

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Proposed PSC Rulemaking)	
4 CSR 240-33.045 Requiring Clear Identification)	
and Placement of Separately Identified Charges)	Case No. TX-2005-0258
on Customer Bills.)	

**SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC MISSOURI'S
COMMENTS REGARDING PROPOSED RULE 4 CSR 240-33.045**

Comes now, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri and, for its Comments regarding Proposed Rule 4 CSR 240-33.045—Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills, states as follows:

I. Introduction and Summary

SBC Missouri agrees that residential customer bills should contain clear and non-misleading descriptions of telecommunications companies' charges. Residential customers should be able to readily determine from their bills the services for which they are being billed and all charges, including surcharges, associated with those services. SBC Missouri agrees that customers should make informed and intelligent decisions about their telecommunications services. However, SBC Missouri does not believe that the proposed rule is the appropriate method to achieve these objectives. The proposed rule oversteps the Missouri Public Service Commission's ("Commission") authority and could potentially impose unnecessary burdens on consumers and unreasonable costs on the industry as a whole for what appears to be the "sins" of a few. To the extent the Commission has concerns about the charges and/or disclosure practices of certain companies, the Commission should litigate those particular concerns with those

individual companies rather than impose unnecessary costs and burdens on consumers and companies in general.

First, truth in billing requirements already exist at the federal level, and those rules apply to both intrastate and interstate telecommunications.¹ Specifically, 47 C.F.R. 64.2401 requires all telecommunications bills to include full and non-misleading descriptions:

Descriptions of billed charges. Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or the services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

SBC Missouri meets that standard and more. SBC Missouri's descriptions of its billed charges are clear and non-misleading. Moreover, SBC Missouri has sought to ensure that its residential customers have other avenues available to them to understand the nature and substance of SBC Missouri's charges. For example, the SBC ILECs recently implemented a new bill format that was specifically designed to respond to customers' requests for a bill that is simpler and easier to understand. Included in this new bill format are dynamic sections that provide customers with important new information to assist them in understanding their billed charges, such as messages about rate changes. SBC also reorganized bills for customers that purchase bundled services so that the bill would associate and clearly identify the appropriate taxes and surcharges

¹ Truth-in-Billing and Billing Format, First Report and Order, CC Docket No. 98-170, ¶21 (1999), which states: “. . .with the exception of the guideline discussed as section II(C)(2)(c) of this Order, which involves standardized labels for charges related to federal regulatory action, the truth-in-billing principles and guidelines adopted herein are justified as slamming verification requirements pursuant to section 258, and thus can be applied to both interstate and intrastate services.”

with the services the customer purchased. SBC Missouri also provides consumers information regarding line-item charges during telemarketing calls, customer-initiated calls to change or add services, and in response to consumer-initiated billing inquiries. Additionally, SBC has increased the content on its website to include explanations of fees, surcharges, and rates and it continues to look for new ways to educate its residential customers.

Second, the Federal Communications Commission (“FCC”) currently is re-examining its existing truth-in-billing rules in In the Matter of Truth-In-Billing and Billing Format, National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-In-Billing, Docket Nos. CC Docket No. 98-170 and CG Docket No. 04-208, March 18, 2005. In particular, the FCC seeks comment on the distinction between government mandated and non-mandated charges and whether it should require a separate section on the bill for government mandated charges.² Additionally and importantly, the FCC seeks comment on whether it should preempt state regulation of carrier billing practices. Given that pending proceeding, and potential impact on the Commission rules proposed here, the Commission should defer this proceeding until the FCC resolves its truth-in-billing issues. In that way the Commission could determine whether additional rules are even necessary at the state level and it could ensure that its rules are consistent with any federal rule(s) that the FCC may implement.

Third, although SBC Missouri believes that consumer bills should contain clear and non-misleading descriptions of telecommunications company charges, there is insufficient evidence to demonstrate that the existing billing rules are insufficient to protect consumers. The fact that telecommunications companies use varying labels to

² Id. at paragraphs 40 and 43.

describe line-item charges and surcharges does not render them per se unreasonable or necessarily confusing to consumers. The fact that all line-items and surcharges are not government mandated does not render such charges inherently unreasonable. Line items and surcharges convey information to the public about the nature of government regulation, telecommunications company actions, and/or telecommunications company services. In fact, the FCC recently reiterated that non-misleading line items are permissible under the FCC's rules.³ Moreover, the marketplace unquestionably operates as a check on telecommunications company billing practices. Telecommunications companies have every incentive to operate in a reasonable manner to maintain good will with their customers and generate good will among potential customers. To do so, telecommunications companies must distinguish themselves not only by the products and services that they provide, but also by their billing practices. Telecommunications companies that engage in unreasonable billing practices run the risk of losing customers and opportunities to win customers. Thus, market forces, particularly in combination with the FCC's existing rules, are more than sufficient to address telecommunications company billing descriptions.

Fourth, while SBC Missouri understands some parties' concerns that certain companies may be stretching the FCC's rules or that there may be dislike for some of the charges assessed by certain companies, the Commission does not have the legal reach to "fix" all of these concerns. Many line-item charges are non-regulated charges, or at the least, are interstate charges not under the Missouri Commission's jurisdiction. In some cases, there appear to be some intrastate telecommunications charges that are currently in Missouri tariffs that cause concern for some. However, the Commission is without

³ Id. at paragraph 1.

authority to eliminate these lawfully tariffed charges through a rulemaking proceeding. For these reasons, SBC Missouri does not believe that the proposed rule is necessary at this time, nor can it rectify many of the concerns that have been expressed as this proposed rule has been discussed.

Alternatively, though, the Commission can litigate any concerns it has about particular carriers' charges under existing rules and statutes which is a more direct, economical, and efficient manner to address the Commission's concerns.

II. Specific Comments Regarding Proposed Rule 4 CSR 240-33.045

A. Proposed Rule 4 CSR 240-33.045 should be limited to residential customer bills. As placed in the rules, proposed rule 4 CSR 240-33.045 falls between two rules that are only applicable to residential customers. Specifically, proposed rule 4 CSR 240-33.045 would fall between: (1) 4 CSR 240-33.040 Billing and Payment Standards for Residential Customers; and (2) 4 CSR 240-33.050 Deposits and Guarantees of Payment for Residential customers. Placement of a rule that addresses both residential and business customer bills between sections of the billing rules that clearly only address residential customer bills would be confusing. Moreover, limitation of the proposed rule to residential customers only makes sense when one reads subsection 1. Specifically, subsection 1 indicates that the disclosures are in addition to those required by 4 CSR-240-33.040(8), which only applies to residential customer bills. Further, although SBC Missouri believes that all consumers know to ask what their bottom-line monthly rate will be and, in SBC Missouri's experience, often ask questions about the specific charges included in their monthly rates, business customers are particularly savvy and do not require Commission Rules to obtain the information they seek,

including information regarding separately identified charges. Thus, SBC Missouri proposes to change the title of proposed rule 4 CSR 240-33.045 as follows:

Requiring Clear Identification and Placement of Separately Identified Charges on **Residential**⁴ Customer Bills.

B. Additionally, this rule should clearly be limited to regulated services over which the Commission has jurisdiction. Not only is this the correct legal approach, but from a broader policy perspective, this will help maintain a more level playing field between those providers of unregulated services that are subject to Commission authority for regulated services, and those providers of such services who are wholly beyond the Commission's jurisdiction. Thus, SBC Missouri proposes the following changes regarding the Purpose of the proposed Rule.

*PURPOSE: This rule is intended to clarify items that may be separately identified on **residential** customer bills, provide guidance for labeling such items and require clear disclosure to **residential** customers the total anticipated service charges for new **regulated** services for which they contract.*

C. SBC Missouri objects to proposed rule 4 CSR 240-33.045(1) because it is overly broad and unduly burdensome.

1. As written, the proposed rule appears to require telecommunications companies to affirmatively provide a clear, full, and meaningful disclosure of all recurring and non-recurring monthly charges. The rule should clearly be limited to recurring monthly charges as it would be unreasonable (absent customer request) for any telecommunications company to keep a customer on the line to discuss all non-recurring monthly charges that a customer may see on his or her bill. For example, companies offer pay-per-use features such as call return, three-way calling, and directory assistance.

⁴ SBC Missouri's proposed changes are in bold and are underlined.

It is impossible for companies to predict the extent to which customers would use these types of services and, therefore, could not identify up-front all non-recurring charges the customer could see on his or her bill. All providers, as a matter of good customer service, will provide the non-recurring charge information if asked.

2. Moreover, proposed rule 4 CSR 240-33.045(1) is unreasonable because it is not feasible for SBC Missouri to describe all of its usage sensitive rates to a customer during the execution of a service agreement. For instance, proposed rule 4 CSR 240-33.045(1) may arguably require SBC Missouri to provide customers with pay per call rates for auto redial, call return, three way calling, local directory assistance, local operator assistance (which has fifteen different rate options in it alone), etc. and the term “all” could be interpreted to require SBC Missouri to discuss each of its toll plans and rates with customers. Such a requirement would place large economic burdens on both large and small carriers, and there is no evidence that customers want such detailed information or are willing to foot the cost of such a mandate by paying higher rates. Moreover, it is not feasible for SBC Missouri to describe such information to a customer during the execution of a service agreement.

3. Further, the proposed rule could be interpreted to require telecommunications companies to provide a clear, full, and meaningful disclosure of all recurring and non-recurring charges, regardless of whether they are tariffed. For example, the proposed rule could be interpreted to require telecommunications companies to disclose taxes. First, the Commission does not have the authority to require disclosure of non-regulated items. Moreover, even if it did, such a requirement would be unreasonable. SBC Missouri’s call centers are not currently set up for service

representatives to provide customers with specific information about taxes. Such information is contained in tax tables. SBC Missouri estimates that if it had to implement the information technology changes in order to allow such disclosures, it would incur non-recurring costs of approximately \$660,000, far in excess of the \$500.00 private cost estimate which accompanied the proposed rule. Additionally, SBC Missouri would incur additional costs as service representatives would have increased customer contact time to explain each and every item the customer could see on his or her bill. This would result in added employee expense and/or degradation in customer service. Moreover, SBC Missouri would incur further costs to maintain the information since tax rates frequently change.

4. In addition, to the extent that SBC Missouri can provide customers with information regarding taxes, surcharges, or similar fees, SBC Missouri does not believe that such items need to be disclosed during the execution of a service agreement. For those residential customers who truly want to learn more about line-item charges, they can ask the service representative to explain them, or they can typically find, as is the case with SBC Missouri, additional information on their telecommunications company's website. All customers should not be burdened by requirements to disclose information about which they do not have a particular interest. Moreover, such disclosure would be very costly, far in excess of the \$500.00 private cost estimate which accompanied the proposed rule. Moreover, consumers believe the process already takes too much time and residential customers will obtain information regarding taxes, franchise fees, and other fees and/or surcharges in their monthly bill pursuant to 4 CSR 240-33.040(8)(I), which provides:

An itemization of the amount due for taxes, franchise fees and other fees and/or surcharges, which the telecommunications company, pursuant to its tariffs, bills to customers.

5. Finally, SBC Missouri believes that this proposed rule must be clearly limited to intrastate telecommunications service provided by telecommunications companies, over which the Commission has jurisdiction. For these reasons, SBC Missouri proposes the following changes to proposed rule 4 CSR 240-33.045(1):

All telecommunications companies shall provide a clear, full, and meaningful disclosure of all **tariffed, recurring** monthly charges ~~and usage-sensitive rates~~ at the time of the execution of a service agreement between the **telecommunications** company and the customer or at the time the customer otherwise contracts with the **telecommunications** company, but in any event prior to the date service is initiated. **This disclosure need not include an itemization of taxes, surcharges, or similar fees.** This disclosure shall be in addition to the itemized account of monthly charges during the **residential** customer's first billing period for the equipment and service for which the **residential** customer has contracted, as required by 4 CSR 240-33.040(8).

D. SBC Missouri objects to the use of the phrase: "disguising it" in proposed rule 4 CSR 240-33.045(2). Specifically, SBC Missouri believes that the purpose of this rule is that telecommunications companies not include fees and charges on a customer's bill that are misrepresented as governmentally mandated fees. Incorporating changes that SBC Missouri has identified in previous paragraphs with those that SBC Missouri proposes here, SBC Missouri proposes that proposed rule 4 CSR 240-33.045(2) be modified as follows:

Telecommunications cCompanies may not include on a **residential** customer's bill any fee or charge misrepresented as a governmentally mandated or authorized fee by:

(A) ~~Disguising it~~ **Misrepresenting it;**

(B) Naming, labeling, or placing on the bill in a way that implies that it is governmentally mandated or authorized; or

(C) Giving it a name or label that is confusingly similar to the name or label of a governmentally mandated or authorized fee.

E. SBC Missouri objects to proposed rule 4 CSR 240-33.045(4) which states that the presence of a charge in a currently effective tariff is not evidence that the charge is authorized or mandated by the Commission. By definition, any currently effective tariff indicates that the charge is authorized or mandated by the Commission; the Commission either approved the charge or allowed it to go into effect by operation of law. Thus, this sentence is legally incorrect and should be deleted in its entirety. Incorporating changes that SBC Missouri has identified in previous paragraphs with those that SBC Missouri proposes here, SBC Missouri proposes that proposed rule 4 CSR 240-33.045(4) be modified as follows:

Telecommunications cCompanies imposing separately identified charges that appear to be governmentally mandated or authorized fees shall provide, upon request by the Commission Staff, such federal, state or local government order, decision, ruling, mandate or other authority on which it relies in placing such a charge on the customer's bill. ~~The presence of a charge in a currently effective tariff is not evidence, in and of itself, that the charge is authorized or mandated by the Commission.~~

F. SBC Missouri objects to proposed rule 4 CSR 240-33.045(5). The Commission has no authority to order removal or modification of any charge that it finds does not comport with this rule. Instead, the Commission must consider, after a hearing, whether an existing tariff is unlawful. Further, the commission may review any newly proposed tariff and its decision to approve or reject the tariff is subject to review on the basis of whether it is lawful and reasonable. Thus, incorporating changes that SBC Missouri has identified in previous paragraphs with those that SBC Missouri proposes here, SBC Missouri proposes that proposed rule 4 CSR 240-33.045(5) be modified as follows:

~~Based on a complaint, the Commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the Commission from suspending or rejecting company tariffs when similar or identical tariff have been approved for other companies.~~ **Nothing in this rule is intended to preclude the Commission's authority to review tariffs for lawfulness.**

G. SBC Missouri objects to proposed rule 4 CSR 240-33.045(6). Specifically, this provision is duplicative of the rule's title and purpose and is unnecessary. Thus, SBC Missouri proposes that proposed rule 4 CSR 240-33.045(6), which provides as follows, be deleted in its entirety.

~~This rule establishes minimum requirements for clarity in billing separately identified charges.~~

H. Finally, incorporating changes that SBC Missouri has identified in previous paragraphs, SBC Missouri proposes that proposed rule 4 CSR 240-33.045(7) be modified as follows:

Any **telecommunications** company that serves as a billing agent for another entity shall not be held liable for any violation of this rule for that portion of the **residential** customer bill that relates to that other entity.

Wherefore, SBC Missouri prays that the Commission consider its comments and eliminate or modify the proposed rule as outlined above, together with any further and/or additional relief the Commission deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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