



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

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**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT  
ON PETITION FOR DECLARATORY RULING OF GREGORY MANASHER,  
ET AL. ON APPLICABILITY OF THE COMMUNICATIONS ACT AND  
COMMISSION RULES REGARDING TRUTH-IN-BILLING**

**CG Docket No. 98-170**

**Comments Due: November 15, 2012**  
**Reply Comments Due: November 30, 2012**

Gregory Manasher, Frida Sirota, and NECC Telecomm (collectively, “Petitioners”) filed a Petition for Declaratory Ruling with the Federal Communications Commission (the “FCC” or “Commission”) seeking guidance on whether certain identified billing practices violate the Commission’s Truth-in-Billing rules, and, if so, whether these practices also violate the Communications Act of 1934, as amended (the “Act”).<sup>1</sup> The Petition arises from a matter pending before the United States District Court for the Eastern District of Michigan, *Manasher, et al. v. NECC Telecomm.*<sup>2</sup> At the request of the Petitioners, the court referred the questions in the Petition to the Commission for consideration.<sup>3</sup> As discussed below, we seek comment on the Petition.

Manasher and Sirota (collectively, “Plaintiffs”) allege in the case that NECC had violated section 64.2401 of the Commission’s rules, 47 C.F.R. § 64.2401, and section 201(b) of the Act, 47 U.S.C. § 201(b), by billing, charging, and collecting monies from Plaintiffs which were unjustly, unreasonably, and deceptively billed as “recurring fees” and “other fees.”<sup>4</sup> The Plaintiffs also alleged that NECC had billed Plaintiffs “for amounts in excess of the actual cost for telephone services used.”<sup>5</sup> NECC disagrees and argues that a violation of section 64.2401 does not necessarily constitute a violation of section 201(b) of the Act.<sup>6</sup> The parties also disagree about the applicability of *Global Crossing Telecommunications*,

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<sup>1</sup> See Petition for Declaratory Ruling, filed by Gregory Manasher, Frida Sirota, and NECC Telecomm on July 13, 2010 (*Petition*), a copy of which is attached to this Public Notice.

<sup>2</sup> *Manasher, et al. v. NECC Telecomm*, Case No. 2:06-cv-10749 (E.D. Mich.) (*Manasher v. NECC*).

<sup>3</sup> See *Petition* at 1.

<sup>4</sup> See *Manasher v. NECC*, Order Denying Plaintiffs’ Motion for Modification of the Court’s Order Dated September 18, 2007, 2008 WL 2622956 at \*1 (E.D. Mich. July 2, 2008) (quoting First Amended Complaint) (“*Manasher Order*”).

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

<sup>6</sup> *Id.*

*Inc. v. Metrophones Telecommunications, Inc.*, in which the Supreme Court held that a violation of a regulation that lawfully implements section 201(b)'s requirements is also necessarily a violation of section 201(b) itself.<sup>7</sup>

In relevant part, section 201(b) of the Act states that charges for and in connection with communication services must be just and reasonable<sup>8</sup> and that unjust or unreasonable charges and practices are unlawful.<sup>9</sup> The Commission's Truth-in-Billing rules require that charges on a telephone bill be accompanied by "a brief, clear, non-misleading, plain language description of the service or services rendered."<sup>10</sup> In adopting the Truth-in-Billing rules, the Commission stated that "a carrier's provision of misleading or deceptive billing information is an unjust and unreasonable practice in violation of § 201(b) of the Act."<sup>11</sup>

The court, applying the doctrine of primary jurisdiction, declined to determine "what the FCC intended to prohibit under § 64.2401 and whether the FCC intended that only some, or all, violations of § 64.2401 are unreasonable for purposes of § 201(b)."<sup>12</sup> The court subsequently certified a list of questions to be referred to the Commission,<sup>13</sup> as set out in the attached Petition, but the court emphasized that it was not asking the FCC to make factual findings pertinent to this case. We seek comment on the questions certified by the court<sup>14</sup> and whether and to what extent *Global Crossing* is applicable to the instant Petition.

Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>15</sup> interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

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<sup>7</sup> See *Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 45 (2007) (*Global Crossing*).

<sup>8</sup> See 47 U.S.C. § 201(b).

<sup>9</sup> See *id.*

<sup>10</sup> 47 C.F.R. § 64.2401(b).

<sup>11</sup> *Manasher v. NECC*, Plaintiffs' Supplemental Brief Pursuant to the Court's June 7, 2007 Order at 2 (Plaintiffs' Supplemental Brief) (citing *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7506 (1999)).

<sup>12</sup> *Manasher Order* at \*6.

<sup>13</sup> See *Manasher*, Opinion & Order Certifying Questions to the FCC, April 8, 2010.

<sup>14</sup> *Id.*

<sup>15</sup> 47 C.F.R. §§ 1.415, 1.419.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>16</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

**FOR FURTHER INFORMATION CONTACT:** Cynthia R. Bryant, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202-418-8164, and [cynthia.bryant@fcc.gov](mailto:cynthia.bryant@fcc.gov).

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<sup>16</sup> 47 C.F.R. §§ 1.1200 *et seq.*