you can *within the record* that we have rather than – a general comment that it

²⁷ Commission Staff's Post-Hearing Brief, ¶ 17 (emphasis added).

²⁸ Post Hearing Brief of AT&T, p. 13.

²⁹ *Id.*, at p. 15.

will cost a lot of money, don't do it."³¹ Each of these estimated amounts should be completely disregarded by the Commission.

E. Carriers Should Be Prohibited From Suspending Or Disconnecting Service Based On Debts That Are Not Legally Collectible.

30. AT&T argues that it should be able to use uncollectible debts, such as past debts for which the statute of limitations has run, to determine whether to provide, suspend, or disconnect service.³² AT&T witness Darlene Starks testified that AT&T believes it can withhold the provision of universal service to a customer who has an outstanding debt to AT&T that is barred from collection by legal action by the statute of limitations. (Stark, D. Test., at 7; Tr. Vol. 2, at 266-267). Ms. Starks admits that AT&T has protections under the Kansas billing standards to require a deposit of such a customer if they are not creditworthy. (Stark, Tr. Vol. 2, at 267).

31. AT&T's position on this issue is contrary to current Commission billing standards applicable to electric, gas and water utilities, and AT&T has provided no basis for the Commission to reverse that policy for telephone carriers.

32. The KCC Electric, Gas and Water Billing Standards, effective July 24, 2007, address the ability of a utility to threaten or refuse service at Section I. E.(2):

E. Responsibility for payment of a bill:

...
(2) The utility shall not threaten or refuse service to or threaten or disconnect the service of an individual for an outstanding debt more than five (5) years old if the service agreement was signed and three (3) years if the agreement was oral.³³

33. The rationale of the KCC in prohibiting a utility from threatening, refusing or disconnecting service for outstanding debts exceeding five years for written contracts and three

³⁰ *Id.*, at p. 18.

³¹ Tr. Vol. 2 at 411 (emphasis added).

³² Post-Hearing Brief of AT&T, pp. 16-17.

years for oral contracts is obvious: collection of those outstanding debts are barred by the applicable statutes of limitation. Further, the Commission's rationale is consistent with common law decisions which prohibit utilities from coercing payment from customers with respect to disputed claims:

A public service corporation cannot safely be invested with a power and authority which will allow it to become both judge and jury in the determination of a disputed claim due it from a consumer. *To do so would be dangerous and investing it with a power that invites extortion, and is too liable to be abused.*

...
If the defendant wishes to collect the old bill, it should resort to the usual judicial process in like manner as other creditors are required to do, and not coerce the plaintiff into paying the old bill by denying him gas.

Elwell v. Atlanta Gas Light Co. 51 Ga.App. 919, 181 S.E. 599, 601 (1935) (emphasis added).

34. Of course, the situation AT&T seeks to utilize to coerce payment is much more egregious than the facts in the *Elwell* decision. Here, AT&T seeks to have the standards changed to allow them to use the provision of universal services to coerce the payment of *uncollectible past-due amounts, legally barred by the applicable statutes of limitations.*

35. It is critical to keep in mind that these uncollectible past-due amounts which AT&T seeks to use to coerce payment are often in dispute. In fact, the very reason the statute of limitations may have expired on such debts could be internal determinations by AT&T that it could not prevail in court. Under these circumstances, AT&T "cannot safely be invested with a power and authority which will allow it to become both judge and jury in the determination of a disputed claim due it from a consumer. *To do so would be dangerous and investing it with a power that invites extortion, and is too liable to be abused.*"³⁴

³³ <http://www.kcc.state.ks.us/pi/billing.pdf>.

³⁴ *Elwell v. Atlanta Gas Light Co.* 51 Ga.App. 919, 181 S.E. 599, 601 (1935) (emphasis added).

36. The Commission should not allow AT&T to use its position as a carrier of last resort to withhold the provision of universal service to coerce the payment of legally uncollectible debts, some of which may be in dispute. AT&T has failed to provide any rationale justifying a reversal of the Commission's longstanding policy prohibiting such coercive tactics by Kansas utilities. As a result, the Commission should deny AT&T's request as it relates to telephone billing standards.

F. Late Payment Charges Should Be Prohibited On Installment Payments Made On Time.

37. Verizon argues that proposed billing standard Section II.D. should be amended to eliminate the prohibition against late penalty fees being applied to installment payments.³⁵ Verizon fails to reveal that Section II.D. prohibits applying late payment charges to installment payments "*that are made on time.*"

38. Verizon failed to produce any evidence in the record supporting its position that late payments should be applied to installment payments "*that are made on time.*" A consumer that arranges for installment payments, *and fulfills that arrangement by making each installment payment on time*, should not be penalized each month by a late payment penalty. CURB would expect this type of usurious practice from pay-day lenders, not from telecommunications carriers.

IV. THE COMMISSION SHOULD APPLY THE KANSAS TELEPHONE BILLING STANDARDS TO WIRELESS ETCS, WITH WAIVERS AVAILABLE FOR ANY PROVISIONS DETERMINED TO REGULATE RATES.

39. USCOC of Nebraska/Kansas, LLC (US Cellular) and RCC Minnesota, Inc. (RCC) argue that if the proposed billing standards include provisions which would regulate the

³⁵ Post-Hearing Brief of Verizon, p. 9-10.

rates of wireless carriers, it would be unlawful for the Commission to apply the billing standards to wireless ETCs.³⁶ CURB disagrees.

40. While CURB witness Michael Lura candidly admitted that some of the proposed billing standards do result in specific dollar amounts, the brief filed by US Cellular and RCC fails to acknowledge that he also clearly testified that the proposed standards contain a waiver of requirements provision that may be utilized by wireless ETCs if it is determined a particular provision constitutes rate regulation. (Lura, Tr. Vol. 2 at 173-174). Had the wireless carriers fully participated in the workshops, it is possible than many of the issues related to the rate regulation issue raised by US Cellular and RCC could have been resolved by the parties. However, the fact remains that a waiver is available in the proposed revised telephone billing standards for any provision determined to constitute rate regulation.

41. US Cellular and RCC further argue that the Kansas billing standards are unnecessary and duplicative of the FCC TIB Standards and the CTIA Code. While US Cellular and RCC attempt to paint a rosy picture, the federal standards and the CTIA voluntary agreement fall far short of the consumer protections provided Kansas consumers for nearly 25 years and the revised billing standards proposed by Staff. CURB witness Michael Lura provided a detailed list of the numerous protections provided under Kansas billing standards that are not provided under the FCC TIB standards.³⁷ Even AT&T witness Cyndi Gallagher acknowledged that the existing Kansas Billing Practices Standards are more comprehensive than the FCC TIB Standards, and cover more billing issues such as bill due dates and when bills must be mailed. (Gallagher, Tr. Vol. 2 at 245-246). Finally, the FCC has recognized that its TIB rules have done little to solve consumer issues and consumers still experience a tremendous amount of confusion regarding

³⁶ Post-Hearing Brief of USCOC of Nebraska/Kansas, LLC and RCC Minnesota, Inc., ¶¶ 5-12.

³⁷ See, Post-Hearing Brief of CURB, ¶¶ 23-24.

their bill, which inhibits their ability to compare carriers' service and price offerings. (Aarnes, D. Test., at 20-21; Tr. Vol. 1 at 112; Commission Staff's Post-Hearing Brief, ¶ 6).

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

42. Sprint argues that “no party has articulated why any of the particular regulations are ‘necessary to protect consumers in the ETC context’ – that is, ‘to further universal service goals’ – as required by the FCC.”³⁸ To the contrary, CURB witness Michael Lura identified numerous proposed billing standards that “are vital consumer protections, directly impacting the provision of universal service, for Kansas ratepayers...”

43. Specifically, Mr. Lura identified the following proposed billing standards which impact the provision of universal service:

- 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; and
- information included in suspension and disconnection notices.

(Lura, D. Test., at 25-26).

³⁸ Post-Hearing Brief of Sprint, ¶ 44.

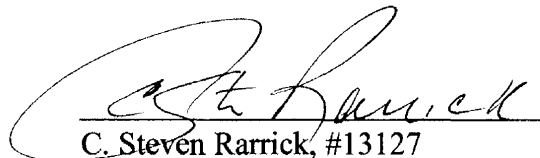
44. Likewise, Staff witness Christine Aarnes testified that all of the proposed billing standards further universal service, and that the goals of universal service “are to provide quality telecommunications services at a just, reasonable and affordable rate and quality telecommunications services would be encompassed, you know, service provided with quality and standards.” (Aarnes, Tr. Vol. 1 at 123).

45. As a result, parties have specifically “articulated” why the proposed revised billing standards are necessary to protect consumers and “to further universal service goals.”

VI. CONCLUSION.

46. CURB appreciates the opportunity to submit this Reply Brief on behalf of Kansas small business and residential ratepayers. CURB urges the Commission to decline to adopt the federal TIB rules in lieu of the Kansas billing standards. Instead, the Commission should adopt Staff’s Proposed Revised Billing Practices Standards with the changes proposed by CURB.

Respectfully submitted,



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