

Resolution Concerning Billing Practices By Commercial Mobile Radio Services (CMRS) Carriers

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**WHEREAS**, Some wireless providers are imposing separate surcharges and fees to pay for implementation of enhanced 9-1-1, number pooling, number portability and universal service assessments; and

**WHEREAS**, Where government has not actually imposed a charge on the retail transaction, this practice offers an opportunity to advertise revenue-generating charges as external mandated charges that do not contribute to the provider's own revenues, and

**WHEREAS**, Some wireless carriers do not detail their costs, and no government agency audits these surcharges and fees as to accuracy; and

**WHEREAS**, Some wireless carriers are resisting the Local Number Portability (LNP) implementation through challenges to the Federal Communications Commission (FCC), the U.S. Courts, and by seeking Congressional action that would result in either further delays or elimination of the requirement; and

**WHEREAS**, Some wireless carriers have already imposed charges for the implementation of LNP; and

**WHEREAS**, Those wireless carriers rendering charges have not indicated an intention to refund any portion of these fees should the mandate be lifted or significantly modified; now therefore be it

**RESOLVED**, That the Board of Directors of the National

Association of Regulatory Utility Commissioners (NARUC), convened in its July 2003 Summer Committee Meetings in Denver, Colorado, that NARUC has numerous concerns regarding the current practice of some wireless carriers imposing separate explicit charges for federally mandated programs such as enhanced 9-1-1 service, local number portability, number pooling, and Universal Service Programs funding; and be it further

**RESOLVED**, Wireless providers should be permitted to require consumers to pay a special purpose charge associated with a program or service that the government mandates the provider to provide to customers. However:

1. Invoices and advertising should distinctly differentiate between such charges that are imposed at the discretion of the provider with the intention of recovering the provider's costs of complying with a government mandate and those special purpose and other charges that are imposed or mandated by law.
2. Providers should collect no more than the cost of the identified mandate, they should be required to provide financial information showing the disposition of revenues generated by such charges, and that financial information should be subject to audit by the FCC and appropriate State authorities.
3. Providers should not add or increase charges to existing fixed-price term contracts without explicit disclosure to customers, at the time the charge is added or increased, and without providing reasonable advanced notice of the increase and allowing customers a reasonable time to contact their provider to cancel their contract without early termination penalties.
4. A portion of the revenues collected relating to enhanced 9-1-1 or number portability should be refunded if any of those requirements are eliminated or overturned or a portion refunded if requirements are modified so as to lower implementation costs; and be it further

**RESOLVED**, The FCC is encouraged to conduct a proceeding to determine whether its existing truth-in-billing rules should be

revised to address current wireless billing practices; and be it further

**RESOLVED**, Appropriate State authorities are encouraged to examine the billing practices of wireless carriers in their States, and either to assert jurisdiction over these practices and determine whether such charges are consistent with their own state laws and regulatory policy or to refer such questions to their state Attorneys General; and be it further

**RESOLVED**, The NARUC General Counsel be directed to file and take any appropriate actions to further the intent of this resolution.

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Sponsored by the Committee on Consumer Affairs and the Committee on Telecommunications

Adopted by the NARUC Board of Directors July 30, 2003

## Whitepaper for CMRS Billing Resolution

There are more than 140 million CMRS (wireless) users across the United States. Many wireless users are paying surcharges and fees that wireless providers claim pay for implementation of enhanced 9-1-1, number pooling, number portability and universal service assessments. Some wireless carriers are imposing separate explicit charges to defray the carrier's costs for federally mandated programs such as enhanced 9-1-1 service, local number portability and number pooling, and these charges in some cases exceed \$1.75 per month. Some wireless carriers are informing consumers that the amount of these fees, which are not governmentally mandated, will be collected at the carrier's discretion for cost recovery purposes.

For example, one wireless carrier is informing its customers that the carrier has discretion to identify the taxes and other assessments that customers are responsible to pay, potentially including federal, State or local taxes, surcharges or fees, as well as assessments to defray costs for federally mandated programs such as enhanced 9-1-1 service, local number portability and number pooling, and without regard to whether the charges are assessed by government on the carrier or the customer.

These charges raise a number of issues:

- Whether these charges give providers an opportunity to present revenue-generating charges intended to recover a portion of the cost of doing business as a government-imposed charge that is in addition to all other charges that generate revenue for the provider.
- Whether new charges of this kind violate fixed-price term contracts.
- Whether wireless carriers are over-billing consumers for the described services, and whether carriers should account to customers for the use of these funds and whether the funds should be audited.
- Whether wireless carriers should be permitted to charge customers for mandates that they have not yet implemented, and whether the funds so collected should be refunded if the relevant government mandate does not finally take effect.
- Why these particular government mandates were selected and not other mandates from the FCC (including interconnection standards and network usage compensation payments) as well as mandates arising from other federal, State and local laws (such as tax laws, securities laws, land use laws, labor laws, worker safety and worker compensation laws), but most such mandates do not produce such explicit charges.

Federal law preempts regulation of entry and rates for wireless providers, and the FCC has directed wireless providers not to file tariffs describing these charges nor any other customer charges. The FCC has adopted Truth-in-Billing rules that require that a telephone company's bill must, among other things, be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered and must also contain full and non-misleading descriptions of charges.

Under 47 U.S.C. § 332(c)(3)(A), the FCC has authority over the "entry of and rates charged by" wireless carriers. Nevertheless, States continue to have authority to "regulate the other terms and conditions" of services provided by wireless carriers. Also, State commissions also have the power to petition the FCC for authority to regulate the rates for wireless where market conditions fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. Under 47 U.S.C. § 253(a), States may not create barriers to entry, although under § 253(b) States retain authority to "preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

States exercise this authority in two broad ways. First, many State regulatory commissions have jurisdiction to ensure that rates charged for telecommunications services are just and reasonable and that bills are not unfair or deceptive. In addition, many States also have consumer protection laws, usually enforced by State Attorneys General, that prohibit unfair or deceptive acts or practices in commerce.

This resolution recognizes the right of carriers to impose such charges. However, it would establish three continuing rules. First, invoices and advertising would distinctly differentiate between charges or mandates that are imposed at the discretion of the provider with the intention of recovering the provider's costs of complying with a government mandate and other charges, like sales taxes and some State universal service charges, that are imposed or mandated by law on the transaction of sale. Second, providers could not over-collect, and they would be required to provide financial information showing the disposition of revenues generated by such charges, and that financial information should be subject to audit by the FCC and State utility commissions. Finally, as a transitory measure, special refunds would be made if currently anticipated mandates do not materialize. The resolution calls for examination of the wireless charges in light of these principles in an FCC proceeding as well as in State proceedings.