

**THE TRUTH IN TELEPHONE BILLING ACT OF  
1999 AND THE REST OF THE TRUTH IN  
TELEPHONE BILLING ACT OF 1999**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS,  
TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON COMMERCE  
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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## CONTENTS

---

	Page
Testimony of:	
Breen, Kevin, Vice President, Consumer Operations and Billing, AT&T ...	11
Eisenach, Jeffrey A., President, Progress and Freedom Foundation .....	14
Hotka, Cathy, Vice President, Information Technology, National Retail Federation .....	29
Lassman, Kent, Deputy Director of Technology and Communications, Citizens for a Sound Economy Foundation .....	32
Moir, Brian R., Partner, Moir & Hardman, on behalf of International Communications Association .....	36
Norquist, Grover G., President, Americans for Tax Reform .....	22
Material submitted for the record by:	
American Library Association, letter dated March 9, 2000, to Hon. W.J. Tauzin .....	49
Neel, Roy, President and CEO, United States Telecom Association, pre- pared statement of .....	49



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**THURSDAY, MARCH 9, 2000**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON TELECOMMUNICATIONS,  
TRADE, AND CONSUMER PROTECTION,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:06 a.m. in room 2322, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Cox, Largent, Cubin, Bliley (ex officio), Markey, Eshoo, Engel, Wynn, Luther, Green, and McCarthy.

Staff present: Linda Bloss-Baum, majority counsel; Cliff Riccio, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. Good morning, and welcome.

The Chair will recognize himself for an opening statement.

Before the deregulation of the Bell System in 1984, telephone service was provided by a few companies that were generally subject to public utility taxes. These taxes were typically passed on to consumers as part of the rates they were charged. These taxes have always been an accepted expense of the carriers, who paid them in exchange for the special monopoly status granted to them by the local authorities.

But we all know that the telecommunications world is much different today than it was in 1984. Thanks to the Telecommunications Act of 1996, in fact, special monopolies have been subject to special utility taxes and are now competing with new entrants—in fact, new technologies altogether. However, many taxing authorities continue to levy the same types of taxes that traditionally were reserved for wire line monopolies on the competitive technologies of today. In fact, so many of these taxes exist today that it is nearly impossible for consumers to understand who is taxing their phone service and how much of those charges are dedicated to Federal, State, and local government programs.

I might add parenthetically that these taxes on the carriers, according to one survey, went up 62 percent in a 12-year period, and those taxes on carriers end up being real taxes now on the Internet, as the carriers become Internet service providers.

In response to this, I have joined with Chairman Bliley last fall in introducing H.R. 3011, the Truth in Telephone Billing Act of

1999. The bill requires that telecommunications carriers identify the government programs for which the carrier is being taxed, the form in which the tax is being assessed, and 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.

Today, many municipalities have decided to extend the traditional public utility type taxes to telecommunications services. In recent years, additional fees have been imposed on consumers' bills to fund special public service programs such as 911 emergency services and hearing impaired services. In some municipalities, the total amount of monthly service that is attributable to State and local taxes is as high as 35 percent.

These local fees, of course, are all in addition to the Federal tax requirements such as the Federal excise tax, the e-rate tax, and the Federal universal service fund fee. That is even hard to say.

The result is that in some States hundreds of different State and local taxes and fees apply to the sale of telecommunications services. Consumers, we believe, have the right to know what these charges are and to understand where a large percentage of their phone bill is going every month.

Among our panel of esteemed witnesses this morning we have with us Mr. Jeffrey Eisenach, president of the Progress and Freedom Foundation. His organization has recently released a report entitled, "The High Cost of Taxing Telecom." This report finds that high telecommunications taxes slow the spread of Internet access and discourage the deployment of broad-band networks needed for the next generation of Internet growth.

I, of course, am very concerned about this unintended circumstance resulting from telephone taxes. If 10, 20 percent of the American public will not have access to Internet services because of the level of telephone taxes, that ought to be a concern to everyone on this panel and everyone in the Congress.

I hope that by educating consumers about the magnitude of these taxing programs we might be able to simplify the process and speed the deployment of new technology in the future.

Of course, part of our wish is that, by putting the spotlight on this huge tax burden being paid by telephone consumers in America, we might just discourage taxing authorities, including the one in which I am a member, to consider repealing or reversing some of this taxing policy.

I look forward to the testimony from this fine panel this morning. I am anxious to hear your thoughts on the bill, 3011, and Mr. Markey's complementing bill, H.R. 3022, which requires disclosure of not only the taxes but all the subsidies that are received by consumers on each month's bill.

I want to thank you for being here and yield to my friend, Mr. Markey, for an opening statement.

Mr. MARKEY. Thank you.

I want to commend Chairman Tauzin for calling this hearing this morning on telephone billing issues. I believe that this is a useful exploration of universal service issues.

Legislation introduced by our esteemed committee colleagues, Chairman Tauzin and Chairman Bliley, seek to assure that tele-

communications fees and taxes are adequately listed on consumer telephone bills.

This legislation is designed to get at one of the critical issues in telephone billing, which is that some of the universal service fees simply are not listed on customers' consumer telephone bills.

This is true most notably of access charges, which are often significant dollar amounts on a consumer's bill, but do not appear anywhere listed as a separate fee.

I think most consumers would be shocked to see how much they pay in access charges, and the legislation introduced by Chairman Bliley and Chairman Tauzin seeks to remedy that situation.

I have introduced companion legislation called, "The Rest of the Truth in Telephone Billing Act of 1999." I offer the Rest of the Truth to point out that a listing of fees and taxes only provides half of the story. The other half of the story is the subsidies in the telecommunications marketplace, which I believe need to be made just as explicit on a consumer's bill as the fees and taxes, in order to fully inform consumers of what they do and do not pay for when they subscribe to telecommunications services.

Mr. Chairman, as most of us are well aware, the telecommunications marketplace is rife with subsidies. In my view, many of these subsidies are quite noble in intention and help to pay for affordable service for the poor and rural consumers. Other fees are designed to ensure that kids and schools get access to the skill set they will need to compete in a post-GATT, post-NAFTA, knowledge-based economy.

Yet, many of these subsidies reflect a historic monopoly marketplace and should be revisited as the marketplace changes. The truth is that many consumers in America today pay too much to support a bloated subsidy system that was designed to support inefficient, monopoly provided service.

As efficiencies arrive in the marketplace due to technological changes and the competitive entry of new providers, I believe that many subsidized services could be provided at lower cost, and therefore less subsidy than previously provided.

Providing subsidies sufficient to keep costs low in rural America and for inner-city poor or to hook up schools and libraries ought to be done in a manner that reflects the actual cost of providing the service.

In order to ensure that we give consumers the rest of the truth in telephone billing, I suggest giving consumers all of that information—what fees and taxes they pay and what subsidies they are receiving or delivering.

If my father in Boston is subsidizing someone in a rural part of New England, my father should know that each month, and so should the rural citizen know that he is being subsidized by my father, a retired milkman. He delivered. He was at the retail end of the milk business. He was not out in the farm, but he certainly is not someone who has been left the legacy of a great pension because of his work, either.

Consumers should know whether they are paying \$8 in fees or \$18 in taxes. They should know whether they are simultaneously receiving a hitherto implicit subsidy to the tune of \$2 or \$200.

I look forward to working with Chairman Bliley and Chairman Tauzin on their legislative proposal and to discussions with our other colleagues, both urban and rural, on how we can better ascertain the true cost, true taxes, true fees, and true subsidies embedded in the telecommunications bills that consumers pay monthly.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Markey.

The Chair is now pleased to welcome the author of the legislation, the chairman of our full committee—who, by the way, made an extraordinary announcement, of course, yesterday. I wanted first of all to acknowledge that announcement and to wish Mr. Bliley all best wishes for a new career. But I would like to remind you of something which will save him the trouble of reminding all of you—he may be leaving, but he is not gone yet. He is still chairman of our committee and he is still going to have an enormous amount to say about what we do this year, and this is one of those issues that he has asked me to help him to work this year and to complete into legislative form.

I want to welcome him and congratulate him for his great years of service in this Congress and wish him the best with the new announcement, but, more importantly, to thank him for leading on this issue, as he has led on so many issues in the Commerce Committee, and to deliver his opening statement at this time.

The chairman of the full committee, Mr. Bliley.

Chairman BLILEY. Thank you, Mr. Chairman, and thank you for those kind words. I also want to thank the ranking member, the gentleman from Massachusetts, for the many kind words he said last night in his statement. I would hope that he would make an appointment down at St. Peter's to go to confession.

This is an important hearing, and this is an important issue for this committee. Our joint Truth in Telephone Billing legislation, H.R. 3011, is based on a simple idea that consumers should know when their government is taxing them.

I am going to submit my full statement for the record, but this was brought home to me many years ago, when I served on the city council in Richmond, and every year, when we needed a few nickels to bring the budget into balance, we frequently would raise the tax on telephone and electricity.

Well, finally the telephone company and the electric utility got smart and went to the State Corporation Commission, which is our version of the PUC, and said, "We want this itemized." That was about 1974. The tax on residential phone service in Richmond by the city and on electricity has not gone up since.

I had a couple of constituents, as I am sure we all have, stop me and say, "I cannot understand this bloody telephone bill, and you ought to do something about it." And that fueled the idea of putting this in to just put it on the bill and let the people know. If the people know how much they are paying, the chances of it being increased are extremely remote, I can tell you that.

With that, I yield back and look forward to hearing the testimony of the witnesses, Mr. Chairman.

Thank you.

[The prepared statement of Hon. Tom Bliley follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you Mr. Chairman for holding this hearing on what, we all agree, is an important issue for the telecommunications industry.

Our joint Truth in Telephone Billing legislation, H.R. 3011 is based on a simple idea that consumers should know when their government is taxing them.

Taxes for telecommunications services have sky rocketed over the past several years. Thanks to the growth of the industry, telecommunications carriers are now a "cash cow" for politicians and regulators. Consumers ought to be aware of the level and degree of this taxation on their monthly bill.

The E-Rate or "Gore Tax" is only one example of what has become a widespread problem not only at the Federal level but at state and local levels as well. We can debate the merits of the E-RATE, and other such spending programs all day. But regardless of whether these programs are worthy of tax-payer dollars, I say consumers have the right to know what they are paying for in their monthly bill. Our Truth in Telephone Billing Act of 1999 would ensure that consumers see these charges plainly on their phone bills every month.

The legislation would require carriers to identify who sets the tax: where the money goes, the assessment, and how much of the bill is being used by the carrier to pay for the government program.

This is better than today's system. Today, governments levy the tax on telecommunications service providers. The providers, in turn, pass the cost on to American consumers in the form of higher rates. The tax is buried in rates.

I know this because, last year, the Committee on Commerce conducted a thorough investigation of the Federal Communications Commission (FCC's) implementation of the Gore Tax. We found that the FCC put pressure on the Nation's largest long distance carriers (on whom the Gore Tax is levied) to withhold information from their subscribers about the true cost of the Gore Tax.

Congress has enacted similar legislation dealing with taxation of cable services. As part of the 1992 Cable Act, I included a provision in the law that permits cable operators to place a line item on consumers' monthly bills that identifies the portion of the bill that is attributed to "franchise fees" that cities and counties typically extract from cable operators as the "price" for offering service. Again, while we may differ on the merits of a spending program, consumers are entitled to know when they're being taxed, and for what purpose.

I want to thank the witnesses for appearing before the Subcommittee today on this important issue. I look forward to your testimony on this important issue for all American consumers.

Mr. TAUZIN. I thank my friend.

The Chair now yields to the gentlelady from California, Ms. Eshoo, for an opening statement.

Ms. ESHOO. Thank you, Mr. Chairman.

I want to start out this morning by following up on your introduction of our chairman, Mr. Bliley. I think it is sad news, and I was really quite rocked when I heard it in California.

Mr. Bliley, I want you to know that you will be missed here enormously. You still have a ways to go before you walk out, but I just cannot help but think of your very first meeting as the chairman of the full committee, when you quoted from St. Francis. I felt privileged to be joining a committee that had you as the chairman and your starting out that way. You know that I have a great deal of respect and regard for you. You have been fair and tough, but I think that we have gotten a lot done together, and I look forward to working with you for the rest of this Congress.

I really feel that I have made a friend. Whether you are in the Congress or back in Richmond, I know that our paths will cross, and I want you to know that you always have a friend in me and I wish you godspeed.

I am glad that we are having this hearing. I think that the testimony today is intended to provide consumers with greater detail in the billing information they receive. The legislation I think at-

tempts to accomplish this goal by listing every tax, as well as subsidies, included in a customer's bill.

I commend you, Mr. Chairman, and the other sponsors of the legislation, for seeking to improve the accuracy of billing for the consumer.

I believe in the simple goal that consumers have a right to know what they are paying for when they pay their telephone bill. I also think we should apply some common sense to these efforts.

Most consumers review with great interest, as I do—when I got into my apartment very late last night, my telephone bill was awaiting me, and I went right to the extra sheets to see how the total amount of the bill had been calculated. So I think they have a great interest in the calls that they make and the charges that are listed in their monthly bill, but I do not think that they quite understand the confusing and complicated explanations of surcharges and other regulatory information they receive.

I just, on my long distance bill, for 3 months been trying to, with telephone calls to the Congressional liaison of AT&T, figure out what the extra bill was that I was paying. It went to my California address.

So I think that there is something to be done about the complicated and confusing information that we need to take into account, but I also do not think that we need accountants to decipher them.

So the goal of the legislation to educate the consumer on the taxes they are paying when they receive their phone bills is an important goal.

Those of us who support public policies like the e-rate or ensuring that 911 service is available to every citizen must be willing to explain to our constituents why we support legislation that made the services possible. I did that when I voted for the Telecommunications Act, and I am proud of that vote.

Consumers should be made aware of the costs and benefits of the program, but it should also be done in a way that avoids confusion and even more cost to the consumer.

I compliment you, Mr. Chairman, on your goal of increasing the accuracy of billing information, and I hope in achieving that goal we can avoid a Federal mandate that turns a telephone bill into a telephone book and forces the consumer to have an assist from their CPA.

I think that we need to marry these goals. We need to be very clear about how we accomplish one and avoid the other.

I look forward to hearing the witnesses today, and I thank you again, Mr. Chairman, for the hearing.

Mr. Bliley, let us make optimum use of the days that are left in this Congress, and I pledge to you that I will with you.

Mr. TAUZIN. I thank the gentlelady. I suggest to you I know the chairman will.

The Chair is now pleased to recognize the vice chairman of the subcommittee, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman.

Let me also express my gratitude and support for the chairman and wish him well in his retirement.

As I stated in my statement yesterday, Mr. Chairman, with his announcement, I will miss the exchange of bow tie and funeral home jokes versus golf and basketball jokes that we have shared over the years. We thank him for his leadership, and we want to—

Mr. TAUZIN. Would the gentleman yield?

Mr. OXLEY. I would be glad to yield.

Mr. TAUZIN. I just want to remind you, the chairman has told me he has renewed his embalmer's license. I wonder if you could get on a basketball team.

Mr. OXLEY. Well, anyway, let me just point out that this tax that we are interested in has been a hidden tax and it has been with consumers for a long time. As a matter of fact, staff tells me that the 3 percent Federal excise tax was originally enacted in 1897 to fund the Spanish American War. The gentleman from California and I were discussing it—it probably makes that the most expensive war in history, as it continues to draw money from the rate-payers.

Currently, telecommunications carriers have no obligation to reveal to consumers what these taxes are, and our bill would certainly improve that.

I wish we could make more progress on the actual issue of the e-rate and other taxes. By enacting the e-rate, the FCC clearly stretched Congressional intent far beyond any reasonable limit of the language in the 1996 Telecommunications Act, and, as a conferee on that important piece of legislation, I can tell you that it clearly was not the intent, that the FCC has pushed well beyond the intentions of the Conference Committee. It set a goal far beyond its means and then stuck consumers with the tab, which they continue to pay.

If we can at least shed a little light on the telephone bill, that is an improvement I am happy to make, and so I thank the sponsor of the bill and look forward to a spirited debate from our panel.

Thank you.

Mr. TAUZIN. I thank the gentleman.

The gentleman, Mr. Luther, is recognized.

Mr. LUTHER. Thank you, Mr. Chairman. And I thank you for holding this hearing. I think there is some excellent information we can gain on this particular issue.

It seems to me—and I really address this to the panelists—that the bills that we are talking about talk about disclosure, and, obviously, disclosure is one step, but beyond that we should, it seems to me, be talking about how do we disclose the information in a meaningful way that is understandable to consumers; because to just disclose and then feel like we have accomplished it by having a bill, as other members here have said, that looks like a telephone book or looks like a bill where there are all these numbers and different acronyms and whatever—that really does not get to the heart, I think, of what consumers are asking for.

I get complaints. I am sure many other members here get complaints from consumers who are simply unable to grasp what is going on with their telephone bills today. And I think we are talking about a couple thousand telecommunications companies operating in our country.

So it seems to me our challenge extends beyond disclosure. Disclosure is one step, but then, beyond that, how can this be put in an understandable form so that the average person can understand what this bill is about? Then they will be empowered to do something. Short of that, I do not think the average consumer is going to feel empowered unless they can actually understand this and then take action based on what they have learned.

So that is the point I simply wanted to make, and I thank you very much again for the hearing and I look forward to the testimony.

Mr. TAUZIN. I thank the gentleman for his statement.

The Chair recognizes the gentleman, Mr. Cox, for an opening statement.

Mr. COX. Thank you, Mr. Chairman.

I am pleased that we are holding this hearing today on the need to improve disclosure to consumers about the taxes that governments impose on telephone service, and I support Chairman Bliley's Truth in Telephone Billing Act, H.R. 3011, which will require explicit disclosure to consumers of the many hidden taxes and cross-subsidies that are now embedded in our phone bills.

I routinely get letters from constituents complaining about this, and I would just like to share a few of them with you, because they make the point so well.

Maurice from Laguna Hills wrote, "If you want to do something about taxes, start with our monthly phone bills. As you can see, on my most recent bill my phone charges are \$9.87 and my taxes are \$6.19. This amounts to a 62.7 percent tax on my phone bill. I suggest you read your phone bill line-by-line some day. Even Cunard cannot figure his out."

Sam from Newport Beach writes, "The Pacific Bell phone bill includes what I refer to as a 'penalty charge' for having more than one phone line per residence. As I read it, these taxes have nothing to do with access but are just a burden to my pocketbook. All these confusing and gray words are camouflaged for additional charges."

Ron from Alisoviejo writes, "Why does the network access for interstate calling tax represent such an outrageous amount, 34 percent? Why are additional telephones in the household singled out for a higher tax, 54 percent?"

Ken from Irvine writes, "Recently I had a second telephone line installed for Internet access. That line is used for nothing else, not even local calls. All Pacific Bell charges came to \$11.75 a month, but my bill was \$17.92 due to taxes, and a \$6.06 a month charge imposed by the Federal Communications Commission. This one tax, a tax not even imposed by Congress, accounts for 51.6 percent of my bill."

I am hopeful that today's hearing will provide us with the impetus to mark up not just the Truth in Telephone Billing Act, to make it easier for Americans like Maurice, Sam, Ron, and Ken to understand how government contributes to high phone bills, but also legislation to reduce or repeal the taxes that they are complaining about.

Today, telephone use is the most heavily taxed service in America, and, except for tobacco, it is the most heavily taxed good or service in America. The tobacco taxes are intended as a penalty for

smoking. We should not be punishing telecommuters and people who use the Internet at the same time that we are complaining about the digital divide.

In addition to the FCC-regulated taxes and fees we are talking about today, the Federal Government also imposes a 3 percent excise tax on telephone service. As my colleague, Mike Oxley, pointed out, this tax was put in place originally in the 19th century to finance the Spanish-American War, making that the most expensive war in American history.

It is time that we bring an end to this war, that we end the tax, and we declare victory.

The tax currently costs consumers nearly \$6 billion a year. By the time one adds in State and local telephone and sales taxes, telephone use is taxed at an average rate of 18 percent, according to a study by the Committee on State Taxation. And that does not even include all the hidden taxes and cross subsidies that we will be looking at today.

Telephone taxes are also among the most regressive taxes on the books. This is a point of rare agreement between Congress' Joint Committee on Taxation and the Treasury Department's Office of Tax Analysis. Everybody agrees on this. Poor people are disproportionately hurt by these taxes.

To make matters worse, telecommunication taxes are growing higher still. This is what has happened just in the last 3 years. The FCC pushed through the famous e-rate, or I should say the "infamous Gore tax," which is costing consumers \$2.25 billion this year. Congress did not approve that tax.

The FCC also required every household with a second phone line to pay the local phone company an additional tax of \$1.50 a month, even though the actual costs of maintaining a second phone line are virtually nil.

The collection burdens, alone, act as a significant barrier to entry for new competitors. The chairman of the National Governor's Association, Governor Mike Levitt, recently reported that a telephone company that wants to do business nationwide has to "maintain information on 310 separate State and local taxes that are applied to 687 tax bases." That can translate into as many as 50,000 tax returns a year. That is why he calls this a "horse and buggy tax system that is unsuited to the exploding telecommunications market."

Repealing the 3 percent Federal telephone tax, dismantling the rest of our obsolete system of telephone taxes, will significantly reduce the cost of local and long distance service, it will remove barriers to more vigorous competition, it will facilitate the deployment of broad-band Internet services, and it will reduce the cost of e-commerce for U.S. firms that do business on line.

I look forward to the hearing. I look forward to the testimony of our witnesses. And I look forward not only to enacting the bill we are having a hearing on today, but the repeal of these onerous taxes, Mr. Chairman.

Thank you.

Mr. TAUZIN. I thank my friend very much.

The Chair is now pleased to recognize the gentlelady from Wyoming, Ms. Cubin, for an opening statement.

Ms. CUBIN. Thank you, Mr. Chairman, for holding this important legislative hearing that will hopefully get to the heart of why consumers' telephone bills look more like tax statements than utility bills.

When I purchase a box of cereal at the store, I am charged for the price of the cereal and maybe sales tax. I do not pay a grocery store access toll or a local seed growers toll or a flour milling charge or a tractor fuel tax or a cereal box processing fee. I just pay for the cereal. It is simple, it is clear, and it is straightforward.

Telephone bills are not simple, they are not clear, they are certainly not straightforward.

Although it seems as if the costs associated with providing telephone service have declined, the average cost to telephone consumers has risen dramatically in the past two decades.

The intent of the 1996 Telecommunications Act was to lower telephone rates, not to increase them. The act was designed to bring competition to the telephone marketplace, thus driving down the prices.

Well, we have seen some competition, but my constituents are asking me why their telephone bills are more now than they were 5 years ago.

A simple answer seems to be that the government has not seen a tax that it will not levy on the hard-working men and women of America. The telephone is a luring revenue generator for the Federal Government and for State governments.

Now, we have all talked about how a tax that was assessed to fund the Spanish-American War is still being assessed. I do believe that Teddy Roosevelt was a great man and I think he was one of our finest Presidents, but I think we have held this tax in his honor long enough, and I, too, would like to completely abolish this Federal excise tax on telephones, and I have co-sponsored Chairman Tauzin's bill.

If and when taxes or fees are deemed inappropriate or arcane, they should always be eliminated. There is no question that phone bills are confusing. We have to work to make sure that telephone bills are more customer friendly and work hard toward educating the American consumer so that they know exactly what they are paying for and why they are paying for it.

I am glad to support Chairman Bliley's bill. Again, Mr. Chairman, I thank you for having this hearing.

Mr. TAUZIN. I thank the gentledady for an excellent opening statement.

I might point out, as I introduce the panel, that we live in a free speech society, and yet we have deregulated trucking and abolished the ICC, and yet we have this amazing regulatory structure over speaking in America, and taxes, Mr. Cox, that actually exceed the taxes on tobacco in some local jurisdictions of America. That is strange.

We are pleased to have a great panel of witnesses this morning, starting with Mr. Kevin Breen, the vice president, consumer operations and billing at AT&T; Mr. Eisenach, who I referred to before, with Progress and Freedom Foundation; Cathy Hotka, the vice president, information technology, of the National Retail Federation; Kent Lassman of the Citizens for a Sound Economy, who has

been here often before—and we welcome you again; and Brian Moir, partner with Moir & Hardman, on behalf of the International Communications Association; and Mr. Grover Norquist, president of Americans for Tax Reform, who has often been here to visit with us on issues common to us.

We thank you all for being here.

We are pleased now to welcome Mr. Breen, the vice president, consumer operations and billing of AT&T.

Gentlemen and lady, your written statements are part of our record. I put up with members reading their statements, and I read my own often, but I do not want you to do that please today. We have got your written statement. Please kind of conversationally summarize for us.

We have some beautiful new electronic equipment that is going to sort of time you, kind of watch it. It will give you a sum-up warning and a stop warning at 5 minutes, so stick with the 5-minute rule, if you will.

We will begin with Mr. Breen, with our great appreciation for your being here, sir.

**STATEMENTS OF KEVIN BREEN, VICE PRESIDENT, CONSUMER OPERATIONS AND BILLING, AT&T; JEFFREY A. EISENACH, PRESIDENT, PROGRESS AND FREEDOM FOUNDATION; GROVER G. NORQUIST, PRESIDENT, AMERICANS FOR TAX REFORM; CATHY HOTKA, VICE PRESIDENT, INFORMATION TECHNOLOGY, NATIONAL RETAIL FEDERATION; KENT LASSMAN, DEPUTY DIRECTOR OF TECHNOLOGY AND COMMUNICATIONS, CITIZENS FOR A SOUND ECONOMY FOUNDATION; AND BRIAN R. MOIR, PARTNER, MOIR & HARDMAN, ON BEHALF OF INTERNATIONAL COMMUNICATIONS ASSOCIATION**

Mr. BREEN. It is an honor to be here today to have this opportunity.

My name is Kevin Breen. I have been in AT&T for over 20 years, and the last 10 years has been spent performing various and sundry billing-related functions, starting with endeavors to take back billing responsibilities from the local exchange carriers into AT&T; managing within-network recording, where the actual capturing of the data from the switch is done, which ultimately ends up on a consumer's bill; and then, for the past 4 years, I have presided over billing operations for consumers. What that essentially entails is everything from getting a message onto the proper invoice, betting the invoice sent to the consumer, handling the processing of the payment, and then the actual updating of the account.

Several of the points I want to make, or highlights, if you will, is to emphasize that AT&T has a vested interest of its own volition to make sure that we are offering consumers the most accurate, complete, and timely billing experience that is achievable. Competitive forces would dictate that we do no less.

The reality of this is that we put, from an investment standpoint, tremendous resources, in terms of dollars, some of our very best people, and leverage our technology to the hilt to ensure that that can become a reality.

This investment ends up manifesting itself in a variety of functions that, when I look at my budget, which let us say is about \$175 million to support consumer billing operations, about a third of that is directed toward preventative and corrective actions to enhance that billing experience.

We have capabilities to actually monitor the end-to-end billing process. When there are problems that occur, we go to great lengths to make sure, down at the individual account level, that the proper steps are taken to make sure that that customer has the highest confidence that AT&T is looking to be straightforward and forthright with them in terms of their billing experience, and that, in fact, we will go the extra mile to make sure they have a positive feeling about what we are doing.

The truth is today that a largest portion of the customer inquiries that we get are due to what I am going to call the "confusion factor," or an uncertainty that is associated with the complexity of the billing. I think you have heard some of the comments made earlier today which would substantiate that.

The fact of the matter is that that places great burden on our costs, from an infrastructure standpoint, and ends up cycling back to represent higher pressures in the overall cost that a consumer would be charged.

The question then on the table is: what could be done? What are some of the highlights? They are captured in my testimony, but I want to make sure that they come forward.

No. 1 is to be real clear about what problem we are trying to solve. I think, as a matter of fact, that most consumers would agree that being able to clearly and simplistically understand what is on their bill, giving them that reasonable assurance when they open that envelope that the charges are there makes sense, that they were, in fact, actually incurred by them is of our foremost concern.

Some of the ways that we can do that, I believe, are to get behind support of things like the Coalition for Affordable Long Distance and local, make sure that we have a highly competitive local marketplace to ensure that companies like ours are putting the very best foot forward that they have toward that consumer experience. I think the repeal of the Federal excise tax has been talked about here. Certainly, that works toward giving the consumer confidence that they know what they are paying for.

And then, finally, I think it is to have the recognition that natural competitive forces are the primary thing that causes me to do what I do in the course of my day-to-day execution of responsibilities.

The reality is, for AT&T to stay in business as a viable telecommunications company makes it imperative that we maintain that above-board, very honest, open relationship with our customers, where they, at the end of the day, say, "The brand of AT&T represents a trustworthy brand, the quality that we get from this company is first cabin, and it is a company we want to continue to do business with." Thank you.

[The prepared statement of Kevin Breen follows:]

PREPARED STATEMENT OF KEVIN BREEN, VICE PRESIDENT, AT&T CONSUMER BILLING OPERATIONS

Thank you for the opportunity to speak about customer billing and customer care operations. AT&T strongly supports the principle that consumers are entitled to receive accurate billing information from carriers about the communications services they offer. After all, the ability of consumers to make informed purchasing decisions is the foundation of a competitive marketplace. Because consumers depend on such information, AT&T goes to great lengths—and incurs significant expense—to provide clear information to customers and also to respond promptly and accurately to customer inquiries. We believe that AT&T's billing practices consistently meet, or exceed, common industry standards.

In a nutshell, AT&T's policy is to provide *every reasonable assurance* that its customers can determine (1) if the AT&T services listed on their bills are the ones they have requested, and (2) if the charges for those services are consistent with their service arrangement. This policy, which AT&T takes very seriously, is not merely consistent with sound legal principles. It also makes good business sense. Good billing practices are essential to create consumer trust and loyalty, both of which are critical to maintaining AT&T's reputation and brand name. At the same time, providing consumers with clear information helps to avoid the costs required to handle individual customer inquiries and complaints, which are typically at least several dollars per call. The best consumer billing practices really are best for the industry.

As a result, AT&T and other responsible carriers take great care to assure that their customers have the information they need to make informed decisions. AT&T over the past year has provided billing notices and inserts to tens of millions of customers that describe line item charges and the reasons for them. Customers with questions about AT&T's billing phrases usually had their questions clarified through discussions with AT&T customer care representatives. Overall, AT&T spent millions of dollars to educate its customers on these matters. And our work isn't done. AT&T constantly conducts consumer research to assure that our billing services keep pace with consumers' needs.

Given this context, the "confusion cost" involved in changing terminology to mandated language would substantially outweigh any benefits of retooling descriptions on consumer bills. There is also a very real *financial cost* involved in changing complex billing systems. Industry members have demonstrated to the FCC that billing system changes are neither simple nor cheap, and they can take significant time to implement. For example, Ameritech managed to cut corners when they reformatted their bills recently because the carrier intentionally left legacy software and hardware systems intact. Even so, the project cost *\$8 million* and took *18 months* to complete. In an effort to ensure optimal responsiveness to changing conditions in the highly competitive long-distance marketplace, AT&T tries to maintain a relatively flexible bill format. Nonetheless, many changes and/or new requirements to the bill, which appear inconsequential on the surface, necessitate alterations of a more systemic nature. This subsequently requires long and costly lead times to accommodate necessary design, development, testing and implementation related activities. It is not uncommon for more "permanent" oriented changes to necessitate lengthy intervals ranging from several months to over a year. Imposing additional systems costs would be bad news for consumers, who ultimately bear the cost of regulation.

Existing market forces already provide reputable carriers with powerful incentives to provide their customers with clear information. Billing provides a great opportunity for local competitors to differentiate themselves from the capabilities offered by incumbent local exchange carriers. ALTS, an association of facilities-based local competitors, filed comments at the FCC opposing extensive new billing rules, noting that they "would tend to mandate mediocrity in billing rather than superior billing practices." We agree.

In fact, a number of sound practices are common in the industry today. A toll-free number is the easiest and most direct way for consumers to reach vendors, including telecommunications carriers. If a toll-free number is provided, consumers may raise a question, register a complaint, or obtain information (such as an address) that may be needed to pursue matters that the customer wants to follow up in writing. Reputable carriers and consumers should not be forced to implement or pay for cumbersome billing system changes because of the questionable practices of a small number of bad actors.

Promulgating new billing regulations would be an unnecessary use of the FCC's limited resources, which are much better spent on assuring that access rates are cost-based and that universal service supports are fairly and equitably developed and applied. The telecommunications industry has formed a coalition that is, so to speak, "bipartisan" in nature, having the support both of incumbent local exchange

carriers and members of the long distance industry. The Coalition for Affordable Local and Long Distance Service (CALLS) is promoting a plan that would unify the SLCs, PICCs, and minute-based carrier common line charges into a single SLC. In other words, the CALLS plan would thin out the “alphabet soup” and simplify the bewildering rate structure in place today. If Congress truly wants to help clear up consumer confusion, I would encourage you to support the CALLS plan.

Another positive step that Congress could take is to repeal the Federal Excise Tax, which was first introduced as a “temporary” luxury tax in 1898 to fund the Spanish American War. More than a hundred years have passed, yet consumers still see the Federal Excise Tax as a line item on their phone bill every month—despite the fact that the war is long over and phone service is hardly a luxury these days. Repealing this line item from phone bills would benefit consumers in every part of the country.

Ultimately, consumers are depending on Congress to ensure that real competition develops in the local telecommunications markets. Full competition will drive inflated local phone bills closer to cost—just as long distance prices have plummeted under competitive pressure, price competition in the local markets would be great news for consumers. Already, in just the past year, we’ve witnessed phenomenal price breaks for high-speed Internet access. SBC originally charged \$89 per month for their entry-level DSL service—now it’s down to \$39 because of competitive pressure. Competitors are working hard to create competition in the local markets, but we need your help. Strict enforcement of the Telecommunications Act is the best way to deliver benefits to the consumer pocketbook.

To sum up, AT&T believes that the marketplace demands integrity from reputable carriers. It is in our best interest to provide consumers with the clearest information possible about the programs that they are supporting. The long distance industry provides ample proof that consumers, if given the chance, will indeed use available information to decide between carriers. Accurate billing gives consumers the ability to make informed choices, which is essential in a competitive marketplace. And most would agree that *competition* delivers the greatest consumer benefits.

Thank you.

Mr. TAUZIN. Thank you.

We have a vote on the floor. I think we will have an opportunity for one more witness before we will temporarily recess the hearing.

Mr. Eisenach?

#### STATEMENT OF JEFFREY A. EISENACH

Mr. EISENACH. Mr. Chairman, members of the subcommittee, thank you so much for having me here. It is an honor. I will summarize my testimony.

As Mr. Tauzin indicated, we are doing a good bit of work on the issue of telecommunications taxes at the Progress and Freedom Foundation.

It might be useful for me to indicate how we got into that process.

I had the great pleasure and joy of being married 2 years ago, and my wife moved into my home in Oakton, Virginia, and soon thereafter I came home from work, and she had been busily having phone lines installed in her home office. She has the pleasure of being able to work from home.

And so, as I walked into her office, I found my new wife sitting there in a state of some agitation and irritation, and I said, “Honey, what is the matter?” And she showed me the phone bills that she just started receiving on these two new lines.

As we attempted to sort out what was on those phone bills, it emerged that the taxes accounted for more than 20 percent of the phone bill—over \$12, I think, a month—on her two lines. She found this a source of great irritation.

And I said, “Honey—” being a newly wed husband—“let me see what I can do about that.” Since then, I have had the opportunity to speak to the National Governor’s Association, to testify before the Advisory Commission on Electronic Commerce, to now testify before this subcommittee, and I am doing my best to help my wife with the problem that she identified, and I can say we are very happily married today, maybe, in part, as a result of my efforts.

But, having said that, here we are 2 years later, and I must say to you that, while we have a much better understanding of the nature and extent and level of telecommunications taxes, I still could not do what I could not do that day, which is sit with my wife and go through the items on our telephone bill line by line and sort them out in any comprehensible fashion.

Now, telecommunications taxes are extremely high. Just to make three quick points, if the current level of telecommunications taxes in the United States were applied to broad-band services, DSL services, cable modem services from the cable company, which they may or may not be, depending on where you are, and if I were to go to the store and buy my daughter a \$600 personal computer, which I can do today, and if I were to want my 12-year-old daughter to have access to the Internet through a broad-band line, I would hook her up to a DSL line. And if I were to do so, I would pay more in taxes on that line during the 3-year life of the computer than I paid for the computer. I would pay more in telecommunications taxes on the phone line to hook me up to the Internet than for the computer, itself.

Now, in a world where getting 12-year-old daughters hooked up to the Internet is a major and legitimate public policy goal, why our first response would be to levy, in effect, a 100 percent marginal tax rate on the ability to do that I find a little bit mystifying.

But it is not just the level of taxes that matters, it is the complexity of taxes. In my testimony I talk a good bit about the source of that complexity.

Simply put, a lot of the complexity, most of the complexity, results from the fact that telecommunications, despite the Telecommunications Act, remains as regulated, arguably more-heavily regulated, today as it was in 1996 when we passed the Telecommunications Act. Indeed, telecommunications prices are essentially nothing but a patchwork of cross-subsidies mandated by government regulation.

Add on to that taxes from franchise fees to the taxes, Mr. Cox, that you mentioned—over 300 separate State and local taxes applied on 700 different tax bases, over 55,000 tax returns filed by a single national telecommunications provider. In my home State of Virginia, nearly 4,500 tax returns are filed per year for any company hoping to do business in the State.

It brings to mind a quotation from Appeals Court Judge Learned Hand, who said, in looking at the income tax, “In my own case, the words of such an act as the income tax, for example, merely dance before my eyes in a meaningless procession. Cross-reference to cross-reference, exception upon exception, couched in abstract terms that offer no handle to seize hold of, leave in my mind only a confused sense of some vitally important but—” and I think this is particularly apt—“successfully concealed report which it is my

duty to extract but which is within my power, if at all, only after the most inordinate expenditure of time.”

I thought that was particularly appropriate in thinking about all of our efforts, as has been talked about here, to understand our telecommunications bills. It is practically impossible.

I think the bills before the committee represent good faith efforts to move in the right direction. I think there are clearly things that can be done to improve the transparency of telephone bills. But I also think, as some people have suggested, that a certain amount of reasonableness needs to be applied to the workability and ability of a billing process to fully inform consumers of what is an unreasonably complex pricing process mandated by government.

Thank you.

[The prepared statement of Jeffrey A. Eisenach follows:]

PREPARED STATEMENT OF JEFFREY A. EISENACH, PRESIDENT, PROGRESS AND FREEDOM FOUNDATION

Mr. Chairman and Members of the Subcommittee, it is an honor to appear before you today to discuss H.R. 3011, the Truth in Billing Act of 1999 and H.R. 3022, the Rest of the Truth in Billing Act of 1999.

Before continuing, I should note that while I serve as President of The Progress & Freedom Foundation, a non-partisan research and educational institution,<sup>1</sup> and also on the faculty of the George Mason University Law School, the views I express are my own and do not necessarily represent those of the Foundation, its board or other staff; nor those of George Mason University. However, my testimony is based in large part on research now underway at The Progress & Freedom Foundation to examine the nature, extent and consequences of taxes on telecommunications services.

H.R. 3011 and H.R. 3022 represent efforts to make it easier for consumers to understand what they are paying for telecommunications services. Both of the bills correctly identify the main source of complexity in telecommunications billing, and hence of confusion among consumers, as the extremely complex array of taxes, fees and cross-subsidies imposed on telecommunications services by government. My testimony this morning focuses on the nature of these taxes, fees and cross-subsidies.

*Telecommunications Taxes in the U.S.*

Telecommunications services in the United States are subject to an almost incomprehensible array of taxes at the local, state and Federal levels. Indeed, there are so many taxing entities levying so many taxes, fees and other charges that there literally is no comprehensive data source from which a complete listing can be obtained. Nevertheless, it is possible to paint a fairly accurate picture of the overall level of telecommunications taxes.<sup>2</sup>

*Federal Taxes:* The Federal taxes on telecommunications are of three main types. First, the Federal government levies a three-percent excise tax on all telecommunications services. Second, it imposes fees on telecommunications carriers that are used to subsidize the provision of telecommunications services, wiring and computer-related equipment at schools, libraries and rural health care centers. Third, it oversees a complex “universal service” system designed to lower the costs of telecommunications services below costs for some consumers while raising them above costs for others.

The Federal telecommunications excise tax (FET) adds three percent to the cost of every telecommunications bill. It covers both long distance and local telephone service for both residential and business customers. Revenues from the tax are treated as general revenues. The FET is projected to raise about \$6 billion in FY

<sup>1</sup> The Progress & Freedom Foundation was founded in 1993 to study the digital revolution and its implications for public policy. A 501(c)(3) research and educational organization under the Internal Revenue Code, PFF is funded entirely by private contributions and accepts no government contracts or funding of any kind. More information on PFF is available at its Web site, at [www.pff.org](http://www.pff.org).

<sup>2</sup> A major new study by the Committee on State Taxation (COST) provides a wealth of data on state and local taxation of telecommunications services. See Committee on State Taxation, *50-State Study and Report on Telecommunications Taxation* (Washington, DC: Committee on State Taxation, 1999). This study will make possible far more sophisticated analyses of telecommunications taxes than have been possible in the past.

2000. As shown below, this makes it the third largest general revenue excise tax in the U.S. budget, just behind alcohol and tobacco.

Table One: General Fund Excise Taxes<sup>3</sup>

Product	Revenue (FY 1998, millions)	Share of On-Budget Federal Revenue
Alcohol .....	\$7,215	0.53%
Tobacco .....	\$5,657	0.44%
Telecommunications .....	\$4,910	0.38%

<sup>3</sup>Beginning in 1998, revenues from the excise tax on motor fuels were removed from general revenues and dedicated virtually entirely to the highway trust fund. At nearly \$40 billion, the tax on motor fuels is far and away the largest Federal excise tax in terms of revenue raised. Source: Office of Management and Budget, *Budget of the United States: Historical Tables* (Washington: Government Printing Office, 1999).

Source: Office of Management and Budget

The second major tax on telecommunications services is the tax levied on telecommunications carriers to support the Federal Communications Commission's "e-rate" program. In May 1999, the FCC voted to raise the annual amount of this tax by approximately \$1 billion to \$2.25 billion annually.<sup>4</sup> These taxes are passed through by telecommunications carriers as part of their universal service charges to individual customers.<sup>5</sup> Under the FCC's so-called "truth in billing" rule, of course, phone companies are prohibited from identifying the e-rate fee as a "tax."

The third major category of Federal taxes levied on telecommunications services resides in the system of charges and fees access charges associated with "universal service." While a comprehensive analysis of this system is beyond the scope of this testimony, it includes both explicit cross-subsidies, typically identified as "universal service charges," and implicit cross-subsidies that are incorporated in the access fees local service companies charge long-distance companies for use of the local loop.

Finally, the Federal government oversees the pricing rules that require telephone companies to charge "subscriber line charges" (a different amount for the second line than for the first) and number portability charges. These items are essentially discrete components of the price of local telephone service, distinguished from the remainder of the bill by regulatory fiat.

*State and Local Taxes:* While Federal taxes on telecommunications services are both high and complex, state and local taxes are both much larger and far more complex.

As shown in Table Two below, there are approximately 37 different types of taxes levied on telecommunications services by state and local governments in the United States. These include excise taxes, franchise fees, right of way charges, gross receipts taxes, license fees, 911 fees, public utility taxes and even special levies for programs such as poison control centers. In some cases these taxes apply to local telephone services only; in others they extend across state borders and apply to long distance services as well. Wireless services are often taxed differently from landline services, and telecommunications services offered by non-traditional carriers such as competitive local exchange carriers (CLECs) may in practice be taxed differently from the same services when offered by traditional carriers.

Table Two: State and Local Telecommunications Taxes

State	Local/Municipal
<ul style="list-style-type: none"> <li>• Franchise Taxes</li> <li>• Sales &amp; Use Taxes</li> <li>• Telecommunications Excise Taxes</li> <li>• Gross Receipts Taxes</li> </ul>	<ul style="list-style-type: none"> <li>• Franchise Taxes</li> <li>• Sales &amp; Use Taxes</li> <li>• Local 911 Tax</li> <li>• Excise Taxes</li> </ul>

<sup>4</sup>See Federal Communications Commission, *In re: Federal-State Board on Universal Service: Twelfth Order on Reconsideration in CC Docket No. 96-45* (May 27, 1999). See also Dissenting Statement of Commissioner Harold Furchtgott-Roth (August 5, 1999). The FCC has gone to great lengths to ensure that the charges associated with the e-rate are not seen by the public as taxes. [See, for example, *In re: First report and Order and Further Notice of Proposed Rule-making, Truth-in-Billing and Billing Format; CC Docket 98-170* (May 11, 1999). In this "truth in billing" proceeding, the FCC effectively prohibited long distance carriers which pay into the fund from including on their bills a line showing the portion being passed through to consumers.] All documents available at [www.fcc.gov](http://www.fcc.gov).

<sup>5</sup>The e-rate program has been roundly criticized by academic economists. See, for example, Jerry Hausman, *Taxation by Telecommunications Regulation: The Economics of the E-Rate*, (Washington: The AEI Press, 1998).

Table Two: State and Local Telecommunications Taxes—Continued

State	Local/Municipal
<ul style="list-style-type: none"> <li>• License Fees</li> <li>• Utility Taxes, Utility User Taxes, PUC Fees</li> <li>• Rental/Lease Taxes</li> <li>• Utility Sales Taxes</li> <li>• Business &amp; Occupation Taxes</li> <li>• Infrastructure Maintenance Fees</li> <li>• 911 Fees, Emergency Operation Charges, 911 Database Charges, 911 Equalization Surcharge</li> <li>• Intrastate Surcharge</li> <li>• High Cost Fund Surcharge</li> <li>• Relay Service, Communications Devices Surcharges, Universal Access Charges</li> <li>• Access Line Charges</li> <li>• Infrastructure Fund Reimbursement</li> <li>• Poison Control Surcharge (TX)</li> <li>• Public Utility Commission Fees</li> <li>• Universal Service Charges, Universal Lifeline Telecommunications Surcharge</li> </ul>	<ul style="list-style-type: none"> <li>• Telecommunications Taxes</li> <li>• Gross Receipts Taxes</li> <li>• License Fees</li> <li>• Utility Taxes</li> <li>• Access Line Tax</li> <li>• Rental/Lease Taxes</li> <li>• Telephone Relay Surcharge/Universal Lifeline Surcharge</li> <li>• Public Service Taxes</li> <li>• Utility Users Tax</li> <li>• Infrastructure Maintenance Fees</li> <li>• Right-of-Way Charges</li> <li>• 911 Fees</li> <li>• Business &amp; Occupation Taxes</li> <li>• Teleconnect Fund</li> </ul>

Source: AT&T, The Progress & Freedom Foundation

A recent study by the Committee on State Taxation (COST) found that, taking into account all of the various state and local taxes on telecommunications in the United States, there are over 300 separate state and local taxes and fees applied to almost 700 different tax bases. Altogether, the COST study finds that a telecommunications provider operating throughout the U.S. would have to file over 55,000 tax returns annually. In just one state, my home state of Virginia, a state-wide telecommunications company files 4,341 tax returns each year.

#### *Are Phone Taxes Too High?*

While the main focus of my testimony is on the complexity of telecommunications prices, including taxes, it should be noted that consumers may well be frustrated not just by the complexity of all of the various taxes and fees, but also by their level. Not counting universal service charges, access charges, subscriber line charges or number portability charges (that is, counting only funds that go to the government to fund government programs), the average tax rate on residential telecommunications services in the U.S. is over 18 percent. Federal taxes account for roughly four percent of this total, while local and state taxes account for 14 percent. In some localities, taxes account for over one third of a typical telephone bill. (See Attachment One.)

The research now underway at The Progress & Freedom Foundation suggests that these levels of taxation are excessive when judged by generally agreed upon standards of tax analysis.<sup>6</sup>

#### *Is Truth in Billing an Achievable Goal?*

Given the complexity of the system described above, it is worth considering whether truth in billing is an obtainable goal—that is, whether it is possible in any global sense to provide consumers with sufficient information for them to fully understand what is on their phone bills. The unfortunate but obvious answer is that it is not. This does not mean, however, that we should not try to create as much transparency as possible. As I understand it, H.R. 3011 would represent a step in the right direction. H.R. 3022, while its objectives are laudable, would appear to be a step too far.

Before commenting further on the two bills, let me discuss briefly why global transparency does not seem to me to be an achievable goal. Simply put, while the transition to a competitive environment initiated by the Telecommunications Act of 1996 is well underway, the telecommunications business remains very heavily regulated—more regulated, arguably, than in 1996 when the Act was passed. From the subscriber line charge (higher for second lines than for first lines) to the geographically averaged rates mandated by state regulatory commissions, from access charges (levied on traditional long distance service but not IP service) to “life-line” services for low-income consumers, from the Federal universal service fund (subsidizing

<sup>6</sup>See Jeffrey A. Eisenach, “The High Cost of Taxing Telecom,” *Progress on Point 6.6* (September 1999).

rural and high cost areas) to the TELRIC pricing scheme (intended by the FCC as a subsidy for new entrants), telecommunications prices are essentially nothing but a patchwork of cross subsidies mandated by government regulation.

Taxes only complicate the picture further. As the National Governors' Association points out in a report released last month, "Taxes imposed on telecommunications are a remnant of the days when the industry was a regulated monopoly."<sup>7</sup> Indeed, tax policy has not kept up with either the move towards competition nor with technological change.

For example, broadband services offered by cable companies appear generally to be subject to cable franchise fees levied by local governments. Similar services offered through the telephone company infrastructure are, of course, not subject to cable franchise fees, but may or may not be subject to telecommunications taxes, depending on who is offering the service and what other services (e.g. Internet access) are bundled with it. Such inconsistencies represent discrimination in favor of some companies (and their consumers) and against others.

As Mr. Bliley accurately pointed out in his remarks last October upon introducing H.R. 3011, "rather than make the case for more government spending directly to the people, governments instead levy the tax on telecommunications service providers... [R]egulators then pressure the service provider to bury the tax in its rates."<sup>8</sup> The result of this process is the extraordinarily complex set of local and state taxes discussed above.

Again, changing technology is exacerbating the problem: Last week, for example, CTIA President Tom Wheeler testified on legislation in the Senate that would provide for "uniform sourcing" on taxes applied to cellular telecommunications services by state and local government. In his testimony, he pointed out that, during the course of a trip from Baltimore, MD to Philadelphia, PA, a cell phone user passes through 12 different taxing jurisdictions, each with its own rates and rules—rates and rules which are not only complex but may well be inconsistent.

With all this in mind, imagine trying to provide today's telecommunications consumers with a "global" understanding of their phone bills. It brings to mind what Supreme Court Justice Learned Hand once said of the Income Tax:

In my own case, the words of such an act as the Income Tax, for example, merely dance before my eyes in a meaningless procession; cross-reference to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of—leave in my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time.<sup>9</sup>

In short, we have created a system which is complex beyond the ability of even the experts to understand. Only by reducing the complexity of the system can we hope to achieve the ultimate objective of more comprehensible telecommunications prices.

We can begin this process by adopting incremental reforms that reduce complexity. At the Federal level, some proposals now under consideration would represent important moves in the direction of greater simplicity:

- implementing the so-called "CALLS" proposal, which would simplify access fees, the Subscriber Line Charge, and the universal service system,
- adopting the uniform sourcing legislation mentioned earlier,
- repealing the Federal Excise Tax on telecommunications services.

States should also be looking at incremental reforms, including simplifying their own universal service programs and following the recommendations of the National Governors' Association report referenced above to consider tax reduction and simplification.

Ultimately, however, complexity is an unavoidable consequence of a regulatory system designed for the very purpose of driving prices away from the levels that would be set in the marketplace. Thus, simplification of telecommunications pricing will come only with thoroughgoing deregulation of the telecommunications marketplace.

#### *Truth In Billing: What Can Be Done*

In the meantime, as I indicated earlier, public policy can and should pursue a more limited goal. Specifically, it should attempt to provide consumers with as much

<sup>7</sup>Scott Palladino and Stacy Mazer, *Telecommunications Tax Policies: Implications for the Digital Age* (Washington, DC: National Governors' Association, 2000).

<sup>8</sup>Rep. Thomas Bliley, *Congressional Record*, October 5, 1999, p. E2027.

<sup>9</sup>Jeffrey L. Yablon, "As Certain as Death—Quotations About Taxes (Expanded 2000 Edition)," Tax Notes, January 10, 2000.

information as is practicable about the nature and level of telecommunications taxes and fees.

Insofar as it requires telecommunications providers to identify and accurately describe specific assessments levied under Sec. 254 of the Telecommunications Act, H.R. 3011 would appear to achieve this goal. To the extent the bill goes beyond Sec. 254, to include “any other governmental mechanism, fund, tax or program,” I would hope the Subcommittee would take into account some of the discussion above with respect to whether such a requirement would be workable in practice.

H.R. 3022 goes still further than H.R. 3011, essentially requiring receiving carriers to identify not just the payments side of the equation, but also any offsetting subsidies. While the idea may seem—as the name of the bill implies—to simply require the telling of “the rest of the story,” in fact the two sides of the story are fundamentally different.

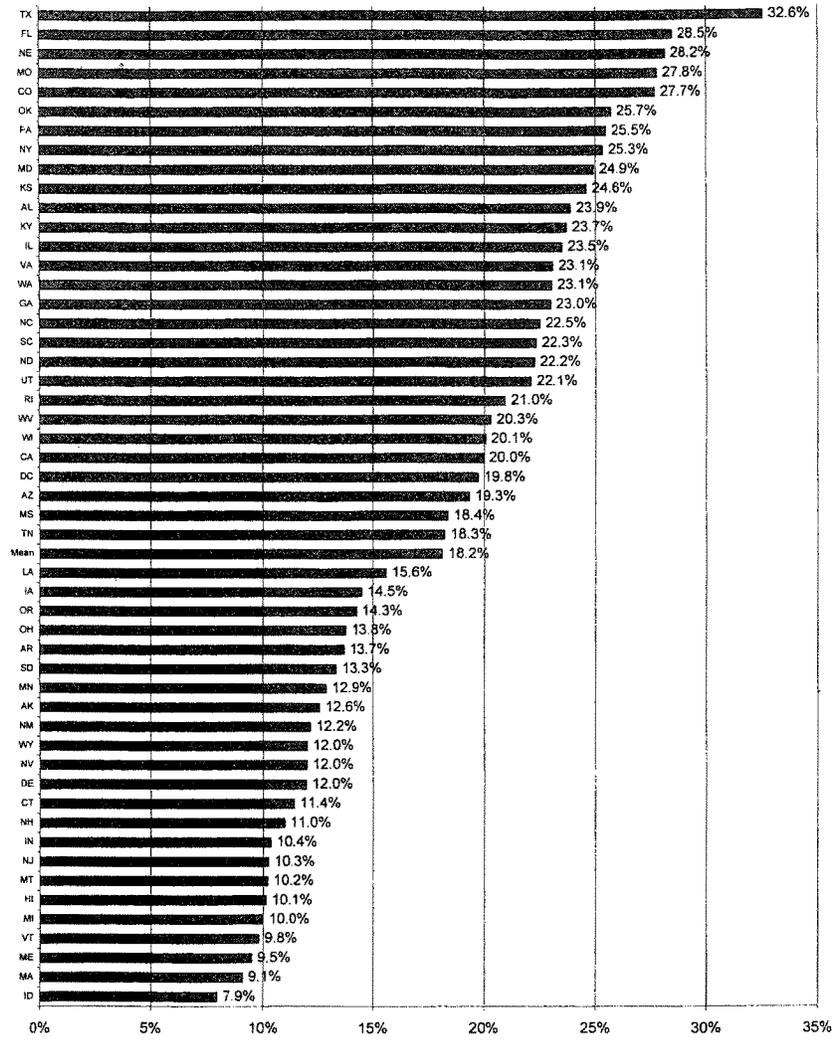
As a general matter, taxes are levied for the purpose of providing “public goods,” which is to say goods that would be underprovided by the marketplace because of economic externalities or insufficiently defined property rights. In the case of universal service programs, for example, it is generally agreed that there are “network externalities” associated with universal access to telephone services. With respect to the schools and libraries program, an argument can be made that there is a strong public goods element to having a well educated population, and that access to the Internet is an important aspect of achieving that goal.

In both cases, the benefits associated with these programs accrue to the public at large, as well as to individual citizens. By their very nature, these benefits are impossible to measure and difficult to estimate. Furthermore, any estimates would be subject to the same type of controversy that typically accompanies benefits estimates for other government programs—e.g., environmental programs—and there would be considerable debate, and certainly no ultimate consensus, over the correct numbers to put on individual bills. The costs, by contrast, are both known and easily assigned. We can observe directly the precise amount of tax collections and the persons from whom they are collected.

#### *Summary*

To the extent that the bills now before this Subcommittee would force telecommunications carriers to provide consumers with information about specific, easily-identified taxes, they would contribute significantly to a better public understanding of the tax component of telecommunications prices. H.R. 3011, as it relates specifically to programs under Sec. 254 of the Telecommunications Act, would represent a positive step towards the goal of greater transparency and better informed consumers in the telecommunications marketplace.

### Telecommunications Tax Rates



Mr. TAUZIN. I thank you.

For our remaining four witnesses, I will ask that you bear with us. We have, if I am correct, about 4 minutes left in the vote on the rule, which will be followed then by a vote on the journal, and if the vote is held open, as I expect it will be, probably the earliest members could get back here would be about 10 minutes after. So, to be on the safe side, why don't we adjourn until 11:10. The hearing will reconvene at that time.

Thank you.

[Brief recess.]

Mr. TAUZIN. The meeting will come back to order.

I will skip over our next witness to Mr. Norquist, who has a flight to get to.

Mr. Norquist?

#### STATEMENT OF GROVER G. NORQUIST

Mr. NORQUIST. Thank you very much, Mr. Chairman.

I will not read my testimony.

Americans for Tax Reform receives no government money, Federal, State, or local.

I serve on the Commission for Electronic Commerce, and people think that that 19-member commission that has its final meeting in Dallas is supposed to decide whether or not we should tax the Internet. One of the first things we discovered with the testimony that we had was that the component parts of the Internet are extremely heavily taxed now. So it is not a question of should we tax electronic commerce and the Internet, but, given how heavily taxed it is now, should we perhaps be reducing taxes there.

We have seen the average of 14 percent excise tax on telecommunications by States, the 3 percent Spanish-American War tax that people talk about, the Gore tax that is laid down on top of that, and then some politicians have the nerve to talk about a digital divide that some poor people cannot afford access to the Internet because their telephones and telecommunications are so heavily taxed they are priced out of the market.

So step one on the digital divide is to reduce these taxes, and I want to endorse the legislation that Mr. Tauzin and Mr. Bliley are putting forward to make it clear to taxpayers and to people who are taxpayers, because they use phones, exactly what they are paying.

If you do not have visibility, if it is not transparent, people get mad at the phone company when the price of their phone service goes up and they do not understand that State, local, and sometimes Federal Government are piling these things on.

One of the reasons the American economy does better than other economies and our business community gets the investment it does is we have transparency. You can look at AT&T and you can know what is there. You go to some other countries, and they have very big companies. You have no idea what is really inside those. You have got a black box for company books.

Too often, taxpayers see a black box when they are trying to understand what they are paying for and who. Over time, politicians have loved to put taxes, State and local, in particular, on government monopolies, and the local monopolies, whether they are power

plants or phone companies, have not fought them because they just passed it on, but those have really piled on to the point where, both in power generation and in telecommunications, taxes have gotten excessive on those fields.

I would urge, as a taxpayer advocate, that we enact this legislation, Truth in Billing, so that people understand what is there, but not just for telecommunications. I think you should consider similar efforts on power companies, because State and local governments—I am told that some States forbid the power companies from letting their consumers know that they are not just paying for the power generation but they are also paying for State and local add-ons, taxpayer add-ons. I think that is a time when State and local governments are deliberately obscuring their part of the tax burden to consumers for the Federal Government to step in.

One other thought is the four-R law, which forbids—and this has come up at the Electronic Commerce Commission—the four-R law stops State and local governments from passing discriminatory taxes on railroads, pipelines, and other things that are part of the national grid. Both with power generation and with telecommunications, those are now part of a national grid, now that we are in the process of deregulating and undoing the mistakes 100 years ago of deciding that these should be government-run monopolies.

I think it would pay to have a Federal law which says, just as a railroad cannot find—you run a railroad from Chicago to L.A. Utah cannot have a 1 percent property tax on all business property but 10 percent on the rail road line.

We have now State and local governments that have one tax rate for goods and services but a higher one for power plant generation, both in property tax and on sales and excise taxes, and on telecommunication.

I think those are options.

I would urge the committee to consider sunsetting the Gore tax, the e-rate tax. If we cannot repeal it, let us say, okay, you wanted \$10 billion. At the end of \$10 billion we are going to audit, which you did, but, also, it ends. If we do not sunset the Gore tax, our great-grandchildren will be paying the Gore tax, just as we are still, 100 years later, paying that 3 percent Federal excise tax.

I would simply close by saying the Commission on Electronic Commerce did have a test vote. Of the nineteen members, all but four were for recommending to Congress abolishing the 3 percent excise tax. Of those four, there is one Bolshevik from South Dakota who always votes for tax increases, but the other three were the Clinton Administration appointees on the Commission from Commerce, USTR, and Treasury. So everybody except the Gore/Clinton representatives wanted to get rid of that 3 percent telecommunications tax.

Thank you.

[The prepared statement of Grover G. Norquist follows:]

PREPARED STATEMENT OF GROVER G. NORQUIST, PRESIDENT, AMERICANS FOR TAX REFORM

EXECUTIVE SUMMARY

Americans for Tax Reform endorses the Truth in Telephone Billing Act (H.R. 3011), sponsored by Chairman Tom Bliley (R-VA) and Rep. Billy Tauzin (R-LA).

That legislation would require every telephone bill in the country to indicate clearly exactly what taxes are being assessed on the consumer's bill.

For our democracy to work, voters must know exactly what taxes they are paying and under whose authority. In other words, taxes must be as transparent as possible. Only then can voters decide whether the taxes are worthwhile and know who to hold accountable. Taxes buried in the charges for telephone service or otherwise hidden are consequently subversive of democracy.

The proposed bill would eliminate this problem for telephone taxes. It would ensure that each taxpayer is given full information regarding the taxes assessed on his or her telephone bill each month. Telephone customers would know what they are paying and why, and then they can take appropriate action at election time.

Total taxes on phone bills are excessive. About 50% of what the consumer pays in phone bills ends up going to the government in various taxes. At a minimum, the FCC's e-tax, the federal excise tax, and Universal Service Charges should be eliminated, reducing phone bills for average workers by around 25%.

Finally, ATR opposes H.R. 3022, The Rest of the Truth in Telephone Billing Act of 1999, sponsored by Rep. Ed Markey (D-MA), as it does not make clear that the government subsidy that some phone users receive are provided at the expense of other workers.

As President of Americans for Tax Reform,<sup>1</sup> I heartily endorse the Truth in Telephone Billing Act (H.R.3011), sponsored by Chairman Tom Bliley (R-VA) and Rep. W.J. Billy Tauzin (R-LA). That legislation would require every telephone bill in the country to indicate clearly exactly what taxes are being assessed on the consumer's bill.

In particular, the legislation would require each telephone bill to name each tax assessed on the bill, the government authority that requires the tax to be assessed, the dollar amount the consumer must pay for each tax, and the method of calculating the tax, whether a flat fee for each line or subscriber, or a percentage of total charges, or some other basis.

For our democracy to work, voters must know exactly what taxes they are paying and under whose authority. In other words, taxes must be as transparent as possible. Only then can voters decide whether the taxes are worthwhile and know who to hold accountable. Taxes buried in the charges for telephone service or otherwise hidden are consequently subversive of democracy. Such taxes abuse working people who are busy struggling to maintain their homes and raise their families.

The proposed Truth in Telephone Billing Act would eliminate this problem for telephone taxes. It would ensure that each taxpayer is given full information regarding the taxes assessed on his or her telephone bill each month. As a result, telephone bills would no longer be the confused jumble of hidden and poorly labeled taxes they are today. Telephone customers would know what they are paying and why, and then they can take appropriate action at election time.

Among the numerous fees and assessments on their phone bills voters will learn more about is the outrageous e-tax. The Federal Communications Commission (FCC) imposed this tax on phone bills without Congressional authority. The Telecommunications Act of 1996 gave the FCC authority to set discounted rates for Internet access and other services to schools and libraries. But instead of these discounts, the FCC imposed the e-tax on phone bills across the nation to raise money to subsidize such Internet services. The tax raises monthly phone bills by about 5%, imposing a total \$2.4 billion annual burden on phone users. The FCC can only be expected to raise this illegitimate tax more in the future.

The funds raised by the tax are provided to a government controlled corporation, the Universal Services Administering Corporation (USAC), which gives grants to schools and libraries to fund Internet access. It took over 2 years after passage of the 1996 Telecommunications Act for schools to get any money under this system. A major portion of the funds are now siphoned off to help finance the USAC bureaucracy dispensing the grants.

This bureaucracy and the e-tax it administers are redundant and unnecessary, as well as ineffective. Since 1995, Federal funding for education technology has increased by 2,300%, even apart from the e-tax. More than 20 distinct federal programs, and countless state and local programs, help finance upgraded technology to schools and libraries. As a result, 78% of all schools were connected to the Internet by 1997, with an average of one computer for every 8 students.

In addition to the e-tax, all Americans today pay a federal telephone excise tax equal to 3% of their monthly telephone bill. Congress first adopted the telephone

<sup>1</sup>Neither Americans for Tax Reform nor the witness, Grover Norquist, has received a federal grant or subgrant or any federal contract or subcontract, during the current fiscal year or either of the two preceding fiscal years.

excise tax in 1898 to help finance the Spanish-American war. The war ended within a year or so. One hundred years later, the telephone excise tax is still with us.

The tax is an object lesson in how supposedly temporary government programs and taxes, once adopted, never end. For the telephone excise tax has been continued for 100 years now on one temporary excuse after another.

The tax was actually phased out after the Spanish-American War, but was reimposed on long distance calls in 1914, and then fully reinstated to help finance World War I. It was brought back to bolster government revenues during the Great Depression, and then to help pay for World War II and the Korean War.

In 1966, the tax was increased from 3% of telephone bills to 10% to help pay for the Vietnam war. After the war it was phased down to 3%, and then extended repeatedly in the 1980s to help cover the deficit. Now the deficit is long gone and the budget is in surplus, but the telephone tax is still with us.

The tax was originally adopted as a luxury tax on the rich, as only higher income people had phones 100 years ago. Today, the tax is a regressive burden on low income workers, as it amounts to a much larger share of the meager incomes of the poor than of the rich. Another lesson: taxes first adopted on the rich always end up being paid by the middle class, where the real money is. Often, even the poor end up paying.

The telephone excise tax imposes a total burden on the public of \$5-\$6 billion per year. It is one part of the oppressive overall tax burden, which costs the average family more than food, clothing, and shelter combined. Taxes overall take 40% of national income, which is far too high. There is no justification for the telephone excise tax and it should be repealed, as part of a broader, overall tax reduction program.

Still another phone tax burden results from the Universal Service Program. Under this program, universal service charges are assessed on the phone bills of most people so that fees can be reduced below cost for others. Higher phone bills are charged in particular to lower cost service areas in the highly concentrated northeastern U.S. and in urban areas.

Universal service charges cost most people more than the 3% telephone excise tax. These charges amount to a \$7 billion per year Federal tax today, increasing to over \$13 billion in 2003. State required universal service charges add another \$17 billion in redistributed fees, for a total current universal service charge burden of \$24 billion today, rising to over \$30 billion in a few years. This tax could grow even more rapidly in the future if it is used to finance more advanced telecommunications services over phone lines, such as video services and Internet access.

These universal service charges amount to a huge hidden tax that often charges poor urban dwellers to subsidize prosperous rural dwellers. As Stephen Entin of the Institute for Research on the Economics of Taxation says, "A widow in urban New York City or Boston scraping by on Social Security pays a federal line fee that helps to subsidize below-cost phone services to ski chalets in Aspen or Vail."

The Universal Service Charges should be abolished and any necessary subsidies for the poor to pay for phone service should be provided through the welfare system. This along with elimination of the telephone excise tax and the e-tax would reduce most phone bills by around 25%.

But these are not nearly all the taxes that are effectively paid through the average worker's phone bill. Overall, consumers also pay on their phone bills state and local sales taxes, a state gross receipts surcharge, a franchise charge, a charge for Interstate Toll Access, Emergency 911 charges, and a county manhole fee.

But that's just for starters. Out of the remaining amount the consumer pays for phone service, the phone company must pay federal income taxes, state income taxes, federal payroll taxes, unemployment insurance taxes, workmen's compensation taxes, state franchise taxes, local property taxes, and any local income taxes.

Altogether this means that about 50% of what the consumer pays in phone bills ends up going to the government in various taxes. This is excessive overreaching by overly burdensome government.

Finally, I oppose H.R. 3022, The Rest of the Truth in Telephone Billing Act of 1999, sponsored by Rep. Ed Markey (D-Mass.), in its current form. That legislation would also require the phone bill to state any subsidy the phone user receives from any government program and the amount of such subsidy effectively reducing the phone user's bill. The problem with this required statement is that it is out-of-context and effectively misleading. For it does not make clear that the government subsidy is provided by the phone user at the expense of other workers.

Consequently, the Markey proposal should require that the bill also tell the phone user that any such subsidy was harnessed by taxes on their neighbors and other workers. Then voters would be in a position to make a complete judgment on the issue.

Mr. TAUZIN. There are no other members here, and, with your indulgence, I want to do something in order to accommodate Grover. Let me recognize myself right now just to maybe throw a few questions at you, Grover, before you are required to leave.

Without telling me, obviously you have to have a meeting and you have to take votes on it, which you do.

Mr. NORQUIST. Sure.

Mr. TAUZIN. We have heard talk that one of the options of the Commission might be, in fact, to settle the issue of the State and local's ability to tax sales on the Internet, conditioned upon their willingness to reduce the level of taxation on the lines, on the carriers, the Internet. Is that at all on the table with the Commission?

Mr. NORQUIST. It is on the table and it is pushed very hard by some of the pro-tax representatives on the Commission. There are a block of commissioners who are pro-taxpayer. I am the consumer representative on the Commission, but the chairman, Governor Gilmore, has made it very clear that he will vote against any Commission recommendation, and I also would vote against any Commission recommendation which said, "If you do X, then we automatically overturn the commerce clause and the Quill decision and say that States and local governments can raise taxes."

Mr. TAUZIN. But that is on the table? It is something that people are pushing?

Mr. NORQUIST. It is being pushed by Governor Levitt of Utah.

Mr. TAUZIN. Will the Commission give to the Nation and to the Congress a clear understanding of the discriminatory features of telecommunications taxes as among the telecommunications providers?

Mr. NORQUIST. I think there will be a majority vote for a majority position. I do not believe there will be a two-thirds vote.

Mr. TAUZIN. Yes.

Mr. NORQUIST. There will be a majority vote that outlines and recommends abolishing some of these taxes, sunseting the Gore tax, abolishing the 3 percent telecommunications. Perhaps—

Mr. TAUZIN. What I am asking is: will the report give us—I mean, what we are doing in Truth in Billing is trying to give consumers an understanding of what taxes—

Mr. NORQUIST. Yes.

Mr. TAUZIN. [continuing] apply to what phone services, but one of the things that would be extremely helpful for us in understanding your recommendations is to have a clear understanding of which set of taxes applies to which one of the telecommunications carriers so that we can have an understanding of the discriminatory effects of taxation as they all go to the Internet.

I mean, one of the concerns we have in looking at Internet taxation is the concern that, as all of the carriers move toward a converging pattern of digital broad-band informational flows, which contain voice and video and data all in one stream, they are all doing the same business eventually, and that they all need to be taxed very differently, and therefore some consumers will end up paying discriminatory taxes because of the carrier they choose.

We are, obviously, interested in that. I am wondering if the commission is going to do any work at all in identifying those differences for us.

Mr. NORQUIST. That has been highlighted in some of the testimony before the Commission, and yes, that will come forward. There will be an effort by the Commission to recommend to State and local governments that they harmonize some of their conflicting and discriminatory taxes, and that, at the end of, say, 5 years, we can revisit the question of Quill and the commerce clause, but there will not be an automatic, "Once 5 years is over, the commerce clause gets thrown away."

The commerce clause was a good idea when it was put in and it remains a good idea, despite some State and local political leaders who would like to wish the commerce clause was not there.

Mr. TAUZIN. Finally, the question I want to ask you is: we obviously have watched e-commerce grow.

Mr. NORQUIST. Yes.

Mr. TAUZIN. We have begun to hear the concerns of local taxing authorities about the loss of their base. The local sheriff back home, Harry Lee, called me the other day. He was buying a \$1,400 piece of equipment at a store. Right before he bought it, somebody said, "You had better check on the Internet." He went on the Internet and found he could get it for \$400 cheaper because most of taxes he was not going to pay.

And it dawned on him, you know—he is the sales tax collection agency—that his law enforcement abilities are going to be reduced if more and more people did what he did, and he called me to tell me about it.

I wonder, is the Commission beginning to hear those kinds of stories, too? And are you going to speak to that when you speak in your final report?

Mr. NORQUIST. Yes. Absolutely. It will address both that, and also the interesting concern a lot of the State and local elected officials who feel that, as people use the Internet more, they will not get as much sales taxes, one of the questions commissioners have asked these elected representatives is: every business in America is expected to become more efficient and more cost-effective because of the Internet. Why do we hear from State and local governments only that the Internet is not going to be a reason for you to spend less, but for you to raise taxes? And at some point it seems to me that we ought to expect State and local governments to become more productive and, therefore, less expensive to taxpayers because of these new technological tools.

Not everything that happens in the world is an argument for a tax increase, despite the fact that some State and local politicians seem to think it is.

Mr. TAUZIN. Finally, Mr. Norquist, you do not need to do it now, but I would appreciate your comments on the Upton bill. Fred Upton, as you know, has filed a bill dealing with the charges or fees for Internet access. We are going to probably take up a hearing on March 23. Since it relates to the work you are doing on the Commission and to this hearing, it would be interesting to also have your comments on that for the record.

Mr. NORQUIST. We had one other test vote, and I pushed these, and then they decided they did not want to have a formal vote in San Francisco, but I pushed the one. It was my resolution to say,

“Let us get rid of the 3 percent telecommunications tax”—15 yes, 4 no.

I put one forward suggesting a permanent Federal ban on taxation on Internet access, and that one even the Gore/Clinton people voted for. That was unanimous.

Mr. TAUZIN. Good.

Let me announce to the committee what I have done here.

We have not received all the testimony of the panel yet, but we were told Mr. Norquist has to catch a 12 noon flight, and so I wanted to accommodate him, so let me ask if there are any members who would like to ask Mr. Norquist any questions before he has to leave us.

Mr. Green?

Mr. GREEN. Mr. Chairman, just one before he leaves.

Having served 20 years in the legislature with Texas, sales tax is the basic form of revenue, at least for Texas. In fact, we fought against the income tax because we had the sales tax. If we do not address that, we will see reductions in sales tax collections not only for the State, but also for our local governments. That is the frustration I think I have.

I do not want to tax the Internet, because I want to let it grow, but I also see the problem of local legislators and local officials.

I think the city of New Orleans has, counting State taxes, about a 9 percent sales tax. Some States have used the sales tax in place of the income tax.

My concern is that if we see a reduction in that, then you will push States like Texas who have no income tax to go to some type of income tax. Has that been addressed?

Mr. NORQUIST. It has been discussed. We have also been reminded that all of these concerns were raised when catalog sales began to grow 40 and 50 years ago, and all of the scenarios that some State and local politicians spun out back then, that everybody would buy everything by catalog, turned out not to be the case. In fact, most of the growth of Internet electronic commerce sales is at the expense of catalog sales, so it has zero impact on State and local revenues, and that which is not out of catalogs is business-to-business.

So the lost revenue—it is not lost, it is in the hands of consumers and taxpayers—but lost revenue in some people’s eyes is actually this year may be \$180 million, which is one-tenth of 1 percent of sales tax revenue. Sales tax revenue in all States is increasing—tax revenue in all States and localities is increasing.

The idea that they are short of cash is not accurate, but, as I mentioned just before you got here, those of us on the Commission have asked some of these political leaders who said the Internet is a reason to raise taxes, our question is: why, when everyone in the business community has expected that the Internet will reduce their costs and reduce their prices and make them more effective, is nobody at State and local level making that case and showing those kind of productivity increases that could lead to tax reductions.

Mr. GREEN. I think you can see productivity increases, and you are right, the tax reductions—again, in Texas, our Governor has talked about the tax cuts that were done last session.

Mr. NORQUIST. Fine tax cuts.

Mr. GREEN. Yes. But my concern, though, was that if we do see—you know, this could be astronomically different than catalog sales, but I am glad to hear that the catalog sales—the sales on Internet are taking away from catalog, because we fought that battle before I got here in Congress. Of course, that is an issue that our State comptroller, no matter which party they are, talk about the loss of revenue to catalog sales if they do not have that nexus in the State.

Mr. NORQUIST. The good news is that it is really not having that big an effect, and it will not have that big of an effect, even as Internet sales increase, largely because it is business-to-business, which either is taxed or is not taxed outside of Quill. It just is not having that problem.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Green.

Anyone else?

[No response.]

Mr. TAUZIN. Mr. Norquist, thank you. I know you have to make that flight. You are welcome to take off any time you need to, sir.

Mr. NORQUIST. Okay. Absolutely. Thank you.

Mr. TAUZIN. Thank you.

We will now go to Cathy Hotka of the National Retail Federation here in Washington, DC.

Cathy, present your testimony, please.

#### STATEMENT OF CATHY HOTKA

Ms. HOTKA. Thank you very much, Mr. Chairman and members of the committee. The National Retail Federation appreciates the opportunity to be here today.

In case you do not know us, we are the largest trade association representing retailers, and we represent all kinds of retailers—very large ones and very small ones.

We have a Telecommunications Committee, which has on it 60 of the telecommunications managers for the country's largest retailers. To prepare for this meeting today, I phoned a number of them. I did not have much notice. I could not make a date with them. I had to simply say, "Do you have a few minutes to talk to me?" Everyone said, "Gee, I have got to run," until I told them what the subject matter was, and suddenly they were not so busy. They dropped everything they were doing to talk about this, because this is a hot-button item for them.

I want to give you a mental picture.

There is a retailer—and I wish I could tell you who it was—the regional retailer. They are based in North Carolina. They have about 100 stores. Each store is about the size of this room. They use 109 different carriers, so every month the mailman comes with a canvas bag, dumps the bills out on the desk, and the person that they have hired to go through the bills—this is their only job—goes through these bills to see what is correct and what is not correct. It is a gigantic job. They said it is worse than any other billing job they have. Many retailers have literally thousands of suppliers. They use all different utilities. They have got supplies in the Far East, people who speak different languages. Nothing they do is as difficult as this.

Part of the problem is that the charges that appear on these bills, in some cases, are applied in different ways. Some of them are implicit. They are, as they call it, trying to compare apples and Buicks when it comes to choosing carriers. It is very difficult for them.

So they have asked us to spread the word that if there is anything that can be done to make these charges easier to explain, it is going to make their life a lot different and a lot easier.

Now, one of the things that I wanted to mention is, as has come up this morning that you had mentioned and Mr. Green had mentioned, the Internet is here now. We find it very important that our brick-and-mortar retailers bring the Internet into their stores and not rely simply on WATS lines in the store, but to bring broadband into the store, use the advantage of having physical retail with the Internet.

Frankly, so many of our people are so bamboozled by what they see on their phone bill, they are not anxious to cozy up to our friends at the telecommunications carriers and become partners, as they probably should, to expand their business.

They are so worried about the cost and the complexity that they just want it to go away. Frankly, retailers are cheap. They are going to look at anything they can which is going to impact their bottom line. And, while telecommunication rates have decreased—thanks, in some part, to the Telecommunications Act of 1996—the bills have increased. They have not decreased.

So I think, if we are going to move the country ahead and ensure that the information age reaches retailers, as we would like it to do, certainly your bill would do a great deal to accomplish that, and if we can help you in any way we would like to offer our services.

Mr. TAUZIN. Thank you very much. We will take you up on it.

Ms. HOTKA. Great.

[The prepared statement of Cathy Hotka follows:]

PREPARED STATEMENT OF CATHY HOTKA, VICE PRESIDENT, INFORMATION TECHNOLOGY, NATIONAL RETAIL FEDERATION

Chairman Tauzin, Members of the Subcommittee, the National Retail Federation appreciates your invitation to appear before you today to discuss telephone billing. This is a subject of great interest to our members, both large and small.

The National Retail Federation (NRF) is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 20 million people—about 1 in 5 American workers—and registered 1999 sales of \$3 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF also represents 32 national and 50 state associations in the U.S. as well as 36 international associations representing retailers abroad.

Mr. Chairman, telecommunications managers from America's retail companies are anxious to complain about their bills from communications providers. While service from these companies is generally extremely good, bills are unintelligible, they're incorrect, they show federally-mandated surcharges applied in different ways, they present simple line items differently, and they show discounts in a way that makes them almost impossible to understand. One of these managers complained to me that the bills he receives are as complex as the tax forms he and his wife must negotiate each spring. And while the subject of today's hearings is surcharges and the manner in which they are collected, when taken in the context of companies' overall dissatisfaction with the billing process, the problem is particularly severe.

While most analysts acknowledge that rates for long distance and data services are falling, bills generally are not. These charges, whether explicit or implicit, raise

the bottom line of the bill. And the manner in which they are presented on that bill can make it very difficult for customers to shop for carriers in a cost-effective way.

There are some key reasons why retailers are hit particularly hard when phone bills are hard to understand.

Line item surcharges are presented in language that lay people don't understand. They're not explained in the one-syllable words that customers need. Even very large companies, experienced telecommunications managers from America's top ten retailers, are hard pressed to explain what these charges are; they just know that they're there.

Many retailers have hired analysts or outsourcers to handle their telephone bills. These analysts do not simply pay these bills—they check them for accuracy and duplication, determine whether discount formulas have been applied, and keep track of anticipated billing amounts to check for toll fraud. Retailers do not have to do this for their gas bills or electric bills or bills from suppliers in Singapore and Malaysia. Only telecommunications bills are this complex, and generally this incorrect. The expense that this incurs to retailers should not be underestimated. One chain of about ten furniture stores has someone on staff full time to check phone bills.

Telephone bills are complex before these surcharges are added. This is particularly acute for retailers, who must cope not only with telecom use from headquarters, but also from stores. Larger retail companies can find that three or four of their stores have been slammed each month despite PIC freezes. Store personnel use dialarounds which raise rates. Carriers present fraudulent contracts for store telephone volume then demand that they be paid. The potential for mischief is significant. Many retailers find that it's easier to pay the bill than fight it.

Many companies report that, when they contact carriers for information on billing problems, particularly with surcharges and how they have been applied, they cannot get a straight answer. Our telecommunications managers indicate that carriers give varying stories about what these surcharges are. In some cases they have cut back staff so severely that customer service to explain these charges is essentially unavailable.

Because the surcharge line items on bills are generally very difficult to understand, their carriers' account representatives give coy answers when asked about the charges. Many claim that they don't know what the charges really are or what they're used for. Certainly this fosters an atmosphere of distrust which could be easily remedied.

I don't have to tell you that the Federal Communications Commission is not adequately staffed to answer a wide variety of billing questions from corporate customers either.

And the FCC's mandate that carriers make these charges implicit has resulted, our members believe, in inaccurate bills. Most of NRF's members we contacted on this issue believe that their bills are inflated by carriers who apply surcharges in different ways and who don't pass along savings that might be realized when rates are decreased. There's no doubt but that this increases suspicion among the customer base that there's a sort of conspiracy between the federal government and carriers to wrest more money from customers.

The timing of this dispute could not be worse. For the past ten years America's businesses have been considering whether to significantly upgrade their telephone networks. A recent poll of our large-company members revealed that very few had anything less than POTS lines into their stores. This is troubling because if these retailers are to survive the onslaught of virtual-only Internet companies, they must fully integrate the Internet channel into their operations. This means that they must not only have fully functioning Web commerce sites, but they must integrate the Web into their stores. Certainly if rates are made to be artificially high through surcharges, they will not be inclined to take these progressive steps. The imposition of PICC charges, for instance, hit retailers particularly hard because there are so many phone lines in each store. The knowledge that each telephone line in the lingerie department, the candy department, the lamp department would incur surcharges did nothing to encourage retailers to upgrade their communications presence in the store. Retailers are particularly bottom-line oriented, and rather than make essential investments in communications upgrades, many retailers have chosen instead to scale back on investment.

Mr. Chairman, the National Retail Federation supports your effort to bring some common sense to the process of surcharge imposition. If you are successful, we believe that there will be a ripple effect which may result in communications carriers' bills becoming not only easier to read but more accurate.

Many thanks for this opportunity to appear before you today.

Mr. TAUZIN. Next we will hear from Mr. Lassman with Citizens for a Sound Economy here in Washington, DC.

Kent, welcome. We will take your testimony, sir.

#### STATEMENT OF KENT LASSMAN

Mr. LASSMAN. Thank you, Mr. Chairman and members of the subcommittee. We appreciate the opportunity to join you today.

In 1861, President-elect Lincoln said, "I am for those means which will give the greatest good to the greatest number." It is evident that the proponents of the legislation before us today share in his wisdom. Both pieces of proposed legislation share a common attribute—namely, public policy should not impede the flow of information so that consumers can make the best decisions possible.

I represent Citizens for a Sound Economy Foundation, and we recruit, educate, train, and mobilize hundreds of thousands of volunteer activists to fight for less government, lower taxes, and more freedom. As evidence of this grassroots focus, I offer the following statistic:

Last year we hosted five policy events that focused on telecommunications or technology policy in Washington, DC. In the same year, we hosted or participated in more than 150 events around the country that focused on telecommunications or technology policy. Everywhere we go, people are talking about their telephone bill. They are not too happy. Now, it is our job to educate your constituents so that they, in turn, can educate you.

Fortunately, the proposed legislation provides an initial step away from both extensive rate regulation and taxation of telecommunications services. As I have outlined in my written statement, I encourage you to seek support from your colleagues on the Judiciary Committee. They have already held a hearing on a similarly oriented measure, the Taxpayer Defense Act.

The basic problem addressed by all three pieces of legislation is rooted in administrative or regulatory taxation. The hearing today amplifies the problem faced by consumers on a daily basis. Unelected officials use the regulatory process to impose taxes upon telecommunications services. The Taxpayer Defense Act would make this process more difficult. The two pieces of legislation before us today, H.R. 3011 and H.R. 3022 would provide consumers with more information about these taxes through mandates on the service providers.

Both of these objectives are desirable; however, I urge you to remain steadfast in pursuit of a solution to the root problem. Taxation through regulation must be eliminated, not simply discouraged or made more transparent.

My written statement includes a thorough legislative analysis, including minor technical amendments, and I would just like to highlight to you a bit of context for today's deliberations.

Consider the last time you took your car to a mechanic for an oil change. Despite the fact that consumers at Al's Auto Shop might get a bill that looks very different from consumers at Charlotte's Car Shop, there are distinct similarities. The type of service provided, the various new parts installed, and the charges for labor are all listed.

As such, we might require telecommunications providers to provide an explanation of the governmentally mandated taxes, fees, and charges on telecommunications services, just like the services, parts, and labor are explained for an oil change.

However, because information can be costly, there is a point beyond which the cost of collecting information is greater than the benefit that it provides.

For example, it might be beneficial to provide information about regulated access fees to consumers. It would likely be cost prohibitive to distinguish the exact percentage of the access fee that is cost versus subsidy. This would be like an auto repair shop that listed the amount of rent and electricity to provide a well-lit garage in order to do that oil change.

The lesson learned from everyday experience, complaints that we hear from our activists and your constituents, say that, while price information is necessary in the marketplace, it is hard to predict or prescribe the right amount. It is best to let Al and Charlotte and all the telecommunications providers figure that out on their own.

So, to conclude where we began, with the wisdom of Lincoln, the means to provide the most information to the greatest number of consumers is a free market.

Thank you. I look forward to your questions.

[The prepared statement of Kent Lassman follows:]

PREPARED STATEMENT OF KENT LASSMAN, CITIZENS FOR A SOUND ECONOMY  
FOUNDATION

*"I am for those means which will give the greatest good to the greatest number."*  
—Abraham Lincoln, Cincinnati, Ohio on February 12, 1861

#### *Introduction*

Mr. Chairman, and members of the Committee, thank you for the opportunity to share my views on H.R. 3011 and H.R. 3022—the Truth in Telephone Billing Act, and the Rest of the Truth in Telephone Billing Act. Both pieces of proposed legislation share a single attribute. Namely, public policy should not impede the flow of information so that consumers can make the best decisions possible.

This is the most important and defining attribute of the legislation and should influence your deliberations today. A market process, free of regulatory mandates, is the best means to give the greatest amount of good information to consumers.

I present these views on behalf of the members of Citizens for a Sound Economy Foundation (CSE Foundation).<sup>1</sup> CSE Foundation recruits, educates, trains, and mobilizes hundreds of thousands of volunteer activists to fight for less government, lower taxes, and more freedom.

CSE Foundation believes that individual liberty and the freedom to compete expand consumer choices and provide individuals with the greatest control over what they own and earn. CSE Foundation's aggressive, real-time campaigns activate a growing and permanent volunteer grassroots army to show up and demand policy change.

As evidence of this grassroots focus, I offer the following statistic. In 1999 CSE Foundation hosted five telecommunications or technology-related policy events in Washington, D.C. In the same time frame, we hosted or participated in more than 150 events around the country where telecommunications or technology policy was a primary focus.

#### *History*

Extensive regulation of telecommunications services predates the widespread deployment and use of telecommunications services in this country. Taxation and rate regulation are perhaps two of the most perverse forms of government intervention. Each should be eliminated to the greatest extent possible. Both serve to limit the ability of consumers to exchange information efficiently at affordable costs.

<sup>1</sup> CSE Foundation does not receive any funds from the U.S. Government.

Fortunately, the proposed legislation provides an initial step away from both extensive rate regulation and taxation of telecommunications services.

In November of last year, I testified before the House Judiciary Committee on H.R. 2636, the Taxpayer Defense Act.<sup>2</sup> The Taxpayer Defense Act would require legislative action before any new administrative tax could be instituted. Like some of the legislators here today, the supporters of that legislation are prepared to make policy changes to improve the amount of information available to consumers about the taxes, fees, charges, and subsidies associated with telecommunications services.

The basic problem addressed by all three pieces of legislation is rooted in administrative—or regulatory—taxation. The hearing today amplifies the problem faced by consumers on a daily basis: unelected officials use the regulatory process to impose taxes upon telecommunications services.

As I testified last year, H.R. 2636 would make this practice more difficult. Both pieces of legislation before us today—H.R. 3011 and H.R. 3022—would provide consumers with more information about these taxes through mandates on service providers. Both of these objectives are desirable. However, I urge you to remain steadfast in pursuit of a solution to the root problem: taxation through regulation should be eliminated, not simply discouraged or made more transparent.<sup>3</sup>

#### *Pricing and Information*

Information is a costly commodity. This is true in the marketplace for telecommunications services just as it is true of the marketplace for shoes, fresh salmon, or stocks. It is also equally true with regard to information that explains the price that citizens pay for government services.

Prices play a key role in the transmission of important information about goods and services. Changes in price signal changes in scarcity and allow consumers to adjust their use of a product accordingly. And therefore it is no surprise that consumers are best suited to determine which of the competing goods would meet their demand. It is prices that provide the information necessary to make these choices. When government policies affect prices—even the price of information—they can distort the market by altering the prices consumers see in the marketplace. To avoid such distortions, the government's impact on price should be clarified wherever possible.

There is widespread agreement that when it comes to government action that cannot be, or simply is not, performed by a private market that a “price” assigned to that government action increases responsibility and effectiveness of the government actor. In short, consumers should know what they are paying for, especially when it comes to government programs.

Therefore, it is reasonable to expect that the information about the cost of government mandates provided to consumers as a result of either H.R. 3011 or H.R. 3022 would have a positive effect. First, it would allow consumers to have more complete information about the costs associated with telecommunications services. Second, it would provide a rough proxy for the price of the government taxes, fees, and other collections levied on telecommunications services.

While the discussion today is focused on telecommunication services and the billing practices of telecommunications providers, it is instructive to look at an analogous situation. Consider the last time that you took your car to a mechanic for an oil change. Despite the fact that consumers at Al's Auto Shop might get a bill that looks very different from a consumer's bill at Charlotte's Car Shop, there are distinct similarities. The type of service provided, the various new parts installed, and charges for labor are all listed.

As such, it might be reasonable to require telecommunications providers to provide an explanation of the governmentally mandated taxes, fees, and charges on telecommunications services. However, because information can be costly, there is a point beyond which the cost of collecting information is greater than the benefit it provides.

For example, it may be beneficial to provide information about regulated access fees to consumers. It would likely be cost prohibitive to distinguish the exact percentage of the access fee that is a “cost” versus “subsidy.” This would be like an auto repair shop that listed the amount of rent and electricity necessary to provide a well-lit garage to perform an oil change. It is more efficient—for the service provider and for the consumer—to provide a reasonable estimate of the costs associated with the service.

<sup>2</sup> Kent Lassman, Statement to the Committee on the Judiciary, U.S. House of Representatives, November 3, 1999, <http://www.cse.org/informed/456.html>.

<sup>3</sup> For a brief summary of the federal excise tax, see also <http://www.cse.org/informed/361.html>.

*A Legislative Analysis*

The proposed “Truth in Billing” initiatives are quite similar. The Chairman’s legislation, H.R. 3011, would require telecommunications carriers that contribute to governmental programs to provide more information to consumers than is currently made available. This appears to conform to the overarching goal stated at the beginning of this testimony: Public policy should not impede the flow of information so that consumers can make the best decisions possible. With regard to generating information about federal telecommunications taxes, subsidies, and programs, H.R. 3011 is therefore an improvement upon the status quo.

However, it is not necessary to create new law. In an effort to find a solution to the problems associated with little or poor billing information, this legislation appears to ignore the fundamental problem that is the relationship between, on one hand telecommunications services, and on the other hand, federal tax and regulatory policy. Federal taxes and regulation stand in the way of a market process that would generate clear billing procedures to provide information to consumers.

The “Rest of the Truth in Telephone Billing Act of 1999,” H.R. 3022, is essentially the same as the Chairman’s legislation, with one important distinction. H.R. 3022 would require carriers to provide subscribers of telecommunications services a separate line-item stating the amount of their bill that is collected for government programs, taxes, fees, and subsidies.

This provision would continue and extend the basic goal mentioned earlier in this statement. That is, it is a means to provide the greatest amount of information to consumers as possible. CSE Foundation has argued strenuously in the past, and I affirm to you today, that individual consumers should know both how much they contribute to America’s costly subsidy regime and how much individual consumers benefit from the subsidy regime.

The difference between the two pieces of proposed legislation is that H.R. 3022 is one step closer to a plain reading of section 254(e) of the 1996 Telecommunications Act where universal service support “should be explicit and sufficient to achieve the purposes of this section.”

Therefore, a strict policy analysis of H.R. 3022 would suggest that it is superior to its counterpart, H.R. 3011. However, absent a small technical amendment, the legislation would be difficult to implement and probably impossible to pass.

Three words should augment sections (3)(A) and (3)(B) of H.R. 3022. At line 20 of page two and line one of page three the words “an estimate of” would improve the legislation:

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

(B) **an estimate of** the average amount per month by which the subscriber’s service is reduced by any subsidy identified under paragraph (1)(B).

This change would allow the superior attributes of H.R. 3022 to succeed in spite of an ongoing and irreconcilable debate over how one fee or another may be the result of a combination of (a) a regulated recoverable cost, and (b) a subsidy.

*Conclusion*

Information technology is evolving faster than the legal apparatus designed to regulate telecommunications services. As one prominent authority has concluded,

Television is leaving the air in favor of the wires; the telephone is leaving the wires in favor of the air. Copper and coax, wired and wireless, terrestrial and satellite: digital data networks are rapidly emerging as the new universal, universally interconnected standard for the transmission of everything—voice, data, video, the lot.<sup>4</sup>

The effect of the 1996 Telecommunications Act and the dynamic, innovative technology marketplace have brought the exciting possibility of competitive forces to all aspects of the telecommunications marketplace. Yet, significant barriers still remain. First among them are regulated prices, fees, charges, and taxes upon telecommunications services. Consumers would be best served if these policies were stopped in their tracks and regulators no longer intruded into the price system for telecommunications services.

A second best alternative is to promote the most efficient means to provide accurate information to consumers about the federal role in telecommunications services. The legislation considered today would achieve this second best alternative. Where necessary, an amendment should be made to allow for a reasonable estimate of the portion of a fee that is in part a subsidy and in part a regulated rate.

<sup>4</sup>Peter W. Huber, Michael K. Kellogg, and John Thorne, *Federal Telecommunications Law*, page 3, 1999, second edition.

The Truth in Billing Act and its counterpart the Rest of the Truth in Billing Act would serve to provide more information to consumers about the price of our government. Senator Wyden has identified at least 28 different programs or federal agencies that provide telecommunications assistance or subsidies. Each of these programs has an economic cost associated with it. To the extent that these costs are recovered through a consumer's telephone bill, that information should be made explicit and available.

Will Rogers observed that "If you ever injected truth into politics you have no politics." Public policy to inject truth into consumers' telephone bills is a good start toward taking politics out of telecommunications.

Mr. TAUZIN. Thank you very much.  
Our next witness will be Mr. Moir.

#### STATEMENT OF BRIAN R. MOIR

Mr. MOIR. Thank you, Mr. Chairman.

First, let me start—and I am going to close with the same thing—commending you, Chairman Bliley, and Congressman Markey, for introducing the two bills. If I was to stop now, I would tell you vote as soon as possible on these bills, but I will say a few extra things.

I represent, like Cathy, end users. We use telecommunication and IS as a critical part to compete, both domestically and in the global marketplace. We have in this country a jewel. We are the world leader in telecommunications and IS technology. For a long time, we were also the lowest-priced provider of those areas.

I am sad to say, since we have been successful in trying to bring down rates in various areas around the United States, that is now not the case as far as pricing in some areas, particularly in Europe and in the Far East.

It is unfortunate that part of the distortion we are getting now in our bills, which you have all mentioned in your opening statements and many of the other people have mentioned here on the panel, are the huge markups we are seeing on the bill from mindless charges. It makes no sense.

We use these tools to be competitive in a global marketplace, and it is not because we are a low-labor market country. And so our crucial tool is being disadvantaged because of these charges.

What is really happening? We know what is happening. As our prices were coming down, government regulators saw an opportunity to hide—you know, typically prices come down for a while. They used to be on January 1. Back in the late 1980's they started happening on July 1. So when we would have these annual reductions in prices driven by regulators—never as big as they should have been, but either way—they started to have an increased temptation to fold in, at the same time, a series of what are really taxes.

Without commenting on whether they are good objectives or not, it is fair to say the FCC was not put in the business to be a taxing agency or for dispensing money, so we had schools, wiring, we had funds for management of the people to run these networks. I mean, we had libraries getting moneys. We had rural health care facilities getting moneys. We had pixie charges a few years ago, which was new to all of us, which at first the FCC was going to put almost totally on Cathy's members and mine, just on the businesses. They were not even going to allocate it fairly. They were just going to

load it all on us. Fortunately, we raised hell and got those lowered somewhat, but we are still disproportionately paying those.

And that has only been in the last few years. We have a whole string that has been mentioned by others that are on bills.

Without getting to the issues that Congressman Markey raised in his bill on subsidies, there is a whole slew of subsidies we could spend a whole day of hearings on, also.

So, in closing, we really urge you to force these regulators to put these out on the table so that we can see what they are doing and not try to bludgeon the carriers to hide these charges, which they try to sneak in every other year or so, and hopefully that will take a huge step to getting some of these off our bill.

Thank you.

[The prepared statement of Brian R. Moir follows:]

PREPARED STATEMENT OF BRIAN R. MOIR, PARTNER, MOIR & HARDMAN ON BEHALF  
OF THE INTERNATIONAL COMMUNICATIONS ASSOCIATION

Mr. Chairman, I am pleased to have been invited to testify before the Subcommittee Telecommunications, Trade, and Consumer Protection regarding H.R. 3011, the "Truth in Billing Act of 1999" and H.R. 3022, the "Rest of the Truth in Billing Act of 1999". Mr. Chairman, you, Chairman Bliley, and Congressman Markey, as well as the members of the Subcommittee and staff, are to be commended for your efforts to ensure that America's telephone customers are explicitly told what governmentally imposed taxes, fees, and subsidies they are being required to pay in their monthly telephone bills. Clearly, the issues addressed in H.R. 3011 and H.R. 3022 are ones that warrant prompt action. My testimony will represent the perspective of the telecommunications end user, and I hope that the perspective of the telephone customer will facilitate the Subcommittee's deliberations by on these important matters.

The International Communications Association ("ICA") is the largest and most broadly-based organization of telecommunications end users in the United States. ICA is a not-for-profit league of almost 500 corporate, educational, and governmental users of telecommunications and information equipment, facilities, and services. ICA members do not include firms predominantly engaged in the production, sale, or rental of telecommunications services or equipment. Collectively, ICA members spend over \$32 billion per year in this area. On average, individual ICA member telecommunications/information expenditures exceed \$30 million annually. Two-thirds of ICA member companies employ over 10,000 persons, and only 2% have work forces under 1,000. Over 86% of these firms conduct business from fifteen or more locations. As always, ICA speaks from a telephone customer perspective that is broadly informed on the state of the telecommunications and information industries in the United States. If the results of this Subcommittee's deliberations become law, and we hope they do, the monthly telephone bills of ICA members, and other telephone customers as well, could be positively impacted.

*Introduction*

ICA believes that competition is the ultimate safeguard for the telecommunications industry. In recent years, significant progress has been made in developing a competitive telecommunications. ICA vigorously supports pro-competitive policies and the extension of such policies to all sectors of the local telephone marketplace. Unfortunately, whether a market is competitive or not does not impact the likelihood that telephone bills will accurately and explicitly reflect the numerous governmentally imposed fees, taxes, and subsidies that ratepayers are forced to pay. All too often, governmental bodies find it in their interest to pressure the telecommunications carrier community into not explicitly showing these costs to consumers. Even worse, as market prices continue to decrease, some governmental bodies have demonstrated an increased incentive to create pet fees, taxes, and subsidies in hopes that they will not be noticed by telecom ratepayers. These government bodies attempt to time the implementation of their pet projects to coincide with a forthcoming rate reduction thereby hijacking a portion of the monies that would otherwise have benefitted ratepayers in higher savings.

*Business Users' Dependence on Telecommunications*

Since ICA members face competitors in both the technologically developed countries and the low-wage, less-developed countries, they must always be mindful to minimize their operational costs as much as possible. To compete in the world marketplace, large business has an absolute need for timely, accurate, cost effective information that can be made available on demand. To accomplish this, user companies must be able to obtain, operate, maintain, and fully utilize state-of-the-art telecommunications and information technology at cost based rates.

With the development of various voice and data based systems and applications, large business users have become dependent on efficient, reliable, readily available, and reasonably priced telecommunications equipment, facilities, and services. If this Subcommittee is able to ensure that American telephone customers pay as few governmentally imposed telecommunications fees, taxes, and subsidies as possible, then America's business users and its economic future will be significantly benefitted by your efforts. For this reason, ICA members are fully support these deliberations of the Subcommittee.

*Legislative Objective of Business Users*

Typically, ICA's objectives in telecommunications legislation have been based on several principles:

- A. **Legislation should ensure economically rational pricing.** This is critical to ICA members ability to successfully budget and plan for their information and telecommunications needs. It is also **critical** to American businesses ability to carefully control costs in an era of rampant global competition. For less than fully competitive markets, ICA encourages the application of cost-based pricing principles by regulators. Of equal importance is the fact that all governmentally imposed fees, taxes, and subsidies should be clearly and explicitly reflected on customer telephone bills and kept to a bare minimum. Since American telecommunications technology leads the world, governmental bodies should not be allowed to needlessly increase its cost to American business by regularly dumping various charges on the bills of American ratepayers.
- B. **Legislation should increase the availability of services for real user applications and needs—today and tomorrow.** It is important that new services be ones that ICA members can really use, not just services that are pre-defined by carriers and other providers. Public policies should promote increased interoperability among services and networks and allow maximum flexibility for the provision of new telecommunications services. If governmentally imposed fees, taxes, and subsidies are fully warranted, they should be fairly and evenly applied to all services so that end user decision making on which services to use is not skewed by unfairly imposed government charges.
- C. **Legislation should enhance the ability of ICA members to effectively plan and manage their telecommunications service needs.** The need for customers to manage their telecommunications resources on a day-to-day basis must be accounted for. A dizzying array of governmentally imposed fees, taxes, and subsidies only makes end user management of the telecom services more difficult.
- D. **Legislation should contain new incentives leading to worldwide compatibility and uniform access to customers and services.** The development of a technologically advanced network based on worldwide standards is critical to ICA members who are relying upon more and more specialized telecommunications applications in order to remain competitive and innovative in a global environment. Ever increasing governmentally imposed telecom fees, taxes, and subsidies retard these incentives in the U.S. and create incentives for investments to be made in those countries that do not have these charges.

The government imposition of charges for school wiring, presubscribed inter-exchange carrier charges (PICCs), subscriber line charges at varying levels, telephone number portability, federal excise taxes originally intended to help fund the Spanish American War, 911 services, infrastructure maintenance, and others does not facilitate the most robust use of the telecom networks possible.

In addition, the imposition of government subsidies is all too often at unsupported levels or not explicitly charged. Last Fall, the FCC revised its universal service rules for large local carriers. The revised rules reduced the allowable levels of support for some companies, but the FCC also adopted a "hold harmless" policy that effectively negated the ratepayer benefit of these rules by allowing the effected carriers to continue to collect subsidies at the previous levels provided under the old rules. Also, ratepayers in a number of states subsidize the ratepayers in other states without any knowledge of this happening. Without questioning the wisdom of these policies, it is only fair that ratepayers know what they are paying

for. In addition, business users are often required to pay higher fees (subscriber line charges, PICCs, etc.) than other ratepayers for non-traffic sensitive costs. All ratepayers should pay fixed costs equally. If subsidies are required, they should be explicitly indicated and fairly imposed.

#### CONCLUSION

American businesses and educational institutions rely on telecommunications as a strategic resource and will do so even more in the future. Telecommunications is one of the keys to increased competitive advantage, increased profitability, economic growth, and job creation. This reliance places upon government policy makers, and in particular members of Congress who want to revise existing policies, the responsibility to see that telecommunications equipment, facilities, and services continue to be readily available and provided at reasonable rates. A dizzying array of governmentally imposed telecommunications fees, taxes, and subsidies contradicts these objectives.

ICA stands ready to work with those who want to increase user choice by making the telecommunications marketplace, and American business generally, more competitive and free of needless governmentally imposed fees, taxes, and subsidies. We support your quick passage of legislative language consistent with the objectives of H.R. 3011 and H.R. 3022.

Mr. TAUZIN. I thank you, Mr. Moir.

The Chair recognizes himself quickly.

First of all, Mr. Eisenach, your report indicated that the most taxed city in America, telephones, is Richmond, Virginia. We heard the chairman talk about how Richmond and other cities literally saw the telephone companies and utility companies as an easy target, because hidden taxes are a lot easier to deal with, to increase, to collect, than taxes that a consumer sees up front. So a great deal of what the chairman and I want to do is simply to do that, Mr. Moir—to put it all on the table, in the hopes that, once people see it all, two things will happen: one, there will be less of a desire to increase those taxes, because they are no longer hidden and people can see them and you have got to explain them in the next town hall meeting; or, second, there will hopefully be a real effort at repeal and at straightening out some of these incredible messes. And are not those two goals served by this legislation?

Mr. EISENACH. Absolutely, sir. I think Chairman Bliley was very eloquent in introducing this legislation, when he talked about it this morning and told us that he, himself, had experienced the fact that, rather than making the case for more government spending directly to the people, governments, instead, levy the tax on telecommunications service providers, regulators then pressure the service provider to bury the tax, and—

Mr. TAUZIN. He is a former mayor telling us that that was the way things were done, as long as you could hide it.

Mr. EISENACH. Yes, sir.

Mr. TAUZIN. And once the change came about that he and the other administrators of that city and other cities in America could not hide it any more, they stopped not raising it. And that is at least a good effect immediately. If this bill passes, right?

Mr. EISENACH. Absolutely. And I would go further to say that I think this is fully consistent with the intent of Congress. You and I have had many conversations about the Telecommunications Act and its imperfections, but it certainly has facilitated a move toward competition, and, in its plain language, it says that we need, in all of these arenas having to do with subsidies, to move from an implicit subsidy regime to an explicit subsidy regime.

Now, the Federal Communications Commission has already lost in court in some of its efforts to continue hiding the subsidies, its efforts to jigger access charges and subscriber line charges, and so forth, to continue hiding the subsidies in that program and keeping them implicit and hidden from consumers.

I think part of the effort here is to have Congressional oversight to ensure the Commission is not successful in other efforts—for example, with the schools and libraries program—to do the same kind of thing.

Mr. TAUZIN. Now, Mr. Breen, you, obviously, represent the view that this is going to be pretty hard for the FCC to do and for companies to follow because of the fact that there are now so many complex subsidy arrangements and so many taxes coming from so many directions that it is going to make the bill not only hard to administer for companies like yours, but for consumers to understand and it is going to be a pretty hard diet to feed the consumers. Give us your take on that.

Mr. BREEN. Well, I think you have accurately characterized it. I mean, you need to start from the perspective that says, on our very best day, you know, living in the world of billing, the best that we can do is not hear from our customers.

Customers do not pick up the phone, call in to the call center and say, “You know, I just want to let you know this is one of the most marvelously formatted bills. It is accurate. The aesthetics of the paper are really wonderful, etc.” Mr. TAUZIN. We do not get those calls, either.

Mr. BREEN. We have that in common. So anything that involves adding to the complexity or the uncertainty associated with what is on that bill, by definition is going to be a bad thing for us.

Mr. TAUZIN. But, you see, here is the problem we have. Here is the tension. One the one hand, what consumers already know about their bill is getting them angry. What they can already see in terms of subsidies is getting them angry.

One of the members of the subcommittee this morning told us that he was being charged for portability but he does not have access to portability systems. Why am I paying that?

I was on a radio talk show in New Orleans, and I had a student call in and say, “Why am I being asked to subsidize my parents on their phone bill?” And when I got home, my mother said, “And, by the way, Billy, I am subsidizing you in DC, too, and I do not like that.” I mean, they already know that there are some crazy subsidies going on and they already complain about how complex their bills are—witness, Ms. Hotka, your retailer who has to hire special people to go through these incredibly complex bills, already.

We are going to give them a lot more information if this bill passes. They are not going to like how complex it looks.

On the other hand, that is reality. If we are ever going to get a solution to all these taxes and all these subsidies and reductions and simplification, do not you think the first thing we have to do is just doggone burden ourselves with the truth?

Mr. BREEN. I think a lot of it, though, comes down, Mr. Chairman, in terms of the way that truth is going to be communicated. And I cannot really comment on how the policy would play out in

other areas, but I know, from a billing standpoint, you are dealing, for the most part, with a lot of legacy systems.

Any time you go in to try to introduce levels of change, the more micro-level those changes become, whether it is text messages, whether it is doing different forms of rate calculations, it opens you up to a higher probability of two things: one, fundamental problems, i.e., the bill just does not get handled properly; and, No. 2, calls from the consumer, which is going to drive cost into your cost centers, and ultimately flow back into the cost that you go back and charge your customer. So that is probably my biggest apprehension.

Mr. TAUZIN. Before I yield, I want to give anybody a chance to comment. The choice is, obviously, that we inundate people with this massive information and get them angry because we have inundated them with all that information. Or do we allow people to keep hiding the truth from them.

Mr. Moir?

Mr. MOIR. Mr. Chairman, your legislation is actually going to solve AT&T's billing problem, because the second you have the disclosure we know what is going to happen. They are not going to be able to do the next pixie. They are going to have to fold it into slick. They are not going to be able to do rural health care and education and library give-aways at our expense.

Once these are out there and everybody sees this long laundry list that he is dreading having to do, what is going to happen? All bloody hell is going to break loose.

Mr. TAUZIN. They might even ask Congress to pass programs like that—

Mr. MOIR. Absolutely.

Mr. TAUZIN. [continuing] instead of letting the FCC do it, right?

Mr. MOIR. And if the FCC is smart, they may eliminate some of them before you go beat them up.

Mr. TAUZIN. Mr. Lassman, quickly, and then I have got to move on.

Mr. LASSMAN. Mr. Chairman, I think it was Louis Brandeis who wrote that sunshine is the best disinfectant, talking about regulation. And I think the 800-pound gorilla in this room that no one has yet mentioned that causes a great shadow and a great deal of fear is that any legislation you pass, especially that deals with billing, will be put in place by the Federal Communications Commission, and their idea of truth in billing, if you look at the docket that they have handled in the last year, is very different than your own, and that should be discussed and part of your deliberations.

Mr. TAUZIN. Amen, brother.

Mr. Green from Texas?

Mr. GREEN. Thank you, Mr. Chairman. I appreciate the chance of this hearing, because, like most of us, we have letters all the time that come in our office about the complexity of the phone bill. One of them is that I have particularly seniors who are asking, for example, the \$5 charge that our long distance carriers charge. Originally, I was under the impression, when that was put in, that was in case they did not use it. It was just a \$5 minimum charge per month, but it was going to be reduced out if you used that, if

you called more than \$5. Now I have some phone bills coming in saying no, that is in addition to whatever you use.

When did that change, or was it ever correctly the original \$5 charge? AT&T, I guess you are the one on the line, but I would like to ask it of MCI and everyone else, I guess.

Is it actually an offset? Is it a monthly fee and it is offset against your long distance, or is it in addition to whatever you call?

Mr. BREEN. No. I think you have, Mr. Green, appropriately stated that the charge you are talking about is typically referred to as an OCP or an optional calling plan charge, and it essentially gives the consumer an opportunity, based on a particular calling plan, to pay a fixed monthly fee in order to entitle them to a certain rate structure with a particular plan, whatever it may be. That really was the intent initially.

Mr. GREEN. But initially I understood from seniors there was a charge for just access to a long distance provider. Is that on the bill? That is currently on it?

Mr. BREEN. Yes.

Mr. GREEN. Okay. And is that charged no matter what? What if that senior makes more than \$5 worth of calls? Is that subtracted out, or is it in addition to whatever calls they make?

Mr. BREEN. My understanding is the way that it is currently set up is that it is purely additive and that it is independent on the amount of usage that a person has during the month.

Mr. GREEN. Okay. So if I pick any long distance provider—AT&T, MCI, Sprint, whatever—that charge will be on the bill?

Mr. BREEN. Yes.

Mr. GREEN. Was it confusion that I had, or maybe some of my constituents had that originally that \$5 charge was just an access fee to have a long distance carrier and it would be reduced out for whatever you call, for whatever you actually called long distance? Was that the original intent and it was changed somewhere along the way? There is a lot of folks out there who believe that is what it was.

Mr. ENGEL. Would the gentleman yield?

Mr. GREEN. Sure.

Mr. ENGEL. My recollection is exactly as my colleague's recollection. We were told initially that that would be a fee instituted for people that do not use service, because it supposedly was expensive for the companies to carry it without anybody utilizing it, and that if the person did make the calls, that the amount of money they spent on the calls would be subtracted from the fee. That was exactly my understanding of it, as well. And we had not discussed this before.

Mr. GREEN. There was no collusion on this.

Mr. ENGEL. No collusion.

Mr. GREEN. We are not that organized.

Mr. ENGEL. That is actually a good question, but I actually want to say that is my impression, that is was told to us.

I yield back.

Mr. GREEN. Do you have a response?

Mr. BREEN. Well, I am not in a position right now to be able to give the chronological set of events that contributed to it. I do know that the genesis of it, though, was to basically be utilized as some

form of an offset, you know, cost-to-cost causation with respect to the combination of local access to the long-distance network to make sure that, in fact, that was applied equitably.

Mr. GREEN. Thank you.

Mr. Chairman, I think that is something that we might need to look at, because I know the complexity of the bill and the intent of the hearing. That was part of it. There is either some misinformation, or that it was an offset and it was a basic charge for having access to a long distance carrier and it would be reduced out if you made \$6 long distance calls in a month, instead of paying \$11 for \$6 worth of long distance calls.

Mr. TAUZIN. I think Mr. Eisenach wanted to respond.

Mr. EISENACH. Well, there are two articles that I brought with me, because I find this is—despite the fact I spent a good bit of my time studying this, I find this is confusing as anyone else. One article is from the “Washington Post” and one is from the “Wall Street Journal.” I would be happy to share these with the subcommittee.

Mr. GREEN. Hopefully, they agree.

Mr. EISENACH. They explain, in layman’s language, what some of these charges are all about.

Just to clarify, I think there may be a confusion here between what is called the carrier line charge, which is the access to the long distance network, and that is charged whether you sign up with a long distance carrier or not. That is typically more in the nature of \$1.50 than the \$5 charge that you are talking about.

I think what you are talking about with the \$5 charge is part of a calling plan that a number of the long distance providers—

Mr. GREEN. I understand that if you have a calling plan. So the \$1.50—I have been told—and I have to look at my own phone bills, I guess—that the actual cost to have a long distance carrier access was about \$5.

Mr. EISENACH. That is not what this article suggests.

Mr. GREEN. Okay.

Mr. EISENACH. And that is not my understanding.

Mr. TAUZIN. Without objection, the two documents will be made part of the record and we will make copies for members of the committee. Thank you, Mr. Eisenach.

Mr. BREEN. Just for further clarification, I think that that is probably where the source of confusion lies. There are, in fact, two separate fees. One is essentially intended to be an access fee to the long distance network. The other one has tended to be associated with a specific calling plan that a customer would sign up for, and then that is a monthly fee that they would pay, independent of the number of calls that they made.

Mr. GREEN. And those two fees are not something that Congress or the FCC set. AT&T or MCI decided that we would have one line here for the \$1.50, if it is \$1.50, and then if I select a certain calling plan I pay \$5 or \$10 or whatever to get \$0.10 a minute, or whatever the market says at a given time. So that was something that the company decided, the long distance carriers decided?

Mr. EISENACH. As I understand the carrier line charge, that is something that is approved by, or I would argue mandated by the Federal Communications Commission, so that is part of the regulated billing process.

Mr. GREEN. If the gentleman will yield, the bill we are talking about would separate that which is government mandated from that which is either charged by the companies or voluntarily accepted by the customer. So I think one of the reasons for this bill is to end some of that confusion.

Mr. GREEN. Yes. I agree. And that is why I think the bill is worthwhile.

I also think we are all guilty of it, though, whether it is Congress, whether it is the FCC, or maybe a long distance carrier saying, "Well, we want to break it out," and we will go to the FCC, and the FCC gives you the authority to break out that \$1.50. So it is government-mandated, but it was at the request of the long distance carriers.

Again, those balls are in the air, and all of us I think are throwing them up there.

Ms. MCCARTHY. Would the gentleman yield?

Mr. TAUZIN. The gentleman has an additional minute.

Mr. GREEN. Thank you, Mr. Chairman.

Ms. MCCARTHY. Gentlemen, I really appreciate your line of inquiry, and I wanted to follow up and find out, is the carrier line charge—I understand that access fee is required, but is the calling plan required?

Mr. BREEN. The calling plan is not required. It is based upon the calling plan that a customer would sign up for.

Ms. MCCARTHY. What if a customer chooses not to have a calling plan but will pay the access fee, the carrier line charge, as required?

Mr. BREEN. Those customers, I think, that you are describing would be in a non-pick status, where they would not be picked, for example, to an AT&T or an MCI, and they would not have a calling plan with us, per se, and they would reach our network through what we refer to as "dial around," and would become casual usage and would not pay that calling plan or OCP charge that I was talking about.

Ms. MCCARTHY. I have had a lot of inquiries, particularly from seniors, who, with their MasterCard or VISA or cell phone do not want to pay that \$5 or \$6 fee each month because they do not use that stationary phone to make long distance calls, or they just do not make long distance calls. They might use a credit card.

So you are telling me they do not have to pay that? Because we have been giving out bad information in my office, then.

In this day and age of cell phones, a lot of people are just getting rid of their phones and using their cell phone for everything, or they are using a credit card that gives them airplane mileage or some other benefit when they make those calls.

Mr. BREEN. I understand. Honestly, short of seeing the individual bill and account and going through it, I just do not want to comment further on it, because I just think I might contribute to further misleading you.

Ms. MCCARTHY. Mr. Chairman, if someone on the panel can give me a sense of the rule or regulation, could they speak?

Mr. TAUZIN. Mr. Moir, do you know?

Mr. MOIR. Thank you, Mr. Chairman.

The line charge that has been discussed was coined back in May 1997. It is called the "pixie charge." The local phone company—and it varies. You know, for single line business or the first line at home, it is one charge. For the second line and additional lines in homes, it is about a dollar higher. And then, for those of us who are at work, it is considerably higher. In fact, it varies from State to State, but the industry average is about \$4.60 or \$4.70 a line. Theoretically, it is supposed to be coming down, but it actually went up the last year.

Mr. TAUZIN. That is just the line charge?

Mr. MOIR. That is just that. And now——

Mr. TAUZIN. What the gentlelady is getting at is the \$5 plan charge.

Mr. MOIR. I am getting there. Right. So what happens is those charges are billed by the local phone company, these pixie charges, to your designated, or what we call or what they call "pre-subscribed long distance company," who then, of course, bills it back to the customer on their bills.

Now, in the very situation you have raised, you can choose to not designate a long distance company for that line or actually, you know, if you have five lines at home, you can have long distance companies for some lines and not for others.

For any line you do not designate or pre-subscribe a long distance company, then the local phone company will bill you directly for that line charge, that pixie, but then all of these fees that you are getting from long distance companies and various plans will not occur on your bill, and then you will use, as the gentleman mentioned, a dial-around or some other way of getting to long distance.

Mr. TAUZIN. So the answer, in short, is that you can avoid these charges if you want, simply by not choosing a long distance carrier and using these other systems when you need long distance.

Mr. MOIR. But you will still have to pay the pixie charge, but you will avoid the minimums.

Ms. MCCARTHY. That is that line charge. That is that minimal dollar-something.

Mr. MOIR. Well, but if you have two lines it is more than a dollar.

Ms. MCCARTHY. I understand.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, ma'am.

The gentleman from Oklahoma, Mr. Largent.

Mr. LARGENT. While we are on this subject, I want to go to this pixie charge. If you are on this little bill, it has current line charge or carrier line charge, \$1.51. That is what we are talking about, right, at the top?

Mr. MOIR. For the first line.

Mr. LARGENT. Right. Does it make any sense to charge anybody a carrier line charge who does not have a long distance provider? Anyone?

Mr. LASSMAN. Mr. Largent, what you have put your finger on is, in common sense terms, no. It does not. However, rates to pay for our underlying telecommunications network are regulated, and the

cross-subsidies involved in that regulation require that somebody has to pay for the upkeep.

What you have identified, that situation, is how we take from consumers to pay for that.

Mr. LARGENT. Would the same be true, then, for this local number portability surcharge over here that is on my bill, as well, when I do not have the ability to switch local providers? It does not make any sense.

And the reason this is an issue to me, I mean, not only am I being charged for number portability when I do not have a choice of local providers, I have a son who is a young married guy going to college full time, working a part-time job 30 hours a week. He does not have a long distance provider. He cannot afford long distance, so he just does not have a provider, but he is still getting charged this carrier line charge.

Mr. MOIR. I would just like to make a slight correction or disagreement with what was just said here by my colleague to the right.

When the pixie charge was being debated and decided in May 1997, so we could get to start seeing—

Mr. LARGENT. By whom?

Mr. MOIR. By the FCC.

Mr. LARGENT. All right.

Mr. MOIR. The FCC that you all have jurisdiction over here.

Mr. LARGENT. Yes. Sometimes.

Mr. MOIR. Yes, even though they do not always listen. That FCC, then chaired by your good friend Reed Hunt, that FCC decided—

Mr. TAUZIN. Wait. Is he the guy that wrote a book that said he was just taking orders?

Mr. MOIR. Something like that. Although I thought the FCC was an independent regulatory agency under the commerce clause and directly responsible to the Congress, but what do I know.

Or at least Commerce Committees used to—

Mr. LARGENT. Mr. Moir, you are using my time.

Mr. MOIR. All right. The pixie charge came out of access moneys, and the idea was to take—and they were saying these were fixed costs. What we were saying, before you add that as a line item and take it out of access charges, which is being billed on a usage-sensitive basis, we want you, the FCC, to figure out what the true cost is of that local loop from your customer premise to the FCC.

States have rate cases all the time. The FCC, in its entire history, going back to 1934, has never done a cost of service proceeding. Back home, in your State and your State, they do it all the time. The FCC has never done that and refused to do that. And they just took an arbitrary amount of money and dumped it there and dumped most of it on business users.

Our average one, if that was a business bill, would be \$4.60 or \$4.70 for the same figure.

They just did that without any cost justification whatsoever.

So the more you can highlight these issues, the more they are going to, at the FCC, have to cost justify these baloney numbers.

Mr. LARGENT. Ms. Hotka, I had a question for you, because in your testimony you said, “While most analysts acknowledge that rates for long distance and data services have fallen, bills generally

are not." That is true for my house. I just have been doing my taxes and figuring my tax bill, and my communication bill, telephone bills are \$300 a month at my house. That is my personal bill. Whereas I used to get one phone bill that was local and long distance, I now get a local phone bill from Southwestern Bell, I get a cell phone—I used to get two cell phone bills—long distance bill, and now an ISP. So I have got at least four different bills that come in on a monthly basis, and my bills have gone up.

But now I have got Internet in my kitchen, I have got three cell phones, to my knowledge, and so there is a lot of other things that I get to do. And I have a fax, as well, in my house. So there is a lot of things that the business community and individuals like myself are getting to do and have access to today that we did not have access to years ago when our bills were much smaller.

So I am not disagreeing that the cost of regulation is a burden to all of us, but what I am saying is that I think some of the reason that my personal phone bill is going up is my wife cannot live without a cell phone, we have to have a fax, and we are now on the Internet, so there is a lot of other goods that we are receiving that are causing our bills to go up, as well as the regulatory burden.

Would you agree with that?

Ms. HOTKA. Yes. There is no question. And advances in technology are doing more to advance retailing at this stage than anything. But, at the same time, frankly, when I made my phone calls to my Telecommunication Committee members I anticipated that the complaints that I would get would echo the questions that you have had today, "What does this mean? How does this work? Where does this money go?" I thought that those comments would be made by smaller companies.

This stuff is not understood by Fortune 100 companies. It is just too complicated. It makes it very difficult for them to do cost/benefit analysis on different kinds of telecommunication technologies.

When Mr. Tauzin talks about a flood of information, that is good. We would like to have a flood of information. It would help the people who are tasked with analyzing this stuff make much better decisions.

Right now, frankly, to some degree, they are simply retreating from it and saying, "I do not get this stuff." Well, they are going to have to get this stuff. It is what is going to make them competitive in a global economy.

Mr. LARGENT. Yes.

Ms. HOTKA. And so I think any difficulty you have got at home plowing through your thick bill, just imagine how awful that is for companies which are in many nations. It is very difficult. And so anything we can achieve here which is going to make this easier for them to understand is going to help them use these technologies that you mentioned more efficiently.

Mr. LARGENT. Yes.

Mr. Chairman, I understand we have a vote on the floor, so I yield back.

Mr. TAUZIN. I thank the gentleman.

Mr. Wynn?

Mr. WYNN. Thank you, Mr. Chairman.

Mr. Breen, I believe you are with AT&T?

Mr. BREEN. Yes.

Mr. WYNN. The question I have is: why do some companies collect the e-rate subsidy, which appears to be a favorite whipping boy today, on a flat rate and some use a percentage of the customer's bill? Also, at the same time, how does AT&T collect it?

Mr. BREEN. I really cannot answer that at this time. I am not absolutely sure on that one, but we can get back to you on that.

Mr. WYNN. I would appreciate that, because there is some evidence that there is a discrepancy between the 5.7 percent that the FCC collects for e-rate and what is reported in the "Wall Street Journal" at about 8.6 percent, and so obviously there is a concern about what happens to the difference if, in fact, this is true. So if you would provide that information, it would be very helpful.

Mr. BREEN. Understood. We will.

Mr. TAUZIN. Mr. Lassman may have an answer.

Mr. LASSMAN. Mr. Wynn, to clarify that, the pricing structures that we see from the private companies in their interaction with consumers mirrors some of the decisions we made 50 and 60 and 70 years ago about regulation, and that is that consumers are more important than businesses. That was taken as an assumption.

Today, there are flat rate universal service fees given to consumers, residential lines, and percentage-based universal service fees applied to business lines.

So the answer, unfortunately, to your question is both.

Mr. WYNN. Are you prepared to make that representation on behalf of the long distance companies? Not to in any way suggest that you are incorrect, but that is a pretty broad statement on a pretty critical issue, and if AT&T is not sure how they do it, I have to be a little concerned that an activist group might not have the latest information.

Mr. LASSMAN. I am not speaking for AT&T or any of the other 450-plus long distance companies in America, but I am trying to explain to you at least one distinction about how those bills—

Mr. WYNN. So it is your understanding then that no consumers are being charged a percentage rate.

Mr. LASSMAN. Business consumers are. Residential consumers—

Mr. WYNN. No residential consumers are being charged a percentage rate?

Mr. LASSMAN. To my knowledge, they are not. Like I say, I cannot speak for each of them.

Mr. WYNN. We will try to follow up on that, but I thank you. That was very helpful.

Mr. Chairman, in view of the vote, that is all for me.

Mr. TAUZIN. I thank you.

The record will stay open for 30 days. I would ask you, please, if you have further comments on the Upton bill, on some of the testimony Mr. Norquist gave about what is going to happen when the meeting happens in Texas, any further supplements you would like to give us—I know you are good at that—we would appreciate it very much.

Thank you for your testimony today. The hearing stands adjourned.

[Whereupon, at 12:09 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional material submitted for the record follows:]

AMERICAN LIBRARY ASSOCIATION  
March 9, 2000

Chairman W.J. TAUZIN  
*Subcommittee on Telecommunications, Trade, and Consumer Protection*  
*House Committee on Commerce*  
*Washington, DC 20515-6115*

DEAR CHAIRMAN TAUZIN: On behalf of the American Library Association's 59,000 members, I applaud the committee's efforts to give American consumers of telecommunications more information in order to ensure "truth in billing" and to increase overall understanding of a complex billing system. The debate you are undertaking on bills H.R. 3011 and H.R. 3022 is a laudable activity, especially if the outcome of your efforts provides the whole picture to consumers.

ALA has long been a supporter of openness and access to information in the government process and in the marketplace. Librarians are in the daily business of providing full and accurate information to consumers. However, we would not want to see this concept misused to discredit a program that has provided benefits to consumers through schools and libraries in hundreds of communities in every state. Just as we provide our customers with accurate information that is not misleading, we expect Congress to require nothing different from telecommunications providers.

Eighty-seven percent of American voters favor discounts for schools and libraries in rural and high poverty areas so they have the same affordable access and availability to technology as schools and libraries in wealthy areas. These voters are telephone customers and they deserve a greater understanding of all the subsidies within the telephone system, and how these subsidies are becoming more explicit as a result of the deregulation provided for in the Telecommunications Act of 1996.

We look forward to working with you and other stakeholders to enhance communication on this complex subject. Please let us know if we can provide additional information or comment.

Sincerely,

EMILY SHEKETOFF  
*Executive Director, Washington Office*  
*American Library Association*

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PREPARED STATEMENT OF ROY NEEL, PRESIDENT AND CEO, UNITED STATES  
TELECOM ASSOCIATION

Thank you very much, Mr. Chairman, for giving me the opportunity to submit testimony for this hearing with respect to H.R. 3011, the "Truth in Telephone Billing Act of 1999," and H.R. 3022, the "Rest of the Truth in Telephone Billing Act of 1999." This hearing is both timely and important. As the President and CEO of the United States Telecom Association (USTA), I am submitting testimony today on behalf of over 1100 local telephone companies that we represent throughout the United States. Our members send out millions of telephone bills every month. These companies are already regulated with respect to their telephone bills, being subject to both state and federal regulations and/or mandatory guidelines. To give you an example of this, the Federal Communications Commission (FCC) just last year gave us new and additional Truth-in-Billing requirements—which it called "*guidelines*"—to follow. Given this experience, I would say to you that as a general proposition, government regulation of billing content is not a sound legislative or public policy goal, especially in a competitive environment.

I understand and appreciate the billing issue that prompts your legislation. What I hope is that you will stop today to consider the fact that the statutory requirements that you would place on carriers may actually cause more consumer concision than H.R. 3011 or H.R. 3022 seek to cure. Phone bills are already long enough as it is, and consumers do not want to be confronted with even lengthier bills, containing detailed explanations of universal service charges and other charges. The entire arena of universal service, for instance, is extremely complex even to professionals in the telecommunications industry. Both pieces of legislation, if enacted, would require telephone bills that would raise even more questions for consumers rather than answering them. USTA believes that a customer's phone bill is not the appropriate place to explain contributions to the universal service fund pursuant to Section 254 or any other governmental mechanism, fund, tax or program.

The FCC just last May released its First Report and Order and Notice of Proposed Rulemaking (FCC Docket 98-170) *In the Matter of Truth-in-Billing and Billing Format*. The FCC adopted in that proceeding binding Truth-in-Billing guidelines for telecommunications carriers. The purpose of these guidelines was to provide consumers with basic information to make informed choices and to protect them from unscrupulous competitors. In this proceeding, the FCC also looked at the type of issues that H.R. 3011 and H.R. 3022 contemplate, with the FCC concluding that charges associated with federal regulatory actions, such as universal service, should be identified through a standard and uniform label. The FCC issued a Further Notice of Proposed Rulemaking with respect to the specific labels to be used. My message here is not to salute the FCC's actions but to point out to you that both the FCC and the states are actively engaged with respect to this Truth-in-Billing issue, even though in many instances we find their requirements examples of regulatory overkill. Nonetheless, this is not an area that the regulators are treating with benign neglect.

Added to the above, USTA believes that H.R. 3011 and H.R. 3022, if either were to be enacted, would be costly for telephone companies to implement. Extreme expense would be associated with changing existing billing systems to provide for the lengthy descriptions that either piece of legislation calls for. As drafted, these obligations would extend to "any other governmental mechanism, fund, tax or program." Read literally, telephone bills would be required to have additional line items for the subscriber's share of every tax or fee that a carrier pays (e.g., income taxes, rights of way fees, number portability, etc.). In the competitive environment mandated by the Telecommunications Act of 1996 ('96 Act), these costly (and, again, customer-confusing) regulatory requirements are ones we are seeking to avoid. No longer in a monopoly era, telephone companies simply cannot absorb the significant costs of such requirements without resultant negative economic consequences.

The problem you are trying to solve with H.R. 3011 and H.R. 3022 is itself the by-product of the '96 Act and the changes wrought by Section 254, which Congress added because the prior monopoly scheme of universal service could no longer be sustained in a competitive environment. Regulatory costs are true costs, something USTA believes the '96 Act sought to eliminate and/or supplant through increased competition.

Finally, telephone companies regard their customer billing as a powerful, competitive marketing tool which allows them to differentiate their services from other providers. Aside from raising obvious First Amendment concerns, compelled government speech greatly disrupts the manner in which companies communicate with, and compete for, customers. Moreover, though the phone bill was "*deregulated*" nearly 15 years ago, increasing state and federal mandates, along with new legislative proposals (as seen in H.R. 3011 and H.R. 3022), signal a disturbing trend toward reregulating the phone bill as a common carrier service. In a competitive environment, this circumstance must be strenuously avoided.

In closing, there is no existing vacuum that Congress needs to fill by legislative mandate. USTA's members have a strong self-interest in maintaining the integrity of their phone bills and in making sure that customers can clearly understand and read them. Though the concerns Congress seeks to address within H.R. 3011 and H.R. 3022 are legitimate, USTA respectfully asks that Congress allow our companies, and the marketplace in general, to communicate to their customers free from further law or resulting regulation.