

Internet Providers and Paper Billing Fees

By: Mary Fitzpatrick, Principal Analyst
December 5, 2022 | 2022-R-0253

Issue

This report provides information about internet providers' paper billing fees (i.e., a fee charged to customers who receive paper bills). It provides information on the following questions:

1. whether federal law preempts state regulation of these fees,
2. if Connecticut or other states have regulated them, and
3. what powers Connecticut's Public Utility Regulatory Authority (PURA) currently has to regulate broadband internet service and other telecommunication rates and if there has been proposed legislation to expand them.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

The question of whether and to what extent states can regulate on this issue has yet to be answered conclusively. Under the Communications Act of 1934 and the Telecommunications Act of 1996, the Federal Communications Commission (FCC) has broad regulatory authority on a range of communication services, including the ability to preempt state and local laws that conflict with or frustrate its regulatory actions.

The way the FCC has classified broadband internet services has changed over time. The currently applicable FCC order classifies internet services as "information services," generally subjecting internet service providers to a less stringent regulatory framework. In its order, the commission also sought to preempt any state or local requirements inconsistent with that approach. However, in

2019, the U.S. Court of Appeals for the D.C. Circuit invalidated the FCC’s blanket preemption. Consequently, state and local laws regulating internet service have been litigated and challenged on different preemption grounds on a case-by-case basis.

At least three states prohibit or have attempted to prohibit internet service providers from charging paper billing fees (New York, Pennsylvania, and West Virginia). New York has passed two relevant laws, one that prohibits paper billing fees by generally all business entities, and a second that limits internet service rates and fees for certain low-income consumers. However, these laws have been subject to legal challenges. Pennsylvania law gives residents the right to request and receive internet service from certain companies, and the Pennsylvania Public Utility Commission has adopted regulations that prohibit those and other public utility companies from imposing a supplemental fee, charge, or other rate to furnish a paper bill or invoice for services. West Virginia’s Public Service Commission recently ordered Frontier West Virginia, Inc. to stop charging a \$2.99 paper billing fee to certain customers, including for internet services, citing its statutory authority to remedy unreasonable or unjustly discriminatory practices.

Connecticut has several laws on increasing access to internet services or expanding broadband networks (e.g., [CGS § 16-2a\(c\)](#)), but it does not regulate the industry or associated fees it may charge. Generally, PURA has limited jurisdiction over telecommunication services. The authority may only regulate the rates of non-competitive services (e.g., “plain old telephone services” or POTS). Most other telecommunications services have been deemed competitive and therefore are not subject to rate regulation. The legislature has considered bills to expand PURA’s authority to regulate internet service providers, generally on topics of net neutrality or data privacy, but none of those bills became law (e.g., [SB 2 \(2018\)](#)).

Federal Law

Generally, federal law delineates state and federal jurisdiction over internet services. The law gives the FCC broad authority to regulate wireless and wireline communications services, including internet and other telecommunications services. Courts have interpreted the law to give the FCC “ancillary jurisdiction” over communications services closely related to those services under its primary jurisdiction.

The federal statutes distinguish between telecommunications carriers that provide basic service (Title II or “common carrier”) and information service providers that provide enhanced services (Title I). As described in [this Congressional Research Service report](#), the distinction between the two categories “is significant because they have been treated as ‘mutually exclusive,’ i.e., an information service is not subject to regulations governing a telecommunications service under Title II. Because Title I does not give the FCC any affirmative regulatory authority over information services — and because information services are necessarily outside of Title II — the Commission

may only regulate information services pursuant to its ancillary authority or some other non-Title II source of affirmative authority.”

The way the FCC has classified broadband internet service has changed over time, in recent years as part of a debate on net neutrality. As described in [this report](#), prior to 2015, internet service had been classified as an information service under Title I. Then, in a 2015 order ([FCC 15-24](#)), the FCC adopted rules classifying internet service as a telecommunications service under Title II, allowing the agency to impose net neutrality requirements included in the order. Then, in 2018, the commission issued the currently applicable order ([FCC 17-166](#)), reclassifying internet service as an information service.

In its 2018 order, the FCC preempted state or local laws or regulations that were inconsistent with its deregulatory approach. However, a subsequent court decision vacated this part of the order, finding that if the FCC no longer had affirmative regulatory authority over internet services, the commission could not preempt state law in this area without express authorization from Congress. Yet, the court acknowledged that state laws could be challenged as being preempted on a case-by-case basis ([Mozilla Corp. v. FCC](#), 940 F. 3d 1 (D.C. Cir. 2019)).

When it issued the order, the FCC also entered into a [memo of understanding \(MOU\)](#) with the Federal Trade Commission (FTC) that discusses the role each agency plays in regulating internet services. The MOU states that consistent with the FTC’s jurisdiction, the FTC “will investigate and take enforcement actions as appropriate against internet service providers for unfair, deceptive, or otherwise unlawful acts or practices...” Specifically, section 5 of the Federal Trade Act authorizes the FTC to enforce consumer protection laws related to deceptive practices (material representation, omission, or practice that is likely to mislead a consumer acting reasonably in the circumstances) and unfair practices (actions that cause or are likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition) ([15 U.S.C. § 45](#); see also FTC’s [summary](#)).

Examples of States Prohibiting Paper Billing Fees for Internet Service

New York

New York’s law prohibiting paper billing fees is generally a broad consumer protection measure and not limited to public utilities ([N.Y. Gen. Bus. Law § 399-zzz](#)). Notably, it does not prohibit offering consumers a credit or other incentive to elect a specific billing option. The law was recently challenged in federal district court through a class action lawsuit. The court found this law unconstitutional as applied, ruling that it regulates communication of fees rather than the price

itself and therefore violates the First Amendment ([Manship v. T.D. Bank](#), 2021 WL 981587 (2021)).

New York also recently passed a law requiring internet service providers to offer low-income customers high-speed broadband service at or below certain price ceilings. This law, referred to as the Affordable Broadband Act (ABA) ([N.Y. Gen. Bus. Law § 399-zzzzz](#)), has also been the subject of a federal district court suit, described here and cited in arguments on paper billing fees below. In it, the court granted a motion from the internet service providers that brought the suit for a preliminary injunction to bar the New York State Attorney General from enforcing the act. The court found the providers adequately demonstrated a likelihood that their claims would succeed based on conflict preemption and field preemption under the federal Communications Act of 1934 ([N.Y. State Telecom. Ass'n v. James](#), 544 F. Supp. 3d 269 (2021)).

The court characterized the ABA's provisions as rate regulation and a form of common carrier treatment. It also stated that the act "conflicts with the implied preemptive effect of both the FCC's 2018 Order and the Communications Act. The ABA's common carrier obligations directly contravenes the FCC's determination that broadband internet 'investment,' 'innovation,' and 'availability' best obtains in a regulatory environment free of threat of common-carrier treatment, including its attendant rate regulation...the ABA thereby stands as an obstacle to the FCC's accomplishment and execution of its full purposes and objectives and is conflict-preempted."

The court also found that because the ABA regulates within the field of interstate communications, which the FCC has jurisdiction over based on the federal law, it triggers field preemption. It rejected the state's argument that the ABA was an intrastate pricing regulation (i.e., only applicable to companies that choose to provide service in New York).

According to [reporting](#), under a subsequent stipulated judgment, the state agreed to refrain from enforcing the law but reserved the right to appeal the decision. At present, it appears that New York is appealing the decision to the U.S. Court of Appeals for the Second Circuit (see Docket Number 21-1975).

Pennsylvania

Under state law, Pennsylvania's incumbent local exchange carriers must provide internet services in accordance with certain standards ([66 PA C.S. § 3011](#) et seq.). (Generally, incumbent local exchange carriers are the companies that provided telephone service before these services were subject to competition.) The Pennsylvania Public Utility Commission describes these laws and related provisions as a "[Broadband Bill of Rights](#)." In 2015, the commission adopted regulations that prohibit public utility companies from imposing a supplemental fee, charge, or other rate to

furnish a paper bill or invoice for services ([52 Pa. Code § 53.85](#)). According to [the commission](#), the regulation applies to both price regulated and competitive telecommunication service providers.

In comments in the proceeding that led to the regulation, several companies, including AT&T and Verizon, argued against it, generally based on conflicting state law. Verizon, for example, argued that the regulation exceeded the commission's legal authority, violated requirements for regulatory parity, and was illegal rate regulation.

The commission rejected these and other arguments, stating that it had authority to implement the regulation under [66 PA C.S. § 3018\(b\)\(3\)](#), which specifies that provisions generally limiting the commission's ability to regulate rates do not preclude it from regulating "the ordering, installation, restoration, and disconnection of interexchange service to customers."

West Virginia

In November 2022, West Virginia's Public Service Commission issued an order against Frontier to stop charging a \$2.99 paper billing fee. The order applies to bills for telecommunication services, including a single bill for telephone and separate or bundled non-telecommunication services, including internet services ([Commission Order, Case No. 22-0450-T-SC](#)).

In the proceeding that led to this order, Frontier argued, among other things, that federal law preempted the commission from regulating an internet service billing fee, citing the New York case described above (*N.Y. State Telecom. Ass'n v. James*). The company also argued that the fee applies only to internet service, not telephone service, and was therefore outside of the commission's authority.

The commission rejected these arguments, stating that Frontier charges the fee to customers who receive a single bill for telephone service and internet service, and cited a state law regulating unreasonable or unjustly discriminatory practices by certain companies as the basis for its jurisdiction ([W. Va. Code § 24-2-7](#)). The commission found that the fee was unjustly discriminatory to (1) seniors and other customers who are inexperienced with paperless billing and (2) customers who do not have reliable internet access, either due to lack of devices or lack of consistent and dependable internet service. It also concluded that the fee was an unreasonable practice.

Connecticut Law and PURA's Regulatory Role

State law requires PURA to regulate the provision of telecommunications services in the state "in a manner designed to foster competition and protect the public interest" ([CGS § 16-247f\(a\)](#)). It also establishes several goals regarding the provision of telecommunications services, including that the state:

1. ensure that high quality, affordable telecommunications services are universally available and accessible to all residents and businesses in the state;
2. promote effective competition to provide customers with the widest possible choice of services; and
3. ensure that telecommunications providers provide high quality customer and technical services ([CGS § 16-247a](#)).

These and other state laws enacted in the 1990s began a process of deregulating the telecommunications sector. Among other things, these laws (1) deem certain telecommunications services competitive, (2) establish a process for companies to petition PURA to reclassify a service as competitive, and (3) subject telecommunications services to varying levels of regulation based on the service's degree of competitiveness and the type of company providing the service ([CGS § 16-247f](#)). Generally, the law requires more stringent regulation of rates, tariffs, disclosures, and practices of telephone companies providing noncompetitive services (i.e., legacy utility phone companies providing POTS) and minimal regulatory requirements for telecommunications providers providing competitive services. (For example, Frontier provides POTS service in Connecticut at rates regulated by PURA, but the company does not charge a paper billing fee to these customers.)

While Connecticut's market is largely deregulated, some provisions apply to companies providing competitive telecommunication services. For example, [CGS § 16-247f\(e\)](#) requires companies to file tariffs (i.e., detailed rates with terms and conditions) with PURA, though there are many situations in which companies are exempt from these requirements. Additionally, [CGS § 16-256j](#) requires bills for telecommunication services to (1) contain the name of each carrier providing the service and a toll-free number for customer complaints; (2) identify on the bill those charges for which nonpayment will not result in disconnection of basic, local service; and (3) only label a charge as a tax if the tax is directly assessed by the taxing entity on the customer through the telecommunications company. However, PURA's purpose in enforcing these requirements is generally to maintain competition in the market, rather than exert control over company rates for competitive services.

MF:kl