FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.  20554

In the Matter of )

Petition For Forbearance Pursuant to ) WC Docket No. 13-______
47 U.S.C. § 160 From Enforcement of )
The TRS Line Item Prohibition )

PETITION FOR FORBEARANCE

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In the Matter of

Petition For Forbearance Pursuant to 47 U.S.C. § 160 From Enforcement of The TRS Line Item Prohibition

PETITION FOR FORBEARANCE

COMPTEL, through undersigned counsel, and pursuant to Section 10 of the Communications Act, 47 U.S.C. § 160, and Sections 1.53 and 1.54 of the Commission’s Rules, hereby respectfully requests that the Commission forbear from enforcing its uncodified “rule” or requirement that prohibits interstate telecommunications providers from passing through contributions to the Telecommunications Relay Service (“TRS”) Fund to their end users as separately identified line items. The Commission must grant forbearance because (1) enforcement of the line item prohibition is not necessary to ensure that charges, practices, classifications or regulations are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement of the line item prohibition is not necessary to protect consumers; and (3) forbearance from enforcement of the line item prohibition would be consistent with the public interest.1

I. Background and Summary

The Americans with Disabilities Act of 1990 (the “ADA”) amended the Communications Act of 1934 to establish a federal requirement that interstate and intrastate communications

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1 Section 1.54 of the Commission’s rules provides that Petitions for Forbearance must identify “[e]ach statutory provision, rule, or requirement from which forbearance is sought.” Appendix A lists the various Commission orders that reference the line item prohibition.
services be made available to consumers with speech and hearing disabilities that are functionally equivalent to the services made available to consumers without such disabilities.\textsuperscript{2} The availability of TRS services has benefitted all consumers by facilitating communications on our nation’s networks among all members of society. COMPTEL and its members support the TRS program, the Commission’s efforts to ensure that functionally equivalent communications services are available, and the Commission’s recent proceedings to reform and modernize the services supported by the program.\textsuperscript{3}

The ADA requires that the costs caused by the interstate portion of TRS be recovered from all subscribers for every interstate service and the costs caused by intrastate telecommunications relay services be recovered from the intrastate jurisdiction.\textsuperscript{4} Further, the ADA mandates that TRS users pay rates that are no greater than the rates paid for functionally equivalent voice communication services.\textsuperscript{5} The ADA does not provide specific instructions on the means by which interstate costs are to be recovered from subscribers and the Conference Report on the legislation states that the FCC “is granted broad discretion to structure a cost-recovery mechanism to determine the most appropriate method of recovery of interstate costs.”\textsuperscript{6}

\textsuperscript{2} 47 U.S.C. § 225.


\textsuperscript{4} Id. § 225(d)(3)(B).

\textsuperscript{5} Id. § 225(d)(1)(D).

\textsuperscript{6} H.R. Report No. 101-485, Part 4, Title IV Telecommunications, Regulations, 101st Cong., 2d Sess. (1990). In contrast, the Senate’s version of the bill prohibited the Commission from
The Commission’s regulations adopted to implement the ADA provide that “[c]osts caused by interstate TRS shall be recovered from all subscribers for every interstate service, using a shared-funding cost recovery mechanism” and that “costs caused by providing interstate and intrastate VRS shall be recovered from all subscribers for every interstate service using a shared-funding cost recovery mechanism” (emphasis added). The regulations also mandate that every carrier providing interstate telecommunications, including VoIP services, shall contribute to the TRS Fund on the basis of interstate end-user revenues. Thus, Congress has directed that end users of interstate services bear the costs of providing interstate TRS service, and the Commission has directed interstate telecommunications carriers to contribute to the TRS Fund that pays the costs of providing TRS service on the basis of their interstate end-user revenues.

allowing interstate TRS cost recovery though a fixed monthly charge on the bills of residential customers. The Senate Committee’s Report on this prohibition stated, “[w]hile states are granted the maximum latitude to determine the method of cost recovery for intrastate relay services provided under their jurisdiction, the FCC is specifically prohibited from allowing the imposition of a flat monthly charge on residential end users to recover the costs of providing interstate telecommunications relay service. It is the Committee’s expectation that the costs of providing telecommunications relay service will be considered a legitimate cost of doing business and therefore a recoverable expense through the regulatory ratemaking process.” S. Report No. 101-116, Title IV Telecommunications Relay Services, Background, 101st Cong., 2d Sess. (1989). The Senate’s flat monthly end user charge prohibition was not adopted. The House Conference Report explained that “[t]he Committee amendment struck the prohibition on end-user charges that was contained in the introduced legislation. It is the Committees [sic] intent that the Commission have broad discretion in promulgating rules under the Act to determine the most appropriate method to ensure the recovery of interstate and intrastate costs.” H.R. Report No. 101-485, Title IV Telecommunications, Regulations.

7 47 C.F.R. § 64.604(c)(5)(ii).

8 47 C.F.R. § 64.604(c)(5)(iii)(A).
Although interstate providers have been mandated by Congress and the Commission’s rules to recover the costs of providing TRS service – i.e., their contributions to the TRS Fund9 – from their end users, the Commission has put into place an uncodified prohibition that bars providers from identifying TRS contributions as a specifically identified separate line item on their customer bills. In its First TRS Report and Order, the FCC stated that “in order to provide universal telephone service 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 subscribers’ lines.”10

This line item prohibition is inconsistent with the Commission’s truth-in-billing rules. The Commission has explained that its truth-in-billing rules are “intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.”11 This goal is met when consumers can distinguish between the costs imposed by regulatory requirements and the prices

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10 In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Report and Request for Comments, 6 FCC Rcd 4657 at ¶34 (1991). The Commission reiterated this prohibition in its Second Report and Order when it adopted the shared-funding cost recovery mechanism that is in use today, pursuant to which all carriers contribute to a fund and the fund reimburses TRS providers for the cost of providing service. In that Order, the Commission reiterated that “[i]n order to provide universal telephone service 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 users’ lines.” In the Matter of 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 at ¶22 (1993).

11 47 C.F.R. § 64.2400(a).
charged for the services that they are purchasing. In furtherance of this goal, the Commission permits providers to separately identify assessments for universal service\textsuperscript{12} and the federal excise tax\textsuperscript{13} as line items on customer bills. Such is not the case, however, for TRS contributions due to the Commission’s uncodified prohibition on separately identified line items for TRS contributions on end users’ bills. The prohibition precludes providers from truthfully informing their customers about the pricing of the services they are purchasing as compared to the costs imposed by the Commission to fund a laudable government program, thereby creating a conflict between the Commission’s truth-in-billing requirements and the TRS line item prohibition. Perhaps in recognition of this conflict, the Commission announced its “intent to revisit the prohibition on line items referring to interstate TRS in a future proceeding. . . ” in its 2005 Truth-in-Billing Report and Order.\textsuperscript{14} Eight years have passed, but the Commission has not yet revisited the line item prohibition.

The costs of the TRS Fund have risen steadily over the last 20 years. The current contribution factor is 1.484 percent of interstate revenues or 50 times greater than the factor for funding year 1994-1995.\textsuperscript{15} Each provider contributes to the Fund based on its prior year revenues. As a result, providers cannot anticipate the magnitude of annual increases in the TRS

\textsuperscript{12} 47 C.F.R. §54.712. Unlike the universal service fee which carriers have the discretion to pass through to their customers, carriers must collect the TRS contribution fee from their end users under the ADA.


\textsuperscript{14} Truth-in-Billing Second Report and Order at nn. 64 and 86.

\textsuperscript{15} The contribution factor for funding year 1994-1995 was 0.00030.
contribution factor when setting their rates. They must either pass through increases in the
collection amount via a general rate hike, or they must absorb the increases where contracts or
other billing arrangements with customers restrict their ability to raise their rates. Because many
providers use multi-year contracts to serve consumers (both business and residential), the
inability to itemize TRS contributions on their customer bills often means they must absorb any
contribution increases.16 Forbidding providers from disclosing the TRS contribution in a line
item cannot be reconciled with the Commission’s truth-in-billing requirement that consumer bills
contain “full and non-misleading descriptions of charges.”17

The line item prohibition also unjustifiably restricts commercial speech, violating the
First Amendment rights of interstate telecommunications providers that must contribute to the
TRS Fund and those of the end users who must cover the costs of such contributions. The
Commission should avoid constitutional issues whenever possible, and it must do so here by
forbearing from enforcing the TRS line item prohibition.

II. Statutory Standard For Forbearance

Section 10(a) of the Act, 47 U.S.C. §160(a), provides that the Commission shall forbear
from applying any provision of the Act or any regulation18 to a telecommunications carrier if the
Commission determines that (1) enforcement of the provision or regulation is not necessary to
ensure that the charges, practices, classifications, or regulations by, for, or in connection with
that telecommunications carrier are just and reasonable and are not unjustly or unreasonably

16 Indeed, the Commission does not regulate the interstate rates at issue here, so recovery of
the TRS costs is not accomplished through the regulatory ratemaking process as originally
contemplated by the Senate’s version of the legislation. See n. 5 infra.

17 47 C.F.R. § 64.2401.

18 The Commission’s Rules provide that forbearance may be sought from any “statutory
provision, rule, or requirement.” 47 C.F.R. §1.54.
discriminatory; (2) enforcement of the regulation is not necessary for the protection of consumers; and (3) forbearance from applying the regulation is consistent with the public interest. In making the public interest determination, the Commission shall consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. 47 U.S.C. §160(b). As demonstrated below, forbearance from enforcement of the Commission’s TRS line item prohibition meets all three statutory criteria. Forbearance is warranted because the prohibition has no impact on the justness or reasonableness of the TRS contribution factor, nor is it necessary to protect consumers. In addition, the TRS line item prohibition does nothing to promote competitive market conditions. Instead, it directly conflicts with the Commission’s truth-in-billing rules as well as the First Amendment. There can be no question that the public interest demands that the Commission forbear from enforcing the TRS line item prohibition.

III. Forbearance From Enforcing The Line Item Prohibition Will Not Impact The Justness Or Reasonableness Of The Contribution Factor

Section 225(d)(3)(B) of the Communications Act directs the Commission to prescribe regulations that provide that “costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service.” As the Commission has previously found, the ADA does not address how TRS costs are to be recovered from end users. 19 Prior to determining what the costs of federal TRS would be and how those costs could best be recovered from end users, the Commission concluded that “in order to provide universal

19 In the Matter of Structure and Practices of the Video Relay Services Program, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 at ¶ 145 (2011) (the ADA states that the Commission’s regulations “shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service.” The statute does not address how those costs are to be recovered from subscribers, nor how payments are to be disbursed to providers.”)
telephone service 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 subscribers’ lines.” In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Report and Request for Comments, 6 FCC Rcd 4657 at ¶34 (1991). When it subsequently determined that TRS costs should be recovered through a shared funding mechanism, the Commission reiterated that “[i]n order to provide telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate services and not as a specifically identified charge on end user’s lines.” In the Matter of 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 at ¶22 (1993). The rules that the Commission adopted to implement the ADA provide in pertinent part that costs caused by interstate TRS shall be recovered from all subscribers for every interstate service using a shared-funding cost recovery mechanism20 and that every carrier providing interstate telecommunications, including VoIP services, shall contribute to the TRS Fund on the basis of end user revenues.21 Although the Commission has never adopted a rule incorporating the TRS line item prohibition, it has referenced the prohibition over the last 20 years in the footnotes of orders dealing with TRS,22 truth-in-billing23 and universal service issues.24

20 47 C.F.R. § 64.604(c)(5)(ii).

21 47 C.F.R. § 64.604(c)(5)(iii)(A).

The Commission sets the TRS contribution factor on an annual basis and the justness and reasonableness of the contribution factor are determined solely by the Commission. Forbearance from enforcing the line item prohibition will not in any way impact the amount of the TRS contribution established by the Commission. Congress has mandated that end users must bear the cost of providing TRS and interstate telecommunications providers calculate that cost for each end user by multiplying the end user’s interstate spending times the contribution factor established by the Commission. Because the manner in which a provider recovers its interstate TRS contributions from its end users – whether as a component of the cost of interstate service or as a separate line item charge – does not affect either the amount of the contribution factor or the amount of the contribution carriers are permitted to pass through to their end users, enforcement of the TRS line item prohibition is not necessary to ensure that TRS contributions or charges, whether incorporated into interstate rates or billed as a separate line item, are just and reasonable and are not unjustly or unreasonably discriminatory.

Moreover, a carrier’s provision of truthful information to end users through line item charges and descriptions, and classification of TRS contributions as a line item on customers’ opportunity to reiterate that carriers obligated to contribute to the Interstate TRS Fund (e.g., carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers’ bill as one for relay services.”).

23 Truth-in-Billing Second Report and Order at n. 64 (“[T]his Commission has prohibited line items for interstate Telephone Relay Service (TRS) costs.”) and n. 86 (noting the Commission’s “prior conclusion in the TRS context that carriers may not recover interstate TRS costs as a specifically identified line item.”).

24 In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, FCC 12-46 at n. 617 (“We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users’ lines.”).

25 47 C.F.R. § 64.604(c)(5)(iii)(B).
bills cannot possibly be considered unjust, unreasonable or discriminatory. 26 On the contrary, the Commission has previously determined that “providing clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier’s obligation of reasonable charges and practices.” 27 And the Supreme Court has wisely observed that the free flow of information “is indispensable to the proper allocation of resources in a free enterprise system” and “to the formation of opinions as to how that system should be regulated or altered.” Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 765 (1975).

IV. Enforcement of the TRS Line Item Prohibition Is Not Necessary To Protect Consumers

The Commission has never asserted that the TRS line item prohibition benefits consumers or promotes competition. Nor has it ever explained why barring providers from separately identifying TRS contributions in a line item on customer bills is necessary “in order to provide universal telephone service to TRS users as mandated by the ADA.” 28 In fact, there is no statutory basis for the prohibition. The Commission has acknowledged that the Communications Act does not prohibit the use of line items on telephone bills and that the ADA

26 Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1975) (First Amendment protects consumer’s right to receive information and ideas).


does not “address how [TRS] costs are to be recovered from subscribers.”29 Significantly, the Commission has never codified the line item prohibition as a regulation. Subsequent to the adoption of the prohibition, the Commission has referenced it only in footnotes.30 In the absence of any statutory or regulatory restraint on the use of line items to recover TRS contributions or any explanation of the benefits end users enjoy by being kept ignorant about what they are required to pay to fund TRS service, the Commission cannot possibly conclude that enforcement of the TRS line item prohibition is necessary to protect consumers. See 44 LiquorMart, Inc. v. Rhode Island, 517 U.S. 484, 502 (1996) (“complete bans on truthful, nonmisleading commercial messages rarely protect consumers”). Quite the opposite, 

forbearance from enforcement of the TRS line item prohibition is what is necessary to benefit and protect consumers. Forbearance from enforcement of the prohibition will enable consumers to have access on their telephone bills to accurate and meaningful information regarding the extent of their obligation to fund TRS service.

The line item prohibition does not square with the Commission’s truth-in-billing rules, which were adopted to protect consumers. The truth-in-billing rules are designed to assist consumers in understanding their telecommunications bills and thereby promote a more efficient competitive marketplace by ensuring that consumers have “access to accurate, meaningful information in a format they can understand.”31 A separate TRS line item would provide the

29 In the Matter of Structure and Practices of the Video Relay Services Program, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 at ¶ 145 (2011) (Section 225(d)(3)(B) “provides that the Commission’s regulations ‘shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service. The statute does not address how those costs are to be recovered from subscribers. . .’”); Truth in-Billing Second Report and Order at ¶23.

30 See, nns. 20, 21 and 22, supra.

31 Truth in-Billing Second Report and Order at ¶ 3; 47 C.F.R. § 64.2400.
transparency necessary to allow end users to clearly understand what they are being charged for funding the service. Allowing providers to include TRS specific information on customer bills would also advance the Commission’s goal of ensuring that customers have access to accurate, non-misleading information on their bills in order to better understand the charges associated with their service versus regulatory fees. Informed consumers would increase the accountability of both the TRS Fund Administrator and the Commission.

Moreover, forbearance would ease the burden on providers by allowing them to pass the TRS contribution charges through to their customers as an unambiguously delineated line item as opposed to implementing what their customers may perceive as arbitrary rate increases to recover increases in the contribution amount. The TRS contribution factor has increased steadily over the last 20 years. The contribution factor for funding year 1994-1995 was 0.00030. Today it is 0.01484, or 50 times that amount. Precluding telecommunications providers from passing through their TRS contributions to their customers as a separate line item places them in a very difficult position. The TRS contribution factor is calculated based upon providers’ prior year revenues. In setting prices for the current year, providers have no way of anticipating the magnitude of any increases in the contribution factor. To the extent they underestimate the magnitude of any increases when setting rates, providers either have to impose rate hikes on their customers to reflect increases in the contribution factor or eat the cost of those

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32 Truth-in-Billing Second Report and Order at ¶23 (provision of accurate, non-misleading information in line items on telephone bills may be useful information to consumers in better understanding charges associated with their service).


increases because their contracts or other billing arrangements with customers restrict their ability to raise rates. In either event, both providers and end users suffer as a result of the unpredictability of the contribution factor\textsuperscript{35} and the lack of transparency on customer bills.

V. \textbf{Forbearance From Enforcement Of The Line Item Prohibition Would Serve the Public Interest}

Forbearance from enforcing the TRS line item prohibition will serve the public interest by avoiding the unconstitutional infringement of the free speech guarantee of the First Amendment that the TRS line item policy imposes. As the Supreme Court has recognized, there is a “strong societal interest in the fullest possible dissemination of information.” \textit{Central Hudson Gas & Electric Corp. v. Public Service Commission of New York}, 447 U.S. 557, 561-62 (1980). There can be no greater public interest than upholding constitutionally protected freedoms.

Although the Commission permits providers to recover their TRS contributions in their rates for interstate telecommunications service, the line item ban violates the First Amendment by singling out speech of a particular content—a TRS line item—and preventing providers from truthfully disclosing to their customers exactly how much the customers are required to pay to cover the cost of TRS service. A ban on a TRS line item cannot be justified by any language in the ADA or the Communications Act, and it impermissibly keeps end users in the dark about the magnitude of lawful charges that telecommunications providers are required to pass on to them.

\textsuperscript{35} The Commission has acknowledged that the per minute rate for compensating Video Relay Service (“VRS”) providers has fluctuated significantly and that the current rate setting mechanism has negatively affected the telecommunications carriers that must contribute to the TRS fund. It has also recognized the need to create stability and long-term predictability in the compensation mechanism in order to benefit VRS providers and contributing carriers as well as the consumers who bear the ultimate financial responsibility for funding the services. \textit{In the Matter of Structure and Practices of the Video Relay Service Program}, CG Docket No. 10-51, Further Notice of Proposed Rulemaking, FCC 11-184 at ¶22 (rel. Dec. 15, 2011).
to fund a laudable government program that enables all members of society to communicate with one another.

It is well settled that speech does not lose First Amendment protection merely because it is commercial in nature. *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980). In order to survive a constitutional challenge to regulatory restrictions on speech that is neither misleading nor related to unlawful activity, the government must identify a substantial interest to be achieved by the regulation and any restrictions on speech must be carefully tailored to support that interest. *Id.*, at 567. Applying these criteria, the Commission’s prohibition on TRS line items cannot survive First Amendment scrutiny.

The Commission has never asserted, nor could it, that TRS line items are misleading by their nature or that they relate to unlawful activity. *See, BellSouth Telecommunications, Inc. v. Farris*, 542 F.3d 499, 506 (6th Cir. 2008) (truthfully telling customers why a company has raised prices by listing a new tax on an invoice is not false, inherently misleading speech outside the protection of the First Amendment). *See also, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. at 773 (First Amendment precludes state from “completely suppress[ing] dissemination of concededly truthful information about entirely lawful activity, fearful of that information’s effect upon its disseminators and its recipients”). The ADA requires that costs caused by interstate TRS services be paid by end users of interstate telecommunications services. 47 U.S.C. § 225. The Commission elected to create a Fund to which all interstate providers must contribute based on their end user revenues to pay the costs of TRS service. Providers’ contributions to the Fund must be passed through to end users to comply with the requirements of the ADA. The Commission has never articulated what, if any,
governmental interest is allegedly served by prohibiting providers from including a line item on their customer bills that identifies the TRS contribution.

In the absence of any articulated legitimate government interest served by requiring interstate telecommunications providers to incorporate their TRS contributions into their rates for interstate service but forbidding them from identifying those contributions in a line item on customer bills, the TRS line item policy unconstitutionally restricts the free speech rights of the providers and impermissibly suppresses the dissemination of truthful information about lawful activities to end users. In order to avoid the substantial constitutional questions raised by the ban on TRS line items, the Commission must forbear from enforcing it and/or simply eliminate it. Courts have invalidated on First Amendment grounds analogous state statutes and regulations banning particular speech that keeps consumers in the dark about a tax and its impact on their wallets or other matters of public concern. See *BellSouth Telecommunications, Inc. v. Farris*, 542 F.3d 499 (invalidating on First Amendment grounds state law prohibiting telecommunications providers from listing gross receipts tax as a separate line item on customer bills); *Bloom v. O’Brien*, 841 F. Supp. 277 (D. Minn. 1993) (enjoining on First Amendment grounds statute that prohibited health care providers from separately stating gross receipts tax on bills to individuals); see also, *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1975) (invalidating on First Amendment grounds a law barring pharmacists from advertising prices of prescription drugs); *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York* (invalidating on First Amendment grounds regulation banning promotional advertising by electric utilities); *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530 (1980) (invalidating on First
Amendment grounds order prohibiting bill inserts expressing opinions on controversial issues of public policy).

The Commission has recognized that regulating the language providers may use on their customer bills implicates the First Amendment. When it adopted the requirement that providers use “standardized labels” to identify line items on customer bills designed to recover costs incurred as a result of federal regulatory action, the Commission explained that the label requirement did not violate the First Amendment because it did not mandate or ban particular speech, but allowed carriers the discretion to develop their own descriptions of the nature and purpose of the federal regulatory line item charges.\(^\text{36}\) According to the Commission, the standardized label requirement was narrowly drawn to advance the substantial government interest in protecting consumers from unreasonable billing practices while enabling them to make informed choices and therefore passed Constitutional muster.\(^\text{37}\) The same cannot be said for the TRS line item prohibition. As noted, the Commission has not identified any substantial government interest that justifies the prohibition or demonstrated that the prohibition is narrowly drawn to directly and substantially advance that interest. Indeed, it is difficult to imagine what legitimate government interest is served by concealing from end users what they are required to pay to fund the provision of TRS services. In \textit{Bates v. State Bar of Arizona}, 433 U.S. 350, 375 (1977), the Supreme Court characterized as “dubious” “any justification that is based on the benefits of public ignorance.” \textit{See also, 44 LiquorMart,Inc. v. Rhode Island}, 517 U.S. 484 at 503


\(^{37}\) \textit{Id.}
(“The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good”).

A TRS line item prohibition constitutes a content-related ban on particular speech and infringes the First Amendment rights of telecommunications providers that wish to pass their TRS contributions through to their customers as separately identified line items. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. at 771 (statute that singles out speech of a particular content and prohibits its dissemination violates the First Amendment); *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. at 537 (under First Amendment, government has no power to restrict speech based on its content). The line item prohibition also impermissibly suppresses the free flow of information to telecommunications end users in violation of the First Amendment. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S at 756-757 (First Amendment protects right of consumers to receive information). To avoid trampling on the constitutional presumption favoring disclosure over concealment, the Commission must forbear from enforcing its prohibition barring carriers from recovering TRS contributions in separate line items on customer bills or simply eliminate it. Permitting providers to include a line item on their bills designated “Federal TRS Program Fee” would allow them to truthfully inform their end users what they are being billed for TRS services consistent with the public interest.

38 See also *Bates v. State Bar of Arizona*, 433 U.S. 350, 375 (1977) (“consumer’s concern for free flow of commercial speech often may be far keener than his concern for urgent political dialogue”)

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Conclusion

The foregoing demonstrates that COMPTEL has met its burden of proving that forbearance from enforcement of the TRS line item prohibition would satisfy all three statutory criteria set forth in Section 10 of the Communications Act. If for no other reason, the Commission must forbear from enforcing the TRS line item prohibition or simply eliminate it to avoid continuing to violate the First Amendment rights of interstate telecommunications providers and their end users.

Respectfully submitted,

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COMPTEL seeks forbearance from enforcement of the Commission’s uncodified “rule” or requirement that prohibits interstate telecommunications providers from identifying TRS contributions as separately identified line items on customer bills. The “rule” or requirement is set forth in various Commission Orders, including the following:

- *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Request for Comments, 6 FCC Rcd 4657 at ¶34 (1991) (“Moreover, in order to provide universal telephone service 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 subscribers’ lines.”)

- *In the Matter of 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 at ¶22 (1993) (“In order to provide telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate services and not as a specifically identified charge on end user’s lines.”)

- *In the Matter of 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 at n. 33 (2004) (“We take this opportunity to reiterate that carriers obligated to contribute to the Interstate TRS Fund (e.g., carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers’ bill as one for relay services.”)

- *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Second Report and Order, Declaratory Ruling, And Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 at n. 64 (“[T]his Commission has prohibited line items for interstate Telephone Relay Service (TRS) costs.”) and n. 86 (noting the Commission’s “prior conclusion in the TRS context that carriers may not recover interstate TRS costs as a specifically identified line item.”) *vacated on other grounds sub nom. National Association of State Utility Consumer Advocates v. FCC*, 457 F. 3d 1238 (11th Cir. 2006).

- *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, FCC 12-46 at n. 617 (“We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users’ lines.”)
47 C.F.R. §1.54(a)(2)

COMPTEL seeks forbearance from enforcement of the TRS line item prohibition for all interstate telecommunications providers that are required to contribute to the TRS fund.

47 C.F.R. §1.54(a)(3)

COMPTEL seeks forbearance from enforcement of the TRS line item prohibition for all interstate telecommunications services that are assessed contributions for the TRS fund.

47 C.F.R. §1.54(a)(4)

COMPTEL seeks forbearance from enforcement of the TRS line item prohibition on a nationwide basis.

47 C.F.R. §1.54(b)(2)  COMPTEL does not intend to rely on data or information in the possession of third parties.

47 C.F.R. §1.54(c)

Identification of Related Matters: On June 7, 2013, COMPTEL filed Reply Comments in the TRS proceeding in which the Commission asked for comments on the contribution factor proposed by TRS Administrator Rolka Loube Saltzer Associates, LLC for funding year July 2013 through June 2014. In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities, CG Docket No. 03-123. In those Reply Comments, COMPTEL asked the Commission to reconsider and/or clarify its prohibition barring telecommunications providers from specifically identifying TRS contributions as a separate line item on customer bills. In its Order adopting the contribution rate for the 2013-2014 funding year, the Commission cited COMPTEL’s request that the Commission “clarify that carriers are not prohibited from recovering TRS contributions in a line item on customer bills.” In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities, CG Docket No. 03-123, Order, DA 13-1483 at ¶27 and n. 51 (rel. July 1, 2013). The Commission did not, however, rule on COMPTEL’s request.