

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

Before Commissioners: Brian Moline, Chair
Robert E. Krehbiel, Commissioner
Michael C. Moffet, Commissioner

OCT 28 2005

 Docket Room

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

**COMMENTS OF THE
CITIZENS' UTILITY RATEPAYER BOARD**

COMES NOW the Citizens' Utility Ratepayer Board ("CURB") and files the following comments in this docket related to the Kansas Corporation Commission's ("KCC" or "Commission") August 31, 2005, Order soliciting comments regarding the Commission's telephone billing practices standards ("standards").

I. INTRODUCTION

1. In the Order Opening Docket and Scheduling Comments, the Commission requested the parties to file comments on Staff's proposed revised standards and on a list of additional issues presented by Staff in its April 1, 2005, memorandum to the Commission. CURB's comments and views are set forth below.

2. CURB supports the Commission's attention to this important topic. Accurate, timely, and understandable billing is vitally important to consumers and to providers. Unfortunately, problems are growing and many consumers are confused and frustrated by ever-growing, ill-defined, additional line items on end-user bills. CURB is hopeful that regulators and the industry can work together to produce concise, consumer-friendly bills.

II. BACKGROUND

3. On or about March 30, 2004, the National Association of State Utility Consumer Advocates (“NASUCA”)¹ filed a Petition for Declaratory Ruling with the FCC in CC Docket No. 98-170 (“NASUCA Petition”)². CURB is a member of NASUCA and supports the positions taken by NASUCA on billing issues. The NASUCA Petition addressed many of the issues under consideration in this docket. In its Petition, NASUCA stated:

To be clear, NASUCA is not asking the Commission to overturn prior decisions allowing carriers to recover specific assessments mandated by regulatory action through line item charges. Rather, NASUCA is asking the Commission to declare that carriers are prohibited from imposing line items *unless those charges are expressly mandated by federal, state or local regulatory action*. NASUCA is also asking the Commission to declare that line items allowed must closely match the regulatory assessment.³

4. On March 18, 2005, the FCC released the “Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking.” (“Truth-in-Billing Rules”)⁴ In that Order the FCC stated, “We deny NASUCA’s request for a Declaratory Ruling prohibiting telecommunications carriers from imposing any line items or charges that have not been authorized or mandated by the government.”⁵

¹ NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. CURB is a member of NASUCA. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and/or federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² National Association Of State Utility Consumer Advocates’ Petition For Declaratory Ruling, *In the Matter of Truth-In-Billing and Billing Format*, CC Docket No. 98-170. See, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516085825.

³ Petition for Declaratory Ruling, CC Docket No. 98-170, p. vii (emphasis in original).

⁴ Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking (Truth-In-Billing Order), *In the Matter of Truth-In-Billing and Billing Format*, 20 F.C.C.R. 6448, 20 FCC Rcd. 6448, 35 Communications Reg. (P&F) 1008 (March 18, 2005).

⁵ *Id.*, 20 F.C.C.R. at 6458, ¶ 23.

5. On or about June 24, 2005, NASUCA filed initial comments regarding the FCC's Truth-in-Billing Rules with the FCC in CC Docket No. 98-170 and CG Docket No. 04-208 ("NASUCA comments")⁶. As a caveat to their comments, NASUCA states, "As an initial matter, NASUCA notes that it has filed a petition for review of the declaratory ruling portion of the Commission's March 18, 2005 decision, which is currently pending in the United States Court of Appeals for the Eleventh Circuit."⁷ Therefore, while NASUCA did not support line items that are not mandated by the government, based on the FCC's ruling, NASUCA submitted comments on how to best implement the FCC ruling allowing additional line items. In its comments, NASUCA:

- Supported listing government mandated charges in a section of the customer's telephone bill separate from other charges, and further supports a definition of "government mandated charges" that includes only amounts that a carrier is required to collect and remit to government.
- Supported further separation of charges to include a section on customers' monthly telephone bills labeled "Carrier Imposed Charges," containing charges that carriers may, but are not required to, impose.
- Urged the Commission to adopt rules that prohibit carriers from recovering several types of costs in one line item and requiring carriers to characterize their line items as accurately and concisely as possible.

6. CURB endorses and adopts the positions articulated by NASUCA. Taken together, these suggestions will help clarify and simplify consumer bills. Consumers will know at a glance which charges are mandated by a governmental agency and which charges the provider has opted to bill for separately. In addition, if the line items are not bundled, and are

⁶ Initial Comments Of The National Association Of State Utility Consumer Advocates, *In the Matter of Truth-In-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208. See, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517990120.

⁷ *National Association of State Utility Consumer Advocates*, No. 05-11682-DD (11th Cir., filed March 28, 2005). This action has been consolidated with a similar petition for review filed in the United States Court of Appeals for the Second Circuit. *Vermont Public Service Board v. FCC*, No. 05-12601-DD (2nd Cir., filed March 28, 2005).

described accurately, consumers will know whether the charges are valid for their particular situation and will know what charges they are incurring.⁸

III. MISLEADING AND INAPPROPRIATE SURCHARGES SHOULD BE PROHIBITED

7. Misleading and inappropriate line items or surcharges should be prohibited by the Commission. When carriers utilize misleading or inappropriate line items or surcharges, both consumers and competitors are harmed.

8. CURB is aware of at least two carriers that have recently camouflaged rate increases by labeling line items or surcharges in a misleading manner, thereby misleading consumers as to the actual rate being charged in relation to other carriers and gaining an unfair competitive advantage over other carriers.

9. On July 7, 2005, CIMCO Communications, Inc., filed a tariff with the Commission introducing what it characterized as a “new Access Recovery Charge, necessitated by changes resulting from the Federal Communications Commission's *Triennial Review Remand Order* regarding regional Bell operating company unbundled network element obligations.”⁹ CURB filed to Intervene on July 14, 2005, alleging:

- The surcharge was unreasonable, unfair, unjust, unreasonably inefficient, unjustly discriminatory and/or unduly preferential, and contrary to the public interest;
- The surcharge was not an appropriate surcharge, but rather an increase in CIMCO's existing cost of providing service via accessing the incumbent local exchange carrier's network that should appropriately be implemented as an increase in CIMCO's tariffed rate;
- The proposed surcharge misrepresented the nature and cause of the surcharge and conceals what is simply a rate increase caused by an increase in CIMCO's cost of doing business; and

⁸ CURB expects that the FCC will ultimately decide many of the issues discussed herein. However, there is no firm time for a decision and, due to the importance of customer billing, CURB urges the KCC to act on CURB's recommendations at this time.

⁹ July 7, 2005, Cover Letter to Tariff Filing from Andrew Isar, *In the Matter of CIMCO Communications, Inc. Filing Tariff Revisions Introducing a New Access Recovery Charge*, KCC Docket No. 06-CCIC-016-TAR.

- By implementing this increased cost of providing service as a surcharge separate from CIMCO's tariffed rate, ratepayers would be misled in advertising and tariffs as to the actual rate being charged by CIMCO and prevented from making accurate and meaningful comparisons of rates charged by CIMCO's competitors.¹⁰

10. On September 12, 2005, CURB's request to intervene was denied by the Commission, which held that "CURB's concerns regarding the access recovery charge will be addressed in Docket No. 06-GIMT-187-GIT."¹¹

11. While CURB hoped the Commission would have denied CIMCO's proposed surcharge to avoid misleading consumers and harming competitors, CURB nevertheless appreciates the opportunity to address this issue in this docket. As acknowledged by Staff in a September 9, 2005, Memorandum to Commissioners, "Evaluating standards to ensure that companies do not inflate, mislabel, or otherwise aggregate miscellaneous charges in a manner which causes those charges to no longer be identifiable is important in assuring Kansas consumers are protected while being positioned to enjoy the benefits of a robust telecommunications marketplace."¹²

12. It is CURB's understanding that Sage Telecom is using part of the subscriber line charge to recover wholesale costs. Sage Telecom currently charges an "FCC subscriber line charge" of \$9.50 per line per month for residential customers, significantly higher than carriers such as AT&T, Everest, and Prairie Stream, which charge \$6.50 per month for this fee. SWBT's current residential Federal Subscriber Line Charge is \$5.21 per month. Camouflaging increased wholesale costs in the subscriber line charge, rather than including it in tariffed rates, misleads

¹⁰ Petition to Intervene and Motion to Defer Effective Date of Proposed Access Recovery Charge and Suspend Proceeding, *In the Matter of CIMCO Communications, Inc. Filing Tariff Revisions Introducing a New Access Recovery Charge*, KCC Docket No. 06-CCIC-016-TAR.

¹¹ Order Denying Intervention and Closing Docket, ¶ 5, *In the Matter of CIMCO Communications, Inc. Filing Tariff Revisions Introducing a New Access Recovery Charge*, KCC Docket No. 06-CCIC-016-TAR.

¹² Staff Memorandum filed September 9, 2005, p. 2, *In the Matter of CIMCO Communications, Inc. Filing Tariff Revisions Introducing a New Access Recovery Charge*, KCC Docket No. 06-CCIC-016-TAR.

consumers and harms competitors whose rates appear higher to consumers when compared to the rates of Sage Telecom.

13. CIMCO and Sage are certainly not the only carriers to implement misleading and/or inappropriate line items or surcharges. The NASUCA petition provided seven examples of IXC surcharges, and nine examples of wireless carriers' surcharges, that are inappropriate and misleading. (See NASUCA petition, Pages 12-22.) Among examples cited are:

- AT&T's "Regulatory Assessment Fee"
- Sprint's "Carrier Cost Recovery Charge"
- MCI's "Carrier Cost Recovery Charge"
- AT&T Wireless' "Regulatory Program Fee"
- Verizon Wireless' "Regulatory Charge"
- ALLTEL's "Regulatory Cost Recovery Fee" and Others
- Cingular Wireless' "Regulatory Cost Recovery Fee"
- TalkAmerica's "TSR Administration Fee"

14. These charges are misleading and often include numerous costs, making it "difficult if not impossible for the public to be informed of what charges they are paying for."¹³ As a result, they must be prohibited under the new billing standards in Kansas.

IV. GOVERNMENT MANDATED CHARGES SHOULD BE CLEARLY DEFINED AND SEPARATED FROM OTHER CHARGES TO ELIMINATE MISLEADING LINE ITEMS ON CONSUMER BILLS.

15. CURB urges the Commission to require that government mandated charges be clearly defined and separated from other charges to eliminate misleading line items on consumer bills. The question becomes, what is a mandated charge? The NASUCA comments

¹³ *Id.*

recommended a definition of mandated charges as those, “charges that a carrier is *required* to collect directly from customers, and remit to federal, state or local governments.”¹⁴ CURB recommends this definition be included in the definitions section of the revised billing standards. This clear definition will eliminate misleading line items on consumer bills and will provide equally clear guidelines for providers.

16. Putting forth such a clear statement and requirement has several inherent benefits.

Deterrence - Adopting a straightforward definition of government mandated charges, and separating those charges from other charges, should deter carriers from misleading consumers that certain charges are beyond the providers’ control. Clearly, there is an incentive for any provider to keep rates low and therefore more competitive. However, carriers should not be allowed to tariff and advertise rates that are lower than competitors by hiding additional costs in inappropriate surcharges.

Consistency with Truth in Billing standards - In its TIB Order, the FCC stated:

As the record in this proceeding demonstrates, *line-item charges are being labelled [sic] in ways that could mislead consumers by detracting from their ability to fully understand the charges appearing on their monthly bills, thereby reducing their propensity to shop around for the best value. Consumers misled into believing that these charges are federally mandated, or that the amounts of the charge are established by law or government action, could decide that such shopping would be futile.* In addition, lack of standard labeling could make comparison shopping infeasible. Unlike most products purchased by consumers, these line-item charges cannot be attributed to individual tangible articles of commerce. For example, when a consumer purchases socks from the local department store, the consumer knows what item the bill refers to, whether it describes the product as socks, men’s wear, hosiery, etc. In contrast, a consumer receives no tangible product in conjunction with a line-item charge on his or her telecommunications bill.¹⁵

¹⁴ Initial Comments Of The National Association Of State Utility Consumer Advocates, pp. 3-4, Section II, A, *In the Matter of Truth-In-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208.

¹⁵ *In the Matter of Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7532, ¶62 (May 11, 1999) (“*TIB Order*”). (emphasis added)

Benefits to Carriers – Adopting a definition of “government mandated charges” that includes only amounts that a carrier is required to collect and remit to government will simplify billing standards for all carriers by reducing guesswork on what charges go where, and will reduce consumer inquiries to providers. In addition, clearly defining those charges that are government mandated will eliminate unfair competitive advantages gained by carriers that reduce their advertised rates by placing non-government mandated costs in line items that give the impression they are government mandated.

V. SURCHARGES AND LINE ITEMS CONTAINING COMBINED CHARGES SHOULD BE PROHIBITED

17. CURB recommends the Commission adopt rules that prohibit carriers from recovering several types of costs in one line item and requiring carriers to characterize their line items as accurately and concisely as possible. NASUCA’s comments state:

Given the disparate and varying manner in which carriers have identified their monthly line items and surcharges and placed them on customers’ bills, NASUCA believes that the consumers’ interest in clear and non-misleading charges, as well as consumers’ interest in being able to make reasonable price comparisons between competing providers or services, requires guidance in labeling these categories of charges.

While the surcharges carriers may impose at their discretion will likely vary to a considerable extent among carriers (some may impose a surcharge to recover property taxes they pay while others may not, for example), consumers should be able to readily discern not only the total amount of discretionary line items different carriers charge, but also what costs the carriers recover through such charges.¹⁶

¹⁶ Initial Comments Of The National Association Of State Utility Consumer Advocates, at pp. 14-15, *In the Matter of Truth-In-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208.

VI. CARRIER IMPOSED CHARGES, IF PERMITTED IN LINE-ITEM CHARGES, SHOULD BE SEPARATED FROM GOVERNMENT MANDATED CHARGES

18. CURB further supports separation of charges to include a section on customers' monthly telephone bills labeled "Carrier Imposed Charges," containing charges that carriers may, but are not required to, impose. NASUCA's comments state:

In this portion of the bill, carriers could include government-authorized charges which they may impose, regardless of whether the revenues generated by the charge is remitted to the government. In this section of the monthly bill, carriers could include, for example, their monthly universal service charge, local number portability charge, charges that recover property tax assessments, service-related surcharges (such as paper billing fees, payphone use surcharges) and any charges that otherwise recover the carrier's operating costs (e.g., regulatory compliance and proceedings, access charges, etc.).

By designating such charges as "Carrier Imposed," consumers would be accurately, and concisely, informed about the true source of the charges included in this portion of the bill: the carrier.¹⁷

VII. STAFF'S ADDITIONAL ISSUES

19. The Commission's Order Opening Docket and Scheduling Comments also requested comments on the list of issues put forth in Staff's initial memorandum. Clearly these issues are germane to this proceeding and appear to address specific situations that Staff encounters. CURB expects that providers will address these issues and CURB will respond to provider comments in our Reply Comments.

VIII. COMMENTS ON THE PROPOSED BILLING STANDARDS

20. The introduction to the proposed Telephone Billing Practices states, "The following standards are applicable to all jurisdictional telecommunications public utilities and Eligible Telecommunications Carriers (ETC)." However, in numerous places in the proposed

¹⁷ Initial Comments Of The National Association Of State Utility Consumer Advocates, pp. 13-14, *In the Matter of Truth-In-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208.

standards, the only reference is to telecommunications public utilities. For clarity and consistency, CURB recommends that whenever the proposed standard is applicable to both telecommunications public utilities and ETCs, both should be referenced.

21. Section I, A.,(3),b., states, “Packaged or bundled service shall be listed on the bill by package or bundle name with each service provided in the package or bundle itemized.” CURB recommends that “itemized” be defined to mean that the stand-alone service and stand-alone rate must be shown.

22. Section I, C., states, “Once a telecommunications public utility has completed a third-party billed call or a collect call, the originating phone number may not be charged, except in cases of fraud.” CURB recommends that the phrase, “attributable to a responsible party at the originating number,” be added to the end of the sentence.

23. Section I, D., (1), (c), does not make it clear when the 10 day period starts. Is it from the time the mail notice is sent, from time of phone contact or from some other starting time? CURB recommends that it start from the time the mail notice is sent.

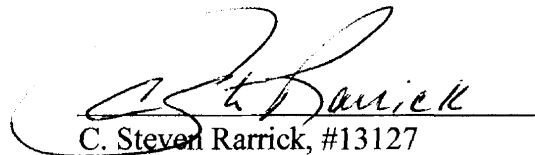
24. Section I, E., does not define what constitutes an “interruption.” CURB recommends that an interruption be defined broader than a total outage. Unacceptable noise levels, slow dial tone, dropped or disconnected calls, should all be included as constituting interrupted service.

25. Section I, I., (1), Notification of Change does not include any reference to newspaper rate change notices. CURB recommends that for providers that do not have a specific customer list, such as operator service providers, that notice be given through newspapers of general circulation for the area being impacted by the rate change.

IX. CONCLUSION

26. Accurate billing is critical to consumers of telecommunications service. As important as accuracy is the clarity of the charges. CURB’s proposals are straightforward. First, CURB recommends the Commission require a section on consumer bills labeled, “Government mandated charges” defined as “charges that a carrier is *required* to collect directly from customers, and remit to federal, state or local governments.” Second, CURB recommends that any other line items be placed in a separate section of the bill labeled “Carrier Imposed Charges.” CURB further recommends that in both sections of the bill, line items be clearly defined and bundling of charges not be allowed. CURB appreciates the opportunity provided in this docket to submit comments on behalf of Kansas small business and residential ratepayers regarding the development of accurate, timely and concise consumer bills. CURB looks forward to assessing the comments of other parties.

Respectfully submitted,




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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

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 28th day of October, 2005.


Notary of Public

My Commission expires:



CERTIFICATE OF SERVICE

06-GIMT-187-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 28th day of October, 2005, to the following:

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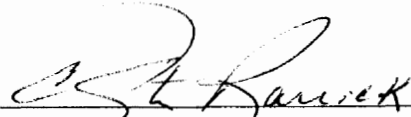
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