

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

In the Matter of a Proposed New Rule 4)
CSR 240-33.045.)

Case No. TX-2005-0258

**COMMENTS OF THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and, pursuant to the Notice to Submit Comments published in the *Missouri Register* on March 15, 2005, submits the following comments:

I. INTRODUCTION

In the March 15, 2005, edition of the *Missouri Register*, the Missouri Public Service Commission (Commission) published its proposed rule, 4 CSR 240-33.045 - Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills. The purpose of the proposed rule is to: (1) clarify items that may be separately identified on customer bills; (2) provide guidance for labeling such charges; and (3) require clear customer disclosure.

The Federal Communication's Commission's (FCC) truth-in-billing principles¹ require:

- That telephone bills be clearly organized, clearly identify the service provider and highlight any new providers;
- That telephone bills contain full and non-misleading descriptions of charges; and
- That telephone bills contain clear and conspicuous disclosure of any information the customer may need to make inquiries about or contest bills.

Despite attempts to make consumers more aware of charges associated with service, line

¹ 47 C.F.R. §64.2400

item fees and surcharges make it difficult for consumers to comparison shop for telecommunications services. Line item fees and surcharges also allow carriers to offer lower per minute or monthly fixed rates, while recovering various costs in surcharges and fees that may not be disclosed during marketing conversations unless the customer asks the appropriate questions. As one consumer wrote in response to press releases on the proposed rulemaking, “From my limited experience it [having added charges included in the price of service] would be most helpful both in understanding current billings, and doing comparative shopping.”²

The Staff finds the proposed rule is compliant with the most recent FCC decision regarding truth-in-billing and billing format issues. The FCC’s *Second Report and Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, FCC 05-55, (“*FCC Order*”) released March 18, 2005 tentatively reverses prior pronouncements that states may enact and enforce more specific truth-in-billing rules.³ The FCC is currently seeking comment on their tentative conclusion and is also seeking comment on future state roles on truth-in-billing common carrier requirements.⁴ The Staff admits the *FCC Order* is somewhat unclear on the extent of the FCC’s tentative conclusion to limit states’ authority in establishing truth-in-billing requirements. For example, the decision to essentially pre-empt state authority could be interpreted to apply only to situations where a state commission is attempting to establish requirements for wireless carriers or providers of interstate telecommunications services. However, in many instances, the *FCC Order* not only discusses wireless carriers, but expands the statements to include all telecommunications carriers. In paragraph 51, where the FCC

² Consumer comment to the Missouri Public Service Commission in response to an article in the *Kansas City Star*. Comment No. P200400280. May 3, 2004.

³ *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *In the Matter of National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, CG Docket No. 04-208, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, FCC 05-55, released March 18, 2005, par. 51.

⁴ *Id.*

discusses its tentative conclusion, the FCC specifically mentions state authority under 47 C.F.R. § 64.2400(c), Truth-in-Billing Requirements for Common Carriers. Therefore, a broader interpretation is that the FCC intends to limit state commission authority in the establishment of truth-in-billing requirements not only to wireless and interstate telecommunications service providers but also to intrastate telecommunications service providers.

A broad interpretation of the *FCC Order* could mean the Commission may be limited in its ability to establish more specific and/or restrictive truth-in-billing rules than currently contemplated by the FCC. Prior drafts of this rule containing more specific and restrictive requirements than the currently proposed Missouri rulemaking, such as the draft rule contained in Exhibit 1, may not be allowed based on this latest *FCC Order*. Although the Staff is supportive of this prior version of the proposed rulemaking, the FCC may confirm its initial tentative conclusion and prevent state commissions from establishing more specific truth-in-billing rules. If that happens, the earlier versions of the proposed rule may violate the FCC's order if adopted by the Commission.

Staff supports the currently proposed rules because they are less likely to be in conflict with the FCC's latest decision. In Staff's opinion, the proposed rules are consistent with FCC's truth-in-billing requirements. Exhibit 2 represents the FCC's existing truth-in-billing requirements and how the FCC proposes to alter them.

Specifically, the *FCC Order* sets forth the following requirements that are general to all carriers, not just specifically related to wireless providers.

- Denies NASUCA's request prohibiting telecommunications carriers from imposing any line items or charges that have not been authorized or mandated.
- Emphasizes that it is permissible for carriers to recover charges that are assessed by carriers ostensibly to recover costs incurred as a result of specific government action.

- Clarifies it is misleading 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 to charge.
- Clarifies that a regulatory line item charge should never exceed any maximum amount or cap established by the government for a specific program.
- Clarifies there is no general prohibition against the use of line items on telephone bills.
- Clarifies that all carriers are prohibited from including misleading information on telephone bills.

The remainder of Staff's comments focuses on specific sections of the proposed rulemaking.

II. COMMENTS

4 CSR 240-33.045(1)

This section of the proposed rule requires clear, full and meaningful disclosure of all monthly charges and usage sensitive rates at the time the customer contacts the company or prior to the date service is initiated. Staff supports this section as proposed.

4 CSR 240-33.045(2)

This section of the proposed rule attempts to preclude telecommunications companies from including any fee or charge misrepresented as a governmentally mandated or authorized fee by disguising it; naming, labeling or placing it in a way that implies it is governmentally mandated; or naming or labeling it in a way that is similar to a governmentally mandated fee.

The FCC Order:

- Emphasizes that it is permissible for carriers to recover charges that are assessed by carriers ostensibly to recover costs incurred as a result of specific government action.
- Clarifies it is misleading 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 to charge.
- Clarifies that a regulatory line item charge should never exceed any maximum amount or cap established by the government for a specific program.

- Clarifies that all carriers are prohibited from including misleading information on telephone bills.

Section 4 CSR 240-33.045(2), as proposed, is consistent with the direction in the *FCC Order*. However, the use of the word “may” could be interpreted to allow telecommunications carriers to misrepresent fees or charges as governmentally mandated or authorized. Therefore, Staff suggests the language be modified as follows:

(2) Companies [may] **shall** not include on a customer’s bill any fee or charge misrepresented as a governmentally mandated or authorized fee by:

4 CSR 240-33.045(3)

This section of the proposed rule provides examples of governmentally mandated or authorized fees and surcharges, and requires such charges to be identified on customer bills in easy to understand terms and in a manner consistent with purpose or applicability. Staff supports this section of the proposed rule.

The Commission filed Reply Comments⁵ generally in support of the National Association of State Utility Consumer Advocates’ (NASUCA) Petition for Declaratory Ruling in CG Docket No. 04-208. As the Commission noted in its Reply Comments:

[M]any carriers charge line item fees and surcharges, purporting to recover various regulatory, administrative and/or government mandated costs. As one Missouri consumer recently commented, “When I query the phone company about the fees and taxes, they maintain they are imposed by State and Federal governments and there is nothing they can do about it. What is unclear is how much is truly tax and how much is routing cost-of-business expense. The other question that arises is why so many taxes are heaped upon the cost of telephone communication when it is a necessity for everyone and definitely not a luxury.”⁶

⁵ Reply Comments of the Missouri Public Service Commission, *In the Matter of Truth-in-Billing and Billing Format National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Carriers*. CC Docket No. 04-208. August 12, 2004 (“Reply Comments”).

⁶ Reply Comments at p. 2, quoting from a consumer comment to the Missouri Public Service Commission in response to an article in the *Kansas City Star*. Comment No. P200400279. May 3, 2004.

In its Reply Comments, the Commission also notes:

[T]he truth-in-billing rules require all charges to be clear and conspicuous. Yet, some carriers use similar nomenclature for duplicitous recovery of what appears to be similar charges or services. For instance, an ILD Teleservices, Inc. bill reviewed by MoPSC staff contains the following “miscellaneous” charges for one telephone line: Universal Service Fund: Jan 16 \$1.27; USF Carrier Adminstrati: Jan 16 \$1.03; Universal Service Fund: Jan 22 \$.89; USF Carrier Adminstrati: Jan 22 \$.83; Universal Service Fund: Jan 30 \$1.46; USF Carrier Adminstrati: Jan 30 \$1.13; Universal Service Fund: Feb 7 \$1.66; USF Carrier Adminstrati: Feb 7 \$1.24. There is no clear description of these apparently similar charges, no explanation as to why each charge appears multiple times and no explanation as to why each charge is a different amount than the previous time period. This example suggests that even “uniform” or “similar” labeling will not alleviate consumer confusion, but may serve to compound that confusion as costs are inaccurately represented as “recovery of regulatory costs” or “recovery of government mandates”. Another Missouri consumer, whose local and long distance charges were approximately \$21, with other charges, taxes and surcharges adding another \$14.50 to his telecommunications bill, remarked, “Glad to see someone is looking into these questionable charges. Keep up the good work.”⁷

This Section of the proposed rule is consistent with the Commission’s Reply Comments and the Staff supports its adoption. However, as previously stated, prior drafts of this rule contained more specific and restrictive requirements than the currently proposed Missouri rulemaking. The draft attached as Exhibit 1 contains language outlining requirements for the placement of the Relay Missouri surcharge on customer bills. The proposed language provides guidance on the placement of a Missouri-specific surcharge; therefore, the Staff recommends a new section (4) be added as follows:

(4) All companies providing basic local exchange telecommunications service shall apply the charge for the Missouri relay fund on customer bills as directed by the Commission and shall identify the monthly charge for this purpose as the "Relay Missouri Surcharge".

⁷Reply Comments at pp. 3-4, quoting from a consumer comment to the Missouri Public Service Commission in response to an article in the *Kansas City Star*. Comment No. P200400281. May 3, 2004.

(A) The Relay Missouri Surcharge is applied on a per line basis each month. The Commission determines the surcharge amount.

(B) A company is allowed to retain a certain portion of revenue collected from the Relay Missouri Surcharge as determined by the Commission in order to recover billing and collection costs.

(C) Remaining revenue collected from the Relay Missouri Surcharge shall be submitted to the Commission.

Since this is a Missouri-specific charge, mandated by Section 209.255 RSMo 2000, the addition of this requirement would be consistent with the *FCC Order*. The Staff supports its inclusion and recommends all subsequent sections of the proposed rule be re-numbered accordingly.

4 CSR 240-33.045(4)

This Section of the proposed rule requires companies imposing separately identified charges that appear to be governmentally mandated or authorized fees to provide, upon request by the Commission's Staff, support that such charge was authorized by a federal, state or local government order, decision, ruling, mandate or other authority. The Section also states that 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. The Staff supports this Section of the proposed rule because it provides the Staff and the Commission the opportunity to review and question charges that may appear on a consumer bill.

4 CSR 240-33.045(5)

This Section of the proposed rule clarifies that the Commission may order the removal or modification of any charge that does not comport with the rule based on a complaint proceeding. The Section also clarifies that nothing in the rule precludes the commission from suspending or

rejecting company tariffs that have charges that are similar or identical to previously approved tariffs. The Staff supports this Section of the proposed rule since it clarifies that the commission can review previously approved tariffed charges through the complaint process or through a new tariff filing.

4 CSR 240-33.045(6)

This Section simply clarifies that the proposed rule establishes the minimum requirements for separately identified charges on a telecommunications bill. The Staff supports this Section of the proposed rule.

4 CSR 240-33.045(7)

This Section of the proposed rule states that any company that serves as a billing agent for another entity shall not be held liable for any violations of the rule when such violations are a result of that portion of the bill relating to the other entity. Staff does not object to this Section. During industry meetings, carriers stated that when they serve as a billing agent for other entities, they often receive information from that entity in the form that it is to be placed on the bill. If that entity is subject to Commission jurisdiction, the Commission could pursue the proper avenues for rule violations. Even if the entity is not subject to Commission rules, the billing agent should not be liable for the actions of other entities. Therefore, Staff supports this Section of the proposed rule.

WHEREFORE, the Staff of the Missouri Public Service Commission respectfully submits these comments on the proposed rule.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Marc Poston

Marc Poston
Senior Counsel
Missouri Bar No. 45722

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)
e-mail: marc.poston@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 14th day of April 2005.

/s/ Marc Poston
