

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	
)	
IP-Enabled Services)	WC Docket No. 04-36

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY
CONSUMER ADVOCATES**

By Public Notice issued December 13, 2019, the Federal Communications Commission’s (FCC or Commission) Consumer and Governmental Affairs Bureau invited comments to refresh the record on Truth-in-Billing (TIB) rules,¹ with an eye towards modernizing and strengthening the rules. The Bureau seeks comments on 1) whether the FCC should extend its TIB rules to interconnected Voice over Internet Protocol (VoIP) service providers, and 2) whether the FCC should require all voice service providers to separate government-mandated fees from those that are not on customer bills (to the extent the bill for voice services includes separate line items). The Bureau also invited comment to refresh the record on the Commission’s authority to extend the TIB rules to interconnected VoIP providers.

¹ 47 C.F.R. § 64.2401(b).

EXECUTIVE SUMMARY

The National Association of State Utility Consumer Advocates (NASUCA)² has previously filed extensive comments with the FCC in support of protecting consumers of voice services³ by applying strong TIB rules to wireline, wireless, or interconnected VoIP providers.⁴ Those NASUCA comments are part of the common record in the 2004 IP-Enabled Services Notice of Proposed Rulemaking (*IP-Enabled NPRM*) and the 2005 Truth-in-Billing Format Second Report and Order, Declaratory Order, and Second Further Notice of Proposed

² NASUCA is a voluntary association of 58 consumer advocates. NASUCA members represent the interests of utility consumers in 43 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. 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). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

³ See, *Truth-in-Billing Format*, CC Docket No. 98-170, et al., Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6448 (Mar. 18, 2005) (*TIB Second Report*) [appellate history omitted]. The FCC's pending rulemaking arose from issues raised in a 2004 NASUCA petition for declaratory ruling concerning TIB protections and line item charges. *Id.*, ¶ 37. In March 2018, the Commission acknowledged NASUCA's position that "there is nothing more violative of the concept of Truth-in-Billing than the placement of charges on consumers bills with descriptions so vague that consumers cannot ascertain what the billings are for or whether the billings were authorized and hence owing." *In the Matter of Gregory Manasher et al., Petition for Declaratory Ruling*, CG Docket No. 98-170, Declaratory Ruling, ¶ 9, (*Manasher Declaratory Ruling*) quoting NASUCA Comments at 2 (filed Nov. 15, 2012).

⁴ See, *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, et al., NASUCA Comments at 2-3 (filed Sept. 13, 2017). NASUCA urged adoption of the FCC's proposed addition to the TIB rules to protect consumers from cramming. NASUCA recommended extending the proposed cramming prohibition "to all providers of voice communications, regardless of technology, including wireless and interconnected VoIP. [footnote omitted] NASUCA can conceive of no legitimate reason for any provider to object, particularly when such platform neutrality would also create a 'level playing field' for compliance among all providers of voice communications." *Id.* at 2. See, also *Consumer Information and Disclosure*, et al. CG Docket No. 09-158, Notice of Inquiry, (2009 NOI), NASUCA Initial Comments at 14-15, 19-25 (filed Oct. 13, 2009), NASUCA Reply Comments at 30-31 (filed Oct. 28, 2009). NASUCA encouraged the FCC to move forward and extend the TIB consumer protections to VoIP as one more form of voice services valued by consumers, regardless of technology. The convergence and consolidation of America's communications marketplace and providers also weighed in favor of consistent consumer protections.

Rulemaking (*TIB Second Report*), and related FCC inquiries.⁵ In the event a bill for voice services includes line items, the NASUCA June 2005 Initial Comments favored listing government mandated charges in a separate section of the bill, apart from line items for discretionary charges imposed by the service provider.⁶ Those “Mandated charges” are the amounts that the carrier is required to collect directly from customers and remit to federal, state, or local governments.⁷ Separating the mandated charges on the bill from discretionary charges would further avoid customer confusion.⁸ NASUCA has therefore previously encouraged the FCC to exercise its legal authority pursuant to Section 201(b)⁹ and/or the FCC’s ancillary Title I authority, and amend its TIB rules to protect consumers of all voice services, regardless of technology.¹⁰

In response to the Public Notice request to refresh the record, the Kansas Corporation Commission (Kansas Commission), NTCA – The Rural Broadband Association (NTCA), Voice on the Net Coalition (VON), INCOMPAS, NCTA – The Internet & Television Association

⁵ See, *TIB Second Report*, NASUCA Initial Comments (filed June 24, 2005), NASUCA Reply Comments (filed July 25, 2005); see also fn. 2 and 3, *supra*.

⁶ *TIB Second Report*, NASUCA Initial Comments at 3-16 (filed June 24, 2005).

⁷ *Id.* at 3-12.

⁸ *Id.* at 12-13.

⁹ 47 U.S.C. § 201(b). See, e.g., *Empowering Consumers to Prevent an Detect Billing for Unauthorized Charges (“Cramming”)*, CG Docket No. 11-116, et al, Reply Comments of NASUCA and the New Jersey Division of Rate Counsel, at 28-35 (filed Dec. 5, 2011).

¹⁰ See, *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, NASUCA Comments at 2-3 (filed Sept. 13, 2017). NASUCA supported the FCC’s proposed addition to the TIB rules to protect consumers from cramming. NASUCA recommended that the “cramming prohibition should extend to all providers of voice communications, regardless of technology, including wireless and interconnected VoIP. [footnote omitted] NASUCA can conceive of no legitimate reason for any provider to object, particularly when such platform neutrality would also create a ‘level playing field’ for compliance among all providers of voice communications.” *Id.* at 2.

(NCTA), ACA Connects – America’s Communications Association (ACA), Verizon, and USTelecom filed Comments. NASUCA’s interests are most aligned with the Kansas Commission’s comments that support extension of TIB consumer protections to bills for voice services from interconnected VoIP providers. INCOMPAS, on the other hand, encourages the FCC to hold to the 2004 status quo and not extend TIB rules to interconnected VoIP because little has changed in the interim.¹¹

NASUCA avers that it is time for the Commission to clarify its TIB rules to delineate the difference between mandated and non-mandated charges, and to extend the TIB rules to interconnected VoIP providers. Such action would dispel consumer confusion and support beneficial competition.

II. REPLY COMMENTS

A. Today’s Consumers Still Need Improved Truth-in-Billing Protections To Make Informed Decisions When Purchasing and Paying for Voice Services, Whether from Wireline, Wireless, or Interconnected VoIP Providers

NASUCA joins with the Kansas Commission in urging the Commission to act on the record created since the *TIB Second Report*, and the refreshed record, for the benefit of current and future consumers of voice services. The 19,000 telephone service billing-related complaints received by the FCC in 2018 provides a rationale, as similar levels of complaints have in the past, for the Commission to take action despite the position of some commenters.¹² The Commission should not adopt the positions advanced by some parties¹³ to “wait for more

¹¹ INCOMPAS Comments at 1.

¹² Public Notice, fn. 2. See, INCOMPAS at 2; ACA at 4; USTelecom at 2.

¹³ See, INCOMPAS at 2; ACA at 4; USTelecom at 2.

evidence of harm” or to forebear from action because “the competitive marketplace will fix all problems.”¹⁴

1. From 1999 to the Present

The Commission adopted the TIB rules in 1999 “to address concerns that there was growing consumer confusion relating to billing for telecommunications services and an increase in the number of entities willing to take advantage of the this confusion.”¹⁵ The Commission extended the TIB rules to include wireless providers in 2005 based in part upon the rise of related consumer complaints to 18,000.¹⁶ The Commission emphasized that the competitive nature of the market for wireless services could not rectify or preclude misconduct by market participants.¹⁷ The Commission extended the Section 64.2401(b) protections to wireless providers “to ensure that wireless consumers receive the information that they require to make informed decisions in the competitive marketplace.”¹⁸ In the FNPRM portion of the *TIB Second Report*, the FCC proposed to refine the TIB rule to better help consumers understand line items included on their bills.¹⁹

Today, the marketplace for voice services has broadened to include service from interconnected VoIP providers, along with wireline and wireless providers. Contrary to the comments by INCOMPAS and others, much has changed.²⁰ Interconnected VoIP providers

¹⁴ Id.

¹⁵ *TIB Second Report*, ¶ 4.

¹⁶ Id., ¶ 16.

¹⁷ Id., ¶ 17.

¹⁸ Id.

¹⁹ *TIB Second Report*, ¶¶ 37-48. See, NASUCA July 2005 Reply Comments at 2-6. (The Commission’s proposal to adopt the additional TIB provisions regarding mandated charges and bill presentation – rather than rely on competitive market conditions – is well founded.)

²⁰ See, e.g. INCOMPAS at 2; VON at 1.

now have direct access to numbering resources. The FCC expects that this will increase competition, benefit consumers with potentially lower bills, and advance movement towards an all-IP network.²¹ Gaining direct access to numbering resources required interconnected VoIP providers to certify their compliance with existing obligations for Universal Service Fund contributions, Telephone Relay Service, paying regulatory fees, and 911 requirements.²² Separately, recipients of Connect America Fund Phase II (CAF II) support can now meet their eligible telecommunications carrier (ETC) obligation to provide voice service by providing that service through an interconnected VoIP offering from a third party or through an affiliate.²³ Regardless, the CAF II recipient ETC retains legal responsibility, including dealing with customer problems.

As the Commission advances its goal of an all IP-network, there are potentially more interconnected VoIP providers competing to provide voice service. Each interconnected VoIP provider incurs regulatory charges and government fees. Those charges and fees could be passed along to the voice service consumer, or an ETC may bill its voice service consumers for a third party's interconnected VoIP service. Each of those choices could conceivably give rise to different types of billing and varied disclosures in such bills.

²¹ *Numbering Policies for Modern Communications*, WC Docket No. 13-97, et al., Report and Order, 30 FCC Rcd 6839, ¶¶ 2, 16-17, 19 (2015) (*Direct Numbering Access Order*).

²² *Id.*, ¶ 29.

²³ Public Notice, *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining Federal Designation as an ETC*, WC Docket No. 09-197, 10-90, 33 FCC Rcd 6695, 6698-99 (rel. July 10, 2018) (Summary of the FCC's rulings).

2. TIB Consumer Protections Should Extend to Voice Service from Interconnected VoIP Providers

Although INCOMPAS characterizes interconnected VoIP as “non-common carrier services,”²⁴ the distinction is meaningless to voice service consumers. Despite regulatory character and differences in the technology that provide services, to the average consumer voice services are voice services and TIB should acknowledge that practical reality. Consequently, the consumer’s bill for voice services should state the charges with sufficient clarity to allow the consumer to reasonably identify and understand what is being charged,²⁵ irrespective of how the voice services are delivered. As the Kansas Commission explained, providing consumers with the same baseline information assists in comparing the prices between service providers, regardless of technology used.²⁶ To the extent that the service providers are not subject to state oversight of consumers’ bills, the Kansas Commission states that federal protections are more critical. NASUCA joins the Kansas Commission’s recommendation that the Commission extend the TIB rules to interconnected VoIP service providers to ensure that consumers receive the information needed to make an informed decisions in the competitive marketplace. Applying the TIB rules will also protect consumers from misconduct or harms that cannot be rectified by competitive forces.

3. The Commission Should Improve the TIB Rules as Proposed in the TIB Report and Supported by NASUCA

To refresh the record, the Public Notice posed the question “whether the Commission should require all voice service providers to separate on consumer bills those line-item fees that

²⁴ INCOMPAS at 3; see also USTelecom at 4 (hyper-competitive information service).

²⁵ See, *Manasher Declaratory Order*, ¶ 4, summarizing the goal of the TIB rules.

²⁶ Kansas Commission at 2-3.

are government-mandated from those that are not to the extent they include separate line items on a consumer's bill."²⁷ NASUCA responds "yes," both in prior comments and now. The Kansas Commission concurs that consumers should be informed of the voice service price, and for each additional billed charge they should be informed whether the charge is mandated to be recovered from the consumer or not. This will help the consumer compare the all-in-cost-of services from different providers.²⁸

The Commission should adopt the proposed TIB clarification that mandatory line item charges are those amounts that a carrier or voice service provider is required to collect directly from customers and remit to federal, state, or local governments.²⁹ Thus, a Universal Service Fund surcharge or Telephone Relay Service surcharge would be identified in the "non-mandatory category." As the Commission has recognized, labelling a line-item charge as mandated when it is not makes it more difficult for consumers to understand their bills and to shop for the best value in the telecommunications or voice services that they need.³⁰ NASUCA also supports the Commission's proposals to require separation of government-mandated and non-government mandated charges on the bill.

Verizon and other commenters' concerns that adoption of this approach will impose excessive billing system changes is overstated. For example, Verizon describes its billing practices for wireline and wireless as generally following a similar division of line item charges.³¹ But, ACA asks for "government-mandated charges" to be an expansive, flexible

²⁷ January 14, 2020 Public Notice at 2 (emphasis added),

²⁸ Kansas Commission at 3-6.

²⁹ *TIB Second Report*, ¶¶ 39, 40; NASUCA Initial Comments at 3-13.

³⁰ See, NASUCA Initial Comments at 7-10; *TIB Second Report*, ¶¶ 62, 63.

³¹ Verizon at 2-3.

category allowing carriers to include and collect payments towards government programs even though there no government requirements that the charges be paid by consumers.³² NASUCA disagrees with the ACA’s “hold them accountable” position. For example, bill identification of a carrier’s federal Universal Service Fund surcharge is not meant to serve as a referendum on the merits of the entire USF program. Rather, consumers should not be misled on their bill into believing that a USF surcharge is the equivalent of a sales tax and as such an unavoidable cost of service. As the Kansas Commission has explained, the identification and delineation of all charges helps consumers identify the total cost of service and also identify any change in a charge and identify whether the change is erroneous or fraudulent,³³ or a carrier’s choice to pass through a charge to customers that it might otherwise have absorbed as part of its business model.

³² ACA at 5.

³³ Kansas Commission at 5.

II. CONCLUSION

NASUCA appreciates the opportunity to refresh the record on the need for the Commission to extend the important consumer protections of the Truth-in-Billing regulations and policy to interconnected VoIP providers who are – from the consumer’s perspective – another provider of essential voice services via a more modern technology. The Truth-in-Billing regulations provide needed protections that competition alone cannot guarantee. NASUCA supports adoption by the Commission of the proposed refinements to the TIB rules, as addressed in NASUCA 2005 Initial Comments, Reply Comments, and above.

Respectfully submitted,

David Springe, Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

Barrett C. Sheridan
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut St., Forum Pl., 5th Fl.
Harrisburg, PA 17101
Phone (717) 783-5048
bsheridan@paoca.org

March 12, 2020
285183