

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matters of</b>	)	
	)	
<b>Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities</b>	)	<b>CG Docket No. 03-123</b>
	)	
<b>Truth-in-Billing and Billing Format</b>	)	<b>CG Docket No. 98-170</b>
	)	
<b>ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions</b>	)	
	)	

**REPLY COMMENTS OF  
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its reply to comments filed in response to the Consumer and Governmental Affairs Bureau’s (Bureau) Public Notice seeking comment on ITTA’s petition for declaratory ruling that it is and always has been permissible for a carrier recovering Telecommunications Relay Services (TRS) Fund contributions via an end user cost recovery fee line item (or the like) on customers’ bills to include TRS, among other references, in the line item description.<sup>1</sup>

**I. DISCUSSION**

Of the five comments filed, four unequivocally support the Petition.<sup>2</sup> The lone outlier was filed by David C. Wallden, Managing Partner of Kairos Partners, LLC, on behalf of an ad

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<sup>1</sup>*Consumer and Governmental Affairs Bureau Seeks Comment on ITTA Petition for Declaratory Ruling*, Public Notice, DA 18-516 (CGB May 18, 2018); ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions, CG Docket Nos. 03-123 and 98-170 (filed May 8, 2018) (Petition).

<sup>2</sup> See separate comments of AT&T, CenturyLink, CTIA, and USTelecom, all filed June 18, 2018.

hoc grouping of enterprise users.<sup>3</sup> The Kairos Partners Commenters assert that the Petition “presupposes that the Commission has ruled that carriers may recover TRS Fund contributions as a specific line item” and that prior Commission rulings hold that “carriers are not permitted to recover TRS Fund contributions . . . even as part of a specifically identified charge on customers’ bills.”<sup>4</sup> Every argument subsequently made by the Kairos Partners Commenters then descends from these mangled readings of the Petition and Commission precedent. The Commission should reject the Kairos Partners Comments outright.

As an initial matter, the Petition clearly acknowledges the Commission’s three-decade-old proscription of a “specifically identified charge on subscribers’ lines” for TRS costs,<sup>5</sup> illustrates how the Commission has applied the prohibition,<sup>6</sup> and demonstrates how, “so long as a line item description includes TRS among at least one other component, it is not a ‘specifically identified charge.’”<sup>7</sup> Far from presupposing that the Commission has ruled that carriers may recover TRS costs as a specific line item, the Petition repeatedly references the proscription, but explains why the requested ruling is not and never has been precluded by it. As the Petition states, “a line item description that includes TRS among at least one other component remains faithful to whatever reason the Commission had nearly three decades ago for prohibiting specifically identified TRS line items.”<sup>8</sup>

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<sup>3</sup> Comments of the Enterprise Users Commenters (June 18, 2018) (Kairos Partners Comments, Kairos Partners Commenters).

<sup>4</sup> *Id.* at 2 (emphases in original).

<sup>5</sup> See Petition at 2 (quoting *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4664, para. 34 (1991) (*TRS I*)); see also *id.* at 4-5.

<sup>6</sup> See *id.* at 4.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 6. In this regard, the Kairos Partners Comments’ contention that the Petition “read[s] the prohibition on TRS line items out of existence” and thereby violates “canons of statutory interpretation” is an egregious misfire. See Kairos Partners Comments at 7-8.

In addition, the Kairos Partners Comments’ emphasis that “carriers are not permitted to recover TRS Fund contributions . . . even as part of a specifically identified charge on customers’ bills”<sup>9</sup> is based on a completely misleading and out-of-context reading of Commission precedent. The Kairos Partners Commenters extract this reference from a footnote in a Further Notice of Proposed Rulemaking seeking comment on potential reforms to the contribution methodology applicable to the federal universal service fund (USF).<sup>10</sup> The specific proposal being discussed was an approach to limit carrier flexibility to recover their universal service contributions from end users through a line item or “surcharge” on end-user bills, whereby carriers “would not be permitted to represent any line item on end-user customer bills as a federal universal service charge.”<sup>11</sup> This is immediately followed by the above-referenced footnote, which states: “We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users’ lines.”<sup>12</sup>

In context, the reference to TRS line items was clearly intended to convey an analogy between the USF contributions proposal and the prohibition on specific TRS line items. It also cited a TRS order from 1993, which itself was a virtual word-for-word reiteration of the proscription announced in *TRS I*.<sup>13</sup> In other words, the context and cited authority manifestly

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<sup>9</sup> Kairos Partners Comments at 2 (emphasis in original).

<sup>10</sup> *Universal Service Contribution Methodology; A National Broadband Pan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5490, para. 394 n.617 (2012).

<sup>11</sup> *Id.* at para. 394.

<sup>12</sup> *Id.* at para. 394 n.617.

<sup>13</sup> *See id.* (citing *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, para. 22 (1993) (*TRS II*)). *Compare TRS II*, 8 FCC Rcd 1806, para. 22 (“In order to provide universal telephone services to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone service and not as a specifically identified charge on end user’s lines.”) with *TRS I*, 6 FCC Rcd at 4664, para. 34 (“in order to provide universal telephone services to TRS users as mandated by the ADA, carriers are required

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indicate that the reference to TRS costs “as part of” a specifically identified charge was intended in lieu of, for instance, “via” a specifically identified charge. Moreover, the Kairos Partners Comments’ placement of emphasis on “as part of” also ignores the Commission’s references to a “specifically” identified charge which, as the Petition demonstrates, is not the case with a charge that identifies TRS as one among other descriptions.<sup>14</sup> If anything, against the backdrop of the Commission’s proscription of specific TRS line items, its subsequent acknowledgement that Video Relay Service costs may be passed on to consumers as a surcharge on their monthly service bills<sup>15</sup> is recognition that it is permissible for carriers to recover TRS costs “as part of” a line item description that includes other components. In sum, the Kairos Partners Commenters’ reading of Commission precedent as prohibiting TRS cost recovery as part of a line item description is either wildly off-base or disingenuous. The Commission should disregard it.

As noted above, all of the Kairos Partners Commenters’ other arguments rely on their tortured readings of the Petition and Commission precedent, and layer on new ones. ITTA addresses a sample of them.

*The Second Truth-in-Billing Order does not prohibit inclusion of TRS in a line item description on customers’ bills.* In the *Second Truth-in-Billing Order*, the Commission reiterated that carriers are not prohibited *per se* under the Commission’s Truth-in-Billing rules or the Communications Act of 1934, as amended (Act), from including non-misleading line items on

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to recover interstate TRS costs as part of the cost of interstate telephone service and not as a specifically identified charge on subscribers’ lines”). As AT&T observes, the only difference between these two proclamations was the *TRS II* replacement of “subscribers” with “end user’s”. See AT&T Comments at 3 n.5.

<sup>14</sup> See Petition at 5-6. See also AT&T Comments at 7; CTIA Comments at 4.

<sup>15</sup> See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367, 17409, para. 103 n.209 (2011).

telephone bills.<sup>16</sup> In an accompanying footnote, the Commission “note[d] that this finding does not alter the role of any other specific prohibition or restriction on the use of line items,” and gave as a specific example that the “Commission has prohibited line items for interstate [TRS] costs.”<sup>17</sup> In support of the footnote’s example, the Commission cited *TRS I*, *TRS II*, as well as a 2004 TRS order which itself cited *TRS I* and *TRS II*,<sup>18</sup> and, as discussed above,<sup>19</sup> these collective sources do nothing more than prohibit “a specifically identified charge” for TRS on subscribers’ or end-users’ lines.

Yet, somehow from this very limited language and restatement of *TRS I*, the Kairos Partners Comments make the Knieval-esque leap that in the *Second Truth-in-Billing Order*, the Commission “answered . . . squarely in the negative” the question of whether, “in light of the Truth in Billing rules . . . carriers [are] permitted to include TRS in a line item description on customers’ bills.”<sup>20</sup> Nowhere in *TRS I* or any of its progeny did the Commission expand the proscription of a “specifically identified charge” for TRS costs to line item descriptions that include TRS among at least one other component.<sup>21</sup> In addition, because the *Second Truth-in-*

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<sup>16</sup> See *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6459, para. 23 (2005) (*Second Truth-in-Billing Order*), *rev’d on other grounds sub nom. NASUCA v. FCC*, 457 F.3d 1238 (11<sup>th</sup> Cir. 2006).

<sup>17</sup> *Id.* at n.64.

<sup>18</sup> See *id.*; see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475 (2004) (reiterating that carriers obligated to contribute to the TRS Fund “may not specifically identify a charge on their consumers’ bill as one for relay services”).

<sup>19</sup> See *supra* at 3-4.

<sup>20</sup> Kairos Partners Comments at 5.

<sup>21</sup> *Contra id.* at 7 (“the FCC has already addressed the application of the Truth-in-Billing rules to TRS charges and held that the prohibition on TRS line items trumps permission to describe these charges on customers’ bills”), 8 (“TRS cannot be ‘described’ or ‘referenced’ in a line item description on customers’ bills because the TRS charge should not appear on the bill in the first

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*Billing Order* did not say what the Kairos Partners Comments purport it did, the comments' contentions that the Petition is procedurally infirm, because it should have been a petition for rulemaking<sup>22</sup> or was an untimely petition for reconsideration of the *Second Truth-in-Billing Order*,<sup>23</sup> are altogether flawed.

*The FCC Consumer Guide's inclusion of both interstate and intrastate charges does not diminish its value in supporting the Petition.* The Petition cites as support the FCC website's Consumer Guide that identifies "911, LNP, and TRS charges" as "typical charges" that consumers may find on their wireline and wireless telephone bills.<sup>24</sup> The Kairos Partners Comments suggest that this is inapposite because the Consumer Guide contains descriptions of both intrastate and interstate charges.<sup>25</sup> This observation, however, is of no moment.

A 911 charge is likely state or local, an LNP charge would be attributable to federal fees to support local number portability administration, and the TRS charge, described in the Consumer Guide as "help[ing] pay for relay services that transmit and translate calls for people with hearing or speech disabilities," could refer to interstate TRS under the Commission's jurisdiction or intrastate TRS under state jurisdiction. In other words, the charges described in that portion of the Consumer Guide are a mix of federal and state/local charges. Notably, the

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place"). In fact, the very point of the Petition is that the Commission never has made the pronouncements that the Kairos Partners Comments imagine.

<sup>22</sup> See Kairos Partners Comments at 3.

<sup>23</sup> See *id.* at 5.

<sup>24</sup> See Petition at 5, Appendix (citing and reproducing FCC, Consumer Guides, Understanding Your Telephone Bill (Feb. 16, 2018), <https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill> (Typical Charges tab, "Understanding Typical Charges on Phone Bills") (Consumer Guide)). See also AT&T Comments at 9-10; CTIA Comments at 5; USTelecom Comments at 3-4 ("Perhaps most notably . . . the Commission includes as an example in its consumer guidance materials a line item description that specifically mentions TRS. It would be incongruous for the Commission to recognize on its website that '911, LNP, and TRS charges' is a typical charge, and also find that a customer bill may not include TRS among other references in a line item description.").

<sup>25</sup> See Kairos Partners Comments at 11.

Consumer Guide does not specify that the TRS charge is only permissible for a state TRS fund. Moreover, this consumer guide was last updated on June 7, 2018,<sup>26</sup> nearly a month following filing of the Petition. If the Commission thought ITTA’s invocation of the Consumer Guide was erroneous, it could have updated the Consumer Guide to specify that the TRS charge it describes is only permissible for intrastate TRS.<sup>27</sup>

Finally, it is not clear what the Kairos Partners Commenters are seeking to accomplish in opposing the Petition. They describe themselves as “business entities that purchase significant quantities of telecommunications services, [who] are affected by any changes to the Commission’s rules governing the collection of taxes and fees, including the TRS fees that are the subject of the *ITTA Petition*.”<sup>28</sup> Moreover, the “Kairos Partners’ mission is to eliminate erroneous telecom taxes, fees, and surcharges . . . [through] research[ing] and identif[ying] telecom tax reduction opportunities . . . resulting in significant cost savings to [its] clients.”<sup>29</sup> Regardless of whether TRS costs are recovered by carriers from their customers as part of their rates or via a non-specifically identified charge on their customers’ bills – both of which, as the Petition demonstrates, are fully permissible under the statute and Commission guidelines<sup>30</sup> -- the fact remains that Section 225(d)(3)(B) of the Act requires that interstate TRS costs “shall be

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<sup>26</sup> See FCC, Consumer Guides, Understanding Your Telephone Bill (June 7, 2018), <https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill> (Typical Charges tab, “Understanding Typical Charges on Phone Bills”).

<sup>27</sup> The Bureau oversees TRS, Truth-in-Billing issues, and the Commission’s consumer publications. See 47 CFR § 0.141.

<sup>28</sup> Kairos Partners Comments at 1.

<sup>29</sup> Kairos Partners, About Us, <http://kairospartnersllc.net/about-us/> (last visited July 2, 2018). See also *id.* (“KAIROS Moment . . . in the telecommunications industry, there are unique opportunities that, if acted upon, can provide significant savings to large users of telecommunications services. However, as the word Kairos describes, these opportunities, which are often characterized by short durations, must be seized, or they will be lost.”).

<sup>30</sup> See, e.g., Petition at 5-6.

recovered from all subscribers for every interstate service.”<sup>31</sup> Thus, even if there was merit to the underlying assertions of the Kairos Partners Comments – which there is not – it would not lead to any relief for the Kairos Partners Commenters from contributing to the TRS Fund.

## II. CONCLUSION

All but one of the commenters on the Petition properly recognize that the Commission’s precedents and guidance, as well as widespread industry practice, fully support the requested declaratory ruling that it is and always has been permissible for a carrier recovering TRS Fund contributions via an end user cost recovery fee line item (or the like) on customers’ bills to include TRS, among other references, in the line item description. The arguments proffered in the lone opposing comments are fundamentally divorced from the realities of the Petition’s request, Commission precedent, and actual, longstanding carrier billing practices. They should be summarily discarded, and the Commission, or the Bureau on delegated authority, should expeditiously issue the requested declaratory ruling.

Respectfully submitted,

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<sup>31</sup> 47 U.S.C. § 225(d)(3)(B).