

STATE CORPORATION COMMISSION

BEFORE THE
STATE OF KANSAS
STATE CORPORATION COMMISSION

AUG 08 2007

 Docket
Room

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

REBUTTAL TESTIMONY OF

MICHAEL D. LURA

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD (CURB)

August 8, 2007

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2

3 A. My name is Michael D. Lura. My business address is 180 Cherry Hills Circle,
4 Gardner, Kansas 66030.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6

7 A. I am self-employed as a telecommunications consultant. I am appearing in this
8 case representing the Citizens' Utility Ratepayer Board (CURB).

9 **Q. ARE YOU THE SAME MICHAEL LURA THAT FILED DIRECT**
10 **TESTIMONY IN THIS DOCKET?**

11

12 A. Yes.

13 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

14

15 A. My rebuttal testimony will address the testimony of other witnesses filed in this
16 docket on July 25, 2007. Specifically I will address the need for updating the
17 current billing standards, the distinction between deniable and non-deniable
18 charges and the proper application of the standards.

19 **Q. WHAT DID OTHER WITNESSES SAY REGARDING THE NEED TO**
20 **UPDATE THE CURRENT BILLING STANDARDS?**

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22 A. Witness Lilli Taylor, testifying on behalf of Sprint Spectrum L.P. and Sprint
23 Communications Company L.P. (collectively, Sprint) states,

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The Commission should likewise recognize that the Billing Standards are unnecessary in the intensely competitive wireless market, as I describe more fully in the remainder of my testimony. (Taylor Direct Testimony, pg. 6, lines 97-99.)

Alltel Kansas Limited Partnerships witness Steve Mowery, testifying on behalf of

Alltel Communications, Inc. (Alltel) states,

The purpose of my testimony is to address the question of whether or not Kansas-specific billing standards are even necessary for

1 wireless ETCs in light of applicable federal standards and efforts
2 the wireless industry has taken to ensure appropriate billing
3 practices in a highly competitive marketplace. (Mowery Direct
4 Testimony, pg. 2, lines 5-8.)
5

6 Witness John R. Idoux III, testifying on behalf of United Telephone Companies of
7 Kansas, d/b/a Embarq (Embarq) states,

8 While the billing standards in place today have not been updated
9 for quite some time, they are more than adequate in that
10 competitive entry into local telecommunications services may
11 serve as a better tool for consumer safeguards. (Idoux Direct
12 Testimony, pg. 3, lines 11-14.)
13
14

15 **Q. DO YOU AGREE WITH THESE POSITIONS?**

16
17 A. No. These issues and questions have already been addressed by the Federal
18 Communications Commission ("FCC"). Regarding whether competition alone is
19 enough to forestall the need for billing standards the FCC stated:

20 We disagree with those commenters that argue that CMRS
21 providers should be exempted from this requirement because they
22 operate in a competitive marketplace. The Commission
23 specifically rejected this argument in the *Truth-in-Billing Order*
24 noting that, as competition evolves, the provision of clear and
25 truthful bills is paramount to efficient operation of the marketplace.
26 Although we agree that a robustly competitive marketplace
27 provides the best incentive for carriers to meet the needs of their
28 customers and affords dissatisfied customers with an opportunity
29 to change carriers, we also recognize that some providers in a
30 competitive market may engage in misconduct in ways that are not
31 easily rectified through voluntary actions by the industry. As the
32 Commission emphasized in the *Truth-in-Billing Order*, one of the
33 fundamental goals of the truth in billing principles is to provide
34 consumers with clear, well-organized, and non-misleading
35 information so that they will be able to reap the advantages of
36 competitive markets.¹
37

¹ 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 Red. 6448, 35 Communications Reg. (P&F) 1008 (March 18, 2005).

1 Although the FCC was referring to CMRS providers, the discussion of
2 competitive markets is equally applicable to all providers in this docket. The
3 conclusion is clear; the presence of competition should not in any way foreclose
4 the KCC from examining and implementing new billing standards.

5 The Kansas Corporation Commission Staff (Staff) expressed similar
6 concerns in their Memorandum to the Commissioners regarding
7 Telecommunications Billing Practices submitted to the Commissioners on August
8 30, 2005. The Memorandum stated, “As the industry continues to move towards
9 a less strict regulation of rates, consumer protection through billing practices
10 becomes a very important issue for the Commission to address.” Staff Witness
11 Christine Aarnes also testifies, “Staff concurs with the FCC’s statement² and
12 believes the Truth-in-Billing rules are a good start, but state specific rules are
13 needed to address issues relevant to Kansas consumers.” (Aarnes Direct
14 Testimony, pg. 21, lines 7-9.)

15 **Q. SEVERAL WITNESSES STATE THAT THE FCC’S TRUTH-IN-BILLING**
16 **RULES AND THE CTIA CONSUMER CODE FOR WIRELESS SERVICE**
17 **PROVIDE ADEQUATE BILLING STANDARDS. DO YOU AGREE?**
18

19 **A.** No. While both of these sets of rules provide some consumer protections, they
20 should not be considered a substitute for Kansas-specific billing standards. The
21 primary fault of both is that they are virtually unenforceable. The FCC typically

² The FCC statement referenced by Ms. Aarnes states, “...we reiterate that it is a misleading practice for carriers to state or imply that a charge is required by the government when it is the carriers’ business decision as to whether and how much of such costs they choose to recover directly from consumers through a separate line item charge. Consumers may be less likely to engage in comparative shopping among service providers if they are led to believe erroneously that certain rates or charges are unavoidable federally mandated amounts from which individual carriers may not deviate.” 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).

1 does not act on individual customer complaints in the manner the Kansas
2 Commission does. The CTIA code, shown as Attachment 1 to Sprint witness
3 Taylor's testimony, states on the first page that, "The carriers that are signatories
4 to this Code have voluntarily adopted the principles, disclosures, and practices
5 here for wireless service provided to individual customers." The Code says
6 nothing about enforcement of the Code and the fact that it is voluntary would
7 make it difficult, at best, to impose meaningful enforcement.

8 Therefore, I continue to recommend that the Commission take this
9 opportunity to update the Kansas Billing Standards to reflect the changes in the
10 industry, help ensure consumer protection, and further enhance the universal
11 service goals of providing excellent services at an affordable price and ensuring
12 that consumers throughout the state realize the benefits of competition.

13 **Q. PLEASE ADDRESS YOUR CONCERNS WITH DENIABLE AND NON-**
14 **DENIABLE CHARGES.**

15
16 A. The current proposed definition of a deniable charge is:

17 A charge that, if not paid, may result in the termination (denial) of
18 the customer's local exchange service (dial tone). Local service
19 charges are deniable charges.

20
21 The current proposed definition of a non-deniable charge is:

22 A charge that will not result in the termination of the subscriber's
23 local exchange service (dial tone) for non-payment, even though
24 the particular service for which the charge has been levied, e.g.
25 paging, long distance, internet service, could be terminated.
26 Charges other than local service charges are non-deniable charges.
27

28 The distinction between these types of charges is critical to consumers. While the
29 definitions refer to "local exchange service (dial tone)", obviously what is being

1 addressed is universal service. Universal service is the cornerstone of
2 telecommunications service. It allows customers to call schools, hospitals,
3 doctors, family, etc. Both the Federal Telecommunications Act (e.g., see Section
4 254) and the Kansas Telecommunications Act (e.g., see Sections 66-2002 and 66-
5 2008) devote entire sections to universal service. Significant funding, through the
6 Federal Universal Service Fund and the Kansas Universal Fund, ensures the
7 provision of universal service. Yet some parties in this docket suggest that the
8 provision of basic local service should be used as a bargaining tool to ensure
9 payment of vertical services and miscellaneous charges such as paging, caller ID,
10 ringtones, internet service, etc.³

11 **Q. PLEASE PROVIDE AN EXAMPLE OF YOUR CONCERN.**

12
13 A. Embarq witness John R. Idoux III states,

14 Under the current billing practices standards, if a customer fails to
15 pay the complete bill on a timely basis, the customer risks the
16 likelihood that collection treatment procedure will start which,
17 ultimately, could include the disconnection of all services provided
18 by Embarq, including local service, if payment by the customer is
19 not ultimately received. For those customers that are struggling to
20 prioritize monthly bills, this potential for the loss of total service
21 via disconnection of service, including local service, allows the
22 payment of the Embarq invoice to remain a priority for the
23 customer. (Footnote omitted.) (Idoux Direct Testimony, pg. 12,
24 lines 1-7.)
25

26 **Q. DO YOU AGREE WITH THIS TESTIMONY?**

27
28 A. I do from the point of view that the ability for a provider to disconnect basic local
29 service is a powerful incentive for customers to pay their bills. I would think the

³ It has never been an issue that the non-payment of basic local charges could result in suspension or disconnection of basic local service. It is only the non-payment of so-called vertical features and services that is at issue.

1 ability to deny basic local telephone service is something all consumer credit
2 organizations such as credit cards, car loans and payday loans would love to have.
3 However, because of the vital impact to public safety and public necessity, I do
4 not agree that non-payment of charges for services other than for basic local
5 service should result in the disconnection of basic local service.

6 **Q. HAS CURB'S POSITION REGARDING THIS ISSUE CHANGED IN THIS**
7 **DOCKET?**

8
9 A. Throughout this docket CURB has been concerned with the definition and
10 implementation of denial and non-deniable charges. However, because many
11 companies do not offer a stand-alone basic local service offering, CURB has
12 compromised on this issue by agreeing that bundled services containing basic
13 local service can be treated as deniable charges. This is not an ideal solution but
14 it does recognize the nature of service offerings in the marketplace today. What
15 this does mean is that companies should be required to make it clear to
16 prospective customers that the non-payment of **any** of the bundled charges can
17 result in total suspension or disconnection of **all** service.

18 **Q. WHAT DID OTHER WITNESSES SAY REGARDING THE**
19 **APPLICATION OF THE BILLING STANDARDS?**

20
21 A. Witness Don J. Wood, testifying on behalf of RCC Minnesota, Inc., (RCC) and
22 USCOC of Nebraska/Kansas (USCOC) states,

23 RCC and USCOC propose that the language of the Application of
24 Standards section be modified to read as follows: "These standards
25 are not applicable when the provider has given notice to the
26 subscriber in the form of a bill insert or bill message that separate
27 billing standards apply that are consistent with the FCC's Truth-in-
28 Billing Standards."
29

1 **Q, WHAT IS YOUR CONCERN WITH THIS PROPOSAL?**

2
3 A. The proposed standards state,

4
5 The following standards are applicable to all telecommunications
6 public utilities, telecommunications carriers and local exchange
7 carriers as defined in K.S.A. 66-1,187 and to all entities designated
8 as Eligible Telecommunications Carriers (ETCs), referred to herein
9 as “provider,” “telecommunications provider,” “local service
10 provider,” or “long distance provider.” **These standards are not**
11 **applicable when the provider has a written and executed**
12 **contract with the subscriber in which the contract specifies**
13 **that separate billing standards apply that are consistent with**
14 **the FCC’s Truth-in-Billing Standards.** (Emphasis added.)
15

16 When I originally read this language it seemed to infer there would be a
17 requirement for a completely separate, stand-alone contract. The type of contract
18 more likely to be entered into with a business customer than a residential
19 customer. However, upon reading Mr. Wood’s testimony suggesting merely a bill
20 insert or bill message, it appears that some interpret the language to not
21 necessarily mean a separate stand-alone contract. That opens the possibility that
22 the proposed language could be interpreted to simply require a line somewhere in
23 the middle of lengthy mass marketed adhesion contracts⁴ that customers are
24 required to sign to obtain service, and that few people are likely to read or
25 understand. Providers may already seek a “Waiver of Requirements” under the
26 proposed rules - as a result, I urge the Commission to remove the last sentence of
27 the “Application of Standards” sentence that is shown above.

⁴ “Adhesion contracts” are defined as, “Standardized contract form offered to consumers of goods and services on essentially ‘take it or leave it’ basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product or services except by acquiescing in form contract. Distinctive feature of adhesion contract is that weaker party has no realistic choice as to its terms. Not every such contract is unconscionable.” Black’s Law Dictionary, Abridged 5th Edition.

1 **Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

2 **A. Yes.**

VERIFICATION

STATE OF KANSAS)
COUNTY OF SHAWNEE) ss:

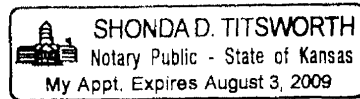
Michael Lura, being duly sworn upon his oath, deposes and states that he is a consultant for the Citizens' Utility Ratepayer Board, that he has read and is familiar with the foregoing; and that the statements made herein are true to the best of his knowledge, information and belief.

Michael D. Lura
Michael D. Lura

Subscribed and sworn to before me this 8th day of August, 2007.

Notary Public Shonda D. Titworth

My Appointment Expires: 08-03-2009.



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 8th day of August, 2007, to the following:

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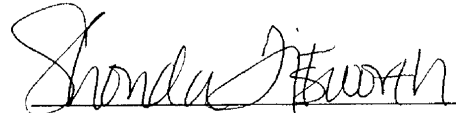
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