

TRUTH IN TELEPHONE BILLING ACT OF 2000

OCTOBER 12, 2000.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3011]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3011) to amend the Communications Act of 1934 to improve the disclosure of information concerning telephone charges, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Telephone Billing Act of 2000".

SEC. 2. TELEPHONE BILLING PRACTICES.

(a) AMENDMENT.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended by adding at the end the following new subsections:

"(c) TRUTH-IN-BILLING.—A telecommunications carrier that is required to contribute to, or that is otherwise assessed for, any support mechanism under section 254, or any other governmental mechanism, fund, tax, or program, shall identify on each subscriber's bill, in simple, plain language (of no more than one line of text per dollar amount)—

"(1) the identity of the governmental mechanism, fund, tax, or program to which the contribution or assessment is made, and the identity of the governmental authority whose rules require or authorize the contribution or assessment;

"(2) the basis for the contribution or assessment (such as per subscriber, per line, or percentage of some or all charges or revenues); and

"(3) as a separate line-item, the dollar amount that is being attributed to and collected from such subscriber for such governmental mechanism, fund, tax, or program.

"(d) PROHIBITION OF EXCESS CHARGES.—If any telecommunications carrier that is subject to subsection (c) discloses to its subscribers under paragraph (3) of such subsection a total dollar amount for any billing period that exceeds the total dollar amount such carrier contributes to or is assessed for the applicable governmental mechanism, fund, tax, or program for such billing period, such carrier shall be liable for a forfeiture penalty equal to the amount of such excess, in addition to any other penalties for which the carrier may be liable under title V. The Commission may, by rule, provide for the distribution of any forfeiture penalties collected under this subsection to the affected subscribers."

(b) CONFORMING AMENDMENT.—Section 258 is further amended by striking the designation and heading of such section and inserting the following:

"SEC. 258. BILLING PRACTICES."

SEC. 3. STUDY REQUIRED.

(a) STUDY OF SUBSIDY SYSTEM REQUIRED.—The Comptroller General shall conduct a study of the implicit and explicit subsidies from the government, taxpayers, and consumers to providers and consumers of telecommunications services, including subsidies in support of universal service required by section 254 of the Communications Act of 1934 (47 U.S.C. 254), the systems for the collection and distribution of support for rural and high cost areas, lifeline services, connections of schools and libraries to the Internet, and rural health care services.

(b) REPORT.—Within one year after the date of enactment of this Act, the Comptroller General shall submit to the Congress a report on the results of the study conducted under subsection (a).

PURPOSE AND SUMMARY

The purpose of H.R. 3011 is to provide some accountability to governmental entities that impose mechanisms, taxes, funds, fees or charges on telecommunications industry as a way to pay for related and unrelated programs. The cost for these programs is often passed on to the consumer in one form or another. Today, the average consumer's telephone bill is loaded with these governmental added-on taxes and fees. However, given the governmental restrictions or unwillingness to explain to consumers what is included in their telephone bills, consumers have no idea what additional programs they are paying for and which government entity imposed the charge.

H.R. 3011 will change this situation. The bill will give consumers valuable information including which government entity is sponsoring the tax or fee, what is the governmental authority for col-

lecting such a tax or fee, and how are companies collecting the fee or tax from consumers. This information will be provided on consumers' telephone bills for open inspection and review by consumers.

BACKGROUND AND NEED FOR LEGISLATION

When measured by total revenue, the telecommunications services industry has realized exponential growth in recent decades. The Federal Communications Commission (FCC) recently reported in its Statistics of Communications Common Carriers that total telecommunications revenue grew from \$153.4 billion in 1992 to \$246.4 billion in 1998. While industry growth has led to substantial job creation and technological innovation, it has also attracted the attention of legislators and regulators at all levels of government. Policymakers—particularly those at the State and local level—increasingly view consumers' telecommunications services as a means of funding a variety of government programs.

Some taxes are historical and already appear on consumers' phone bills, such as the three percent Federal excise tax that was originally enacted in 1897 to fund the Spanish-American War. But many taxes and assessments are fairly recent and, in some cases, remain hidden from consumers because carriers "blend" the tax into consumers' rates (as opposed to explicitly itemizing the tax). For example, at the Federal level, the FCC imposed an "e-rate" tax, which the FCC assesses principally on long distance and wireless carriers' revenues. These carriers, in turn, recover the tax from consumers by raising rates by an average of \$12 per line, per year—and in many cases, fail to disclose the tax to consumers.

Meanwhile, telephone taxes abound at the State and local level. While these taxes vary among localities, many State and local governments impose their own excise taxes, franchise fees, rights-of-way charges, gross receipts taxes, license fees, 911 fees, public utility taxes, infrastructure maintenance fees, and access line taxes. Moreover, State and local government taxation is often discriminatory; that is, State and local governments will typically tax wireless services differently than wireline services, and will tax competitive local exchange carriers (CLECs) differently than incumbent local exchange carriers (ILECs).

The consumer impact of State and local taxation on telecommunications services is significant. According to a recent analysis by the Progress and Freedom Foundation (PFF), State and local governments level approximately 37 different types of taxes on telecommunications services—many of which (once again) are passed on to and hidden from consumers. The PFF found that, on average, 16 percent of consumers' local monthly service goes towards State and local taxes, and that in some markets, the total amount of local monthly service that is attributable to State and local taxes is as high as 35 percent.

It is clear that there exists a lack of information available to consumer about their telephone bills, especially relating to the imposition of fees and taxes for governmental programs. Consumers will benefit from the additional information and knowledge gained through the passage of H.R. 3011.

HEARINGS

The Subcommittee on Telecommunications, Trade, and Consumer Protection held a hearing on H.R. 3011 on March 9, 2000. The Subcommittee received testimony from: Mr. Kevin Breen, Vice President of Consumer Operations and Billing, AT&T; Mr. Jeff Eisenach, President, Progress and Freedom Foundation (PFF); Ms. Kathy Hotka, Vice President for Information Technology, National Retail Federation; Mr. Kent Lassman, Deputy Director of Technology and Communications, Citizens for a Sound Economy (CSE); Mr. Brian Moir, Partner, Moir & Hardman (on behalf of the International Communications Association (ICA)); and Mr. Grover Norquist, President, Americans for Tax Reform (ATR).

COMMITTEE CONSIDERATION

On September 13, 2000, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 3011 for Full Committee consideration, as amended, by a voice vote. The Full Committee met in open markup session on October 5, 2000, and ordered H.R. 3011 reported to the House, with an amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3011 reported. A motion by Mr. Bliley to order H.R. 3011 reported to the House, with an amendment, was agreed to by a voice vote.

The following amendment was agreed to by a voice vote:

An amendment by Mr. Dingell, No. 1, imposing forfeiture penalties on telecommunications carriers that disclose to its subscribers amounts higher than what carriers has been assessed or required to contribute pursuant to a governmental mechanism, fund, tax, or program.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3011, the Truth in Billing Act of 1999, would result in an insignificant in-

crease in budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 11, 2000.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3011, the Truth in Telephone Billing Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal costs), Shelley Finlayson (for the impact on state and local governments), and Paige Piper/Bach (for the impact on the private sector).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3011—Truth in Telephone Billing Act of 1999

H.R. 3011 would require telecommunications carriers to itemize on subscribers' billing statements certain information about each governmental tax, fee, or payment that is levied by federal, state, or local governments. The bill also would require the General Accounting Office (GAO) to complete a study within one year on the subsidies to providers and consumers of telecommunications services. In addition, H.R. 3011 would punish with forfeiture penalties any telecommunications carrier that pays less in governmental taxes, fees, or payments during a billing period than it collects from subscribers for these purposes. The bill also would allow the Federal Communications Commission (FCC) to redistribute these collections to the affected subscribers.

Based on information from GAO, CBO estimates that implementing H.R. 301 would cost GAO about \$1 million in 2001, subject to the availability of appropriated funds, to complete the required study. Because the bill would create new forfeiture penalties and direct spending, pay-as-you-go procedures would apply.

Based on information from the FCC and private-sector sources, CBO estimates that the additional forfeiture penalties collected under H.R. 3011 would amount to less than \$500,000 a year. Thus,

the provision allowing the FCC to redistribute the forfeiture penalties back to affected subscribers would cause an insignificant increase in direct spending.

H.R. 3011 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would require telecommunications carriers, including those owned by state and municipal governments, to include certain information on government assessments on all consumer telephone bills. According to informal estimates by industry groups, there are fewer than 10 state or municipally owned telecommunications carriers. Based on the relatively small number of publicly owned telecommunications carriers, CBO estimates that the costs to state and local governments would not be significant and would not exceed the threshold established by UMRA (\$55 million in 2000, adjusted annually for inflation).

H.R. 3011 also contain private-sector mandates as defined in UMRA. CBO estimates that the total direct costs of mandates in the bill would not exceed the threshold for private-sector mandates established by UMRA (\$109 million in 2000, adjusted annually for inflation).

H.R. 3011 would impose two mandates on telecommunications carriers. First, the bill would require telecommunications carriers to include certain information on government assessments on all consumer telephone bills. The bulk of the costs to comply with those mandates would be programming time to include the required information on telephone bills. According to the FCC statistics, an estimated 1,300 companies provide local telephone services and 700 companies provide long-distance telephone services. Each of those companies would need to modify their computer programs to provide the additional disclosures on telephone bills. According to some industry estimates, the cost to make those changes would be in the range of \$15,000 to \$20,000 per company. Additional minimal costs would be required to accommodate the maintenance and operational costs of administering the changes in the billing process.

Second, the bill would prohibit telecommunication carriers from collecting excess charges as government assessments. Any carrier found in violation would be liable for a penalty in the amount of the excess and any additional penalties applicable in current law. Because the systems are already in place to collect the government assessments, CBO expects the additional cost to administer the system with such a prohibition would be small.

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Shelley Finlayson (for the impact on state and local governments), and Paige Piper/Bach (for the impact on the private sector). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title of the bill, the “Truth in Billing Act of 1999.”

Section 2. Telephone billing practices

Section 2(a) adds a new section 258(c) and (d) to the Communications Act of 1934 (47 U.S.C. §151 et seq). New subsection (c) requires each telecommunications carrier to identify on each subscriber’s monthly statement: (1) the government program for which the carrier is being taxed, and the government entity imposing the tax; (2) the form in which the tax is assessed (e.g., per subscriber, per line, percentage of revenues); and (3) a separate line-item that identifies the dollar amount of the subscriber’s bill that is being used by the carrier to pay for the government program. Under new subsection (c), the identification on each subscribers’ bill is required to be in plain language of no more than one line of text per dollar amount.

New subsection (d) imposes forfeiture penalties on telecommunications carriers that disclose to its subscribers pursuant to subsection (a) amounts higher than what carriers has been assessed or required to contribute pursuant to a governmental mechanism, fund, tax, or program. This is intended to prevent carriers from collecting more than they are required to pay in such mechanisms, fund, tax, or program. The Commission may, by rule, distribute any forfeiture monies received to the affected subscribers.

The Committee expects that, in some instances, telecommunications carriers may be justified in disclosing to individual subscribers an amount for the assessment of government-imposed fees that is greater than the specific assessment by a governmental entity. For example, a carrier may disclose, and thus collect, a percentage of billed revenues equal to 8.6 percent for its contribution to the Universal Service Fund when the actual government assessment for this purpose is 5.6 percent. This discrepancy is permissible under new subsection (d), so long as the aggregate amount actually disclosed to the carrier’s subscriber base does not exceed the

aggregate amount actually paid to the governmental entity. For example, a telecommunications carrier may need to increase the charge to its customers in order to recover government assessments that are actually uncollectible from a portion of its subscribers. Further, a carrier may need to impose a higher rate if the FCC or the Universal Service Administrative Company bases its assessment on a carrier's prior year's revenues, and those revenues are higher than the carrier's actual experience in the current year. Subsection (d) permits such higher disclosures so long as it does not exceed the aggregate funds paid by the carrier to the government for the stated purpose of any particular governmental program, tax, fee, etc.

Subsection (b) changes the title of section 258 of the Communications Act of 1934 from "Illegal Changes in Subscriber Carrier Selections" to "Billing Practices."

Section 3. Study required

Section (3)(a) requires the General Accounting Office (GAO) to conduct an in-depth analysis and examination of the implicit and explicit subsidy mechanisms from government, taxpayers, and consumers to providers and consumers of telecommunications services. As part of this study, GAO is required to examine differing programs contained in the universal service support mechanisms as required by section 254 of the Communications Act.

Subsection (b) requires GAO report its findings pursuant to the study conducted under subsection (a) not later than one year from date of enactment of H.R. 3011.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 258 OF THE COMMUNICATIONS ACT OF 1934

[SEC. 258. ILLEGAL CHANGES IN SUBSCRIBER CARRIER SELECTIONS.]

SEC. 258. BILLING PRACTICES.

(a) * * *

* * * * *

(c) *TRUTH-IN-BILLING.*—A telecommunications carrier that is required to contribute to, or that is otherwise assessed for, any support mechanism under section 254, or any other governmental mechanism, fund, tax, or program, shall identify on each subscriber's bill, in simple, plain language (of no more than one line of text per dollar amount)—

(1) *the identity of the governmental mechanism, fund, tax, or program to which the contribution or assessment is made, and the identity of the governmental authority whose rules require or authorize the contribution or assessment;*

(2) *the basis for the contribution or assessment (such as per subscriber, per line, or percentage of some or all charges or revenues); and*

(3) as a separate line-item, the dollar amount that is being attributed to and collected from such subscriber for such governmental mechanism, fund, tax, or program.

(d) *PROHIBITION OF EXCESS CHARGES.*—If any telecommunications carrier that is subject to subsection (c) discloses to its subscribers under paragraph (3) of such subsection a total dollar amount for any billing period that exceeds the total dollar amount such carrier contributes to or is assessed for the applicable governmental mechanism, fund, tax, or program for such billing period, such carrier shall be liable for a forfeiture penalty equal to the amount of such excess, in addition to any other penalties for which the carrier may be liable under title V. The Commission may, by rule, provide for the distribution of any forfeiture penalties collected under this subsection to the affected subscribers.

ADDITIONAL VIEWS

We support the goal of H.R. 3011, which is intended to ensure that consumers know when and how much they are paying to support government-mandated programs. We are concerned though that the Dingell amendment, which was added to the bill during its consideration by the full Commerce Committee, overlooks two very important factors that impact the way in which telecommunications carriers seek to recover the cost of their contributions to the universal service fund. The first of these factors can, and should be addressed by the Federal Communications Commission; the second, however, requires that the Dingell amendment be redrafted or dropped from the legislation.

The first problem with the Dingell amendment is that it fails to recognize that the Federal Communications Commission's current rules and regulations regarding universal service assessments create a competitive imbalance because they assess carriers on the basis of the prior year's end-user revenues from the provision of certain types of telecommunications. This backward-looking assessment has an adverse impact on any carrier that may be losing market share as new competitors enter the market and win customers. Because the present universal service fund collection regime is based on prior year revenues, a new or expanding carrier may have no revenues, or at least a smaller base of revenues, on which the present year fee is assessed. At the same time, that new or expanding carrier or provider has an expanding base of customers over which they can spread the cost of that assessment. In contrast, a carrier with declining market share is assessed based on the larger prior year revenues, yet has a smaller present base of customers over which to spread the cost. This problem could be exacerbated as the regional Bell operating companies inevitably gain the approvals necessary to enter the interexchange market, and unless the FCC acts to correct the problem caused by the current rules, the unfortunate result will be a competitive imbalance.

Rather than continuing with the Federal Communications Commission's current rules and regulations regarding universal service assessments, the Commission should consider assessing carriers on the basis of its prior six month calendar year's revenues.

The second problem with the Dingell amendment is that it fails to recognize that carriers which must contribute to the universal service fund incur costs as a result of collecting the revenues that ultimately are contributed to the fund. Carriers already bear the burden of collecting revenues to support the universal service fund; they should not also have to bear the administrative cost of collecting those revenues. To ask them to do so would be equivalent of an unfunded mandate. During the 104th Congress, we wisely voted to avoid imposing unfunded mandates on state and local governments; we should endeavor to follow a similar course with respect to businesses. For this reason, the Dingell amendment should be redrafted or deleted from H.R. 3011.

STEVE LARGENT.
MICHAEL G. OXLEY.

