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Federal Communications Commission

FCC 98-232

DISPATCHED

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Truth-in-Billing ) CC Docket No. 98-170  
)  
and )  
)  
Billing Format )

**NOTICE OF PROPOSED RULEMAKING**

Adopted: September 17, 1998 Released: September 17, 1998

**Comment Date:** 30 days from Federal Register publication  
**Reply Date:** 45 days from Federal Register publication

By the Commission: Commissioners Ness, Furchtgott-Roth, Powell, and Tristani issuing separate statements.

**I. INTRODUCTION**

1. One of the primary goals of the Telecommunications Act of 1996 (1996 Act) is to make available to consumers new services and technologies by promoting the development of competition in all aspects of telecommunications services.<sup>1</sup> In today's marketplace, increased competition has generated many new telephone-related services. While the nature of the charges appearing on consumers' telephone bills has changed dramatically due to the proliferation of services and service providers, the bills themselves do not seem to reflect this new era. Increasingly, consumers are concerned about telephone bills that do not provide

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The principal goal of the Act is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." See Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement).

sufficient information in a user-friendly format to enable them to understand the services being provided and the charges assessed therefor, and to identify the entities providing those services. In this Notice of Proposed Rulemaking (Notice), we seek comment on proposals to help provide consumers with the information they need to make informed choices in this competitive telecommunications marketplace.

2. We have seen a tremendous growth in consumer complaints directly or indirectly arising out of the failure of telephone bills to provide end-user customers with necessary information in a clear and conspicuous manner, so as to allow the consumer to understand readily the precise nature of charges appearing on these bills. A review of the bills we have received in conjunction with consumer complaints demonstrates that even the most sophisticated consumer would often be unable, based on the information provided in the bills, to identify the services for which the consumer is being charged or the providers of those services.<sup>2</sup> For example, we have seen numerous consumer complaints expressing frustration at third party charges on their local telephone bills that are simply identified as "monthly" or "basic access," without further explanation.<sup>3</sup> Similarly, we have received many complaints and inquiries resulting from the practice of some carriers of including in their bills line item charges for universal service or access charges, without adequate explanation of the basis for these charges.<sup>4</sup>

3. The difficulty experienced by consumers in understanding their telephone bills is not simply an inconvenience. Rather, consumers must have adequate information about the services they are receiving, and the alternatives available to them, if they are to reap the benefits of a competitive market. Conversely, the rapid growth of competitive options in the telecommunications market, without an equivalent development in the area of consumer education, clearly has been a significant contributing factor in the growth of telecommunications-related fraud. For example, the difficulty experienced by consumers in identifying their service providers based on the information provided in their telephone bills has been a significant factor in the growth of slamming.<sup>5</sup> Our experience with consumer

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<sup>2</sup> See, e.g., Informal Complaint of National Association of Government Employees (filed Aug. 7, 1998) (stating that the company's telephone bill contained unauthorized charges for "Privacy Guad Svc").

<sup>3</sup> See, e.g., Informal Complaint of Michael F. Abfall II (filed Aug. 6, 1998) (stating that his telephone bill contained miscellaneous charges for "services"); Informal Complaint of Kathryn Bullard (filed Aug. 10, 1998) (enclosing a copy of a bill containing miscellaneous charges for "TELE SVC PLAN" and "TEL SVC FEE").

<sup>4</sup> See, e.g., Informal Complaint of The Box Music Network (filed Aug. 6, 1998) (stating that some of the charges on the company's bill are identified as "Other Fees" and "National Access Fee").

<sup>5</sup> Slamming is the unauthorized change of a subscriber's selected carrier for telephone exchange service or telephone toll service. *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long*

complaints received by the Commission demonstrates that slammed consumers often do not realize that they have been slammed for some time because they cannot readily tell, from reading their telephone bills, who their presubscribed carriers are, or even that a switch in carriers has occurred. Similarly, we find that unclear telephone bills also have contributed to the proliferation of cramming, the practice of causing unauthorized, misleading, or deceptive charges to be placed on consumers' telephone bills.<sup>6</sup> Entities that engage in cramming appear to rely heavily on consumer confusion over telephone bills to mislead consumers into paying for services that were not authorized or received. Complaints filed with the Commission also demonstrate that consumers are frustrated frequently in their efforts to resolve problems with charges on their bills because the bills themselves do not provide the necessary information for identifying and contacting the responsible company.

4. We are not alone in our concerns in this area. The National Association of Regulatory Utilities Commissions (NARUC), for example, recently issued a "White Paper" emphasizing the increased importance of providing consumers with information in an understandable manner in order to allow them "to make the most of a competitive marketplace."<sup>7</sup> The White Paper offers several proposals for states to provide appropriate consumer protection in the area of telephone service, including proposals to increase the clarity of telephone bills.<sup>8</sup> NARUC asserts that beneficial telecommunications policy should include a requirement of "clear billing that customers can easily read and understand. In many cases, this is not true of current telecommunications company bills, particularly those that come from the local exchange company (LEC)."<sup>9</sup> NARUC has also passed a resolution expressing its concern about certain interstate carriers that have passed the costs of their universal service contributions directly on to consumers in the form of line item charges, stating that some of these carriers identify such charges as being mandated by the Commission even though the Commission did not mandate the method of recovery of such charges.<sup>10</sup>

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*Distance*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10,674 (1997) (*Slamming FNPRM*).

<sup>6</sup> *FCC and Industry Announce Best Practices Guidelines to Protect Consumers from Cramming*, FCC Press Release (July 22, 1998) (Cramming Press Release).

<sup>7</sup> National Association of Regulatory Utilities Commissioners (NARUC), White Paper on Resolution Urging Support of Principles Promoting Consumer Awareness and Protection by Policy Makers Involved with Telecommunications Regulation, 1. (NARUC White Paper).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> NARUC, "Resolution Regarding End User Surcharges Instituted by Interstate Carriers," adopted March 4, 1998 (NARUC Resolution).

5. Several members of Congress and consumer interest groups have also expressed concern about the failure of telephone bills to provide consumers with important information.<sup>11</sup> For example, in testimony before the Senate, the National Consumers League (NCL) asserts that "[t]he common thread that runs through pay-per-call scams, slamming and cramming is that the telephone billing systems are being used, and abused, as a means of fraudulently obtaining money from consumers."<sup>12</sup> Among the suggestions offered by NCL to stem these abuses is to require that telephone bills clearly and adequately describe changes and provide consumers with information on the service providers.<sup>13</sup> Congressional concern over confusing and misleading telephone bills has resulted in pending legislation to regulate telephone bill format, including requirements that carriers make certain disclosures when notifying subscribers of changes in their bills that result from federal regulatory action.<sup>14</sup> In particular, legislation passed by the Senate finds that the billing practices of some providers of telecommunications services "have generated significant confusion among consumers regarding the nature and scope of universal service and the fees associated with universal service."<sup>15</sup>

6. In this Notice, we seek comment on how to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers. Although much attention has been focused on local telephone bills, the issues raised by this proceeding are equally applicable to all bills for telecommunications services that are furnished to consumers, including bills for local service, interexchange service, and commercial mobile radio service (CMRS). We wish to initiate a dialogue with the states, consumer advocacy groups, and the industry on how to help consumers to understand more readily the services they are receiving and from whom, to make comparisons to determine the best value for themselves, and to determine if they are victims of fraud. We are particularly interested in input from the states on how our efforts to improve the content and format of telephone bills from telecommunications carriers can complement their efforts. We also seek comment from consumer advocate groups and industry members on how carriers can best furnish consumers

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<sup>11</sup> See, e.g., Testimony of Senator John Glenn at the Senate Permanent Subcommittee on Investigations Hearing on "Cramming: An Emerging Telephone Billing Fraud" (July 23, 1998) (Cramming Hearing) (stating that consumers have a desire to know what they are paying for and that the current telephone billing format is too confusing); Testimony of Senator Richard Durbin at the Cramming Hearing (stating that "[p]eople shouldn't need a microscope or a bloodhound to figure out their phone bills").

<sup>12</sup> *The Case of the Phantom Phone Charges*, Testimony of the National Consumers League to the Senate Permanent Subcommittee on Investigations at 2 (July 23, 1998) (National Consumers League Testimony).

<sup>13</sup> *Id.* at 7.

<sup>14</sup> See, e.g., S. 1618, 105th Cong., 2d Session (1998) (Anti-Slamming Amendments Bill).

<sup>15</sup> See, e.g., Anti-Slamming Amendments Bill.

with clear and reliable information.<sup>16</sup> In sum, the goal of this proceeding is to construct, with the help of the states, consumer groups, and the industry, workable solutions to enable consumers to reap the benefits of the competitive telecommunications marketplace while at the same time protecting themselves from unscrupulous competitors.<sup>17</sup>

## II. DISCUSSION

7. In developing the proposals detailed below, we have looked to other regulatory contexts regarding the content of bills and other disclosure documents sent to consumers.<sup>18</sup> Of particular relevance is the Telephone Disclosure and Dispute Resolution Act (TDDRA), which added Section 228 to the Communications Act of 1934 (Act) requiring the Commission and the Federal Trade Commission (FTC) to adopt rules both to promote the legitimate development of pay-per-call services and to shield telephone subscribers from fraudulent and deceptive practices.<sup>19</sup> Due to continuing abuse by information providers in the area of pay-per-call services, in the 1996 Act Congress amended Section 228 to provide even more consumer protection in the area of pay-per-call services.<sup>20</sup> Among other things, the Commission's rules promulgated pursuant to Section 228 require carriers to show, in a portion

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<sup>16</sup> In particular, interested parties are encouraged to identify issues and problems confronting disabled subscribers as a result of the manner in which bills are prepared and disseminated by telecommunications carriers and to submit specific proposals for addressing these concerns. *See, e.g., Implementation of Section 255 of the Telecommunications Act of 1996*, Notice of Inquiry, 11 FCC Rcd 19,152 (1996).

<sup>17</sup> We note that, even prior to the adoption of any rules in this proceeding, the Commission will not hesitate to take enforcement action in this area. Either on its own motion or in response to a complaint, the Commission will move swiftly to protect consumers from unscrupulous carriers who take advantage of consumer confusion over telephone bills in violation of Section 201(b)'s mandate that carrier practices be just and reasonable. *See* 47 U.S.C. § 201(b).

<sup>18</sup> We note that in some instances, Congress has issued legislation regarding disclosure requirements where it deemed agency action to be ineffective at protecting consumers. For example, Congress passed the Telephone Disclosure and Dispute Resolution Act (TDDRA) partly because "[t]he FCC's rules do not go far enough to ensure that consumers are protected and informed." *See* Committee on Commerce, Science, and Transportation Report on 900 Services Consumer Protection Act of 1991, S. Rep. No. 102-190, 102d Cong., 1st Sess. 8 (1990). And partly due to similar concerns about agency inaction in the context of nutrition labeling disclosures, Congress passed the Nutrition Labeling and Education Act of 1990. *See* Nutrition Labeling and Education Act of 1990, H. Rep. No. 101-538, 101st Cong., 2d Sess. (1990) (stating that "since the FDA has been extremely slow in issuing comprehensive nutrition regulations, legislation with a mandatory timetable is necessary to ensure that the program is implemented within a reasonable period of time.")

<sup>19</sup> *See* Public Law 102-556, 106 Stat. 4181, approved Oct. 28, 1992; *Policies and Rules to Implement the Telephone Disclosure and Dispute Resolution Act*, Report and Order, 8 FCC Rcd 6885 (1993) (*Pay-Per-Call Order*).

<sup>20</sup> *See* 47 U.S.C. §§ 228(c), (i)(2).

of the bill separate from ordinary telephone charges, the amount of pay-per-call charges, the type of services for which the consumer is being charged, and the date, time, and duration of pay-per-call calls.<sup>21</sup>

8. We have also looked to required disclosures in the area of credit transactions. The Truth in Lending Act (TILA) and its implementing regulations impose minimum disclosure requirements for credit card bills in order to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and . . . to protect the consumer against inaccurate and unfair credit billing and credit card practices."<sup>22</sup> For example, Section 226.7 of Regulation Z imposes requirements for specific information to be included on consumers' monthly credit card statements.<sup>23</sup> In this regard, we note that we have recently seen significant growth in the use of telephone bills to charge consumers for a wide variety of services, including charges unrelated to telephone service, that traditionally would have been billed either directly or through credit card bills, subject to requirements designed to protect consumers. These protections are not currently provided to consumers, however, when the service provider opts to use the telephone bill to collect these same charges. We seek comment generally on whether and to what extent consumers should have similar protections when these types of charges are billed through telephone bills rather than through other means.

9. We have also looked to recent efforts initiated by the industry to address the problem of unclear or unauthorized charges on consumers' bills. At the request of the Commission, a group of LEC providers of billing and collection services recently developed a set of voluntary guidelines that represent best practices to combat cramming.<sup>24</sup> These guidelines primarily address the relationship between LECs and the service providers for whom they provide billing services.<sup>25</sup> We applaud these efforts to protect consumers from the harm caused by cramming and anticipate that LEC implementation of these voluntary guidelines will significantly reduce the incidence of cramming. Moreover, it is not the intent of this Notice to interfere with, nor duplicate, practices addressed by the LEC guidelines.

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<sup>21</sup> 47 C.F.R. § 64.1510(a)(2)(ii), (iii).

<sup>22</sup> 15 U.S.C. § 1601.

<sup>23</sup> See 12 C.F.R. § 226.7.

<sup>24</sup> See generally Cramming Press Release. The voluntary LEC guidelines include procedures for advance screening of products being charged to local telephone bills, telephone company scrutiny of service providers, verification of end user approval of services being charged to their bills, and customer dispute resolution procedures.

<sup>25</sup> See *Anti-Cramming Best Practices Guidelines*. The guidelines also touch on the subject of bill formatting, recommending that bills be modified to identify each service provider and display the toll-free number for consumer questions.

Rather, the focus of this proceeding is on the relationship between the carriers and their end user customers, and, in particular, on improving the clarity of telephone bill formats. We note that the president of the U.S. Telephone Association recently testified before Congress that it is in the LEC's "intense self interest" to resolve billing problems that have led to cramming, since the revenue received from billing and collecting for cramming entities is offset by the consumer's loss of confidence in the LEC billing process.<sup>26</sup> We similarly believe that it is in the interests of IXCs and other carriers to inform fully their end user customers of the nature and amount of all charges they assess, including any separate line item charges they choose to impose for universal service and access, in order to preserve their customers' belief in the integrity of carrier billing.

10. This body of "truth-in-billing" concepts yields the fundamental principle that consumers should be treated fairly. Fairness in billing mandates that bills be both intelligible and legitimate. To advance this principle of fairness in billing, we consider three guidelines. First, bills should be clearly organized and highlight any new charges or changes to consumers' services. One way to accomplish this may be to require that a telephone bill contain a summary of any changes in the status of a consumer's services, as well as a summary of the current status of a consumer's services. Second, bills should contain full and non-misleading descriptions of all charges that appear therein and clear identification of the service provider responsible for each charge. Accordingly, we seek comment on options for ensuring that bills contain clear and accurate descriptions of the specific charges that are being billed, including charges recently imposed by some carriers to support universal service contributions. Third, a bill should contain clear and conspicuous disclosure of any information that the consumer may need to make inquiries about the charges on the bill. Therefore we seek comment on a proposal that telephone bills contain consumer inquiry and complaint information, including toll-free telephone numbers for the receipt of questions and complaints.

11. We are mindful, however, of the costs incurred by carriers when preparing consumer bills. The importance of providing an accurate and understandable telephone bill must be balanced against the costs incurred to provide that information. Clear disclosure of every detail may add unnecessary information to a consumer's bill without doing much to enlighten that consumer. We seek comment generally on the extent to which any carriers already have in place practices similar to, or that have the same effect as the proposals in this Notice. Commenters should also assess the burdens that would be imposed by the proposals in this Notice and suggest less burdensome practices that would achieve the same goals. We also seek comment on the extent to which the proposals detailed below might be unduly burdensome to small or rural carriers, and on specific proposals that may be necessary to accommodate the needs of such carriers.

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<sup>26</sup> Testimony of Roy M. Neel, President and Chief Executive Officer, USTA, at the Cramming Hearing.

### A. Legal Authority

12. Our examination of the issues described above requires us to consider both a billing carrier's relationship with its end user customer, and a billing carrier's relationship with the other entities for whom it provides billing and collection services. With respect to the first type of relationship, the Commission has recognized that a carrier's billing and collection for communications service that it offers is subject to regulation as a common carrier service under Title II of the Act.<sup>27</sup> With respect to the second type of relationship, the Commission has found that although a carrier's provision of billing and collection services for an unaffiliated carrier is not subject to Title II, such third party billing services may be subject to the Commission's ancillary jurisdiction pursuant to Title I of the Act.<sup>28</sup>

13. The Commission's focus in this proceeding is on the relationship between carriers and their end user customers, and in particular on the provision of necessary information, in a clear and understandable manner, in a telephone bill. We believe that we have jurisdiction to begin this proceeding to address what has become a problem of national proportions. Carriers have the obligation to have charges, practices, and classifications that are just and reasonable, pursuant to Section 201(b).<sup>29</sup> We believe that the telephone bill is an integral part of the relationship between a carrier and its customer. The manner in which charges are identified and articulated on the bills is essential to the consumer's understanding of the services that have been rendered, such that a carrier's provision of misleading or deceptive billing information may be an unjust and unreasonable practice in violation of Section 201(b) of the Act.<sup>30</sup> For example, the Commission has previously warned a carrier

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<sup>27</sup> See *Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 7 FCC Rcd 3528; 3530-3533 (1992), *clarified on reconsideration*, 12 FCC Rcd 1632, 1643-1645 (1997); *Public Service Commission of Maryland*, 4 FCC Rcd 4000, 4004-4006 (1989), *aff'd Public Service Commission of Maryland v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990); *Detariffing of Billing and Collection Services*, Report and Order, 102 F.C.C.2d 1150, 1169-71 (1986) (*Detariffing Order*). We also note that a carrier that provides service to an end user customer remains responsible, and subject to regulation under Title II, for the accurate billing of its service even if that carrier chooses to have the actual billing and collection performed by another entity.

<sup>28</sup> *Id.* at 1168-71; *Public Service Commission of Maryland v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990). Title II of the Act grants the Commission jurisdiction over the provision of interstate or foreign common carrier communications services. See, e.g., 47 U.S.C. § 201. The Commission may, in appropriate circumstances, exercise Title I ancillary jurisdiction." See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 173 (1968); *Computer and Communications Industry, Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 401 U.S. 938 (1983). The Commission has in fact exercised ancillary jurisdiction over certain aspects of non-common carrier provision of billing and collection service. See, e.g., *Detariffing Order*, 102 FCC 2d at 1174; *Public Service Commission of Maryland*, 4 FCC Rcd at 4005.

<sup>29</sup> 47 U.S.C. § 201(b).

<sup>30</sup> *Id.*

that failure to correct misleading information it provided in connection with issuance of a calling card could constitute a violation of Section 201(b) and result in enforcement action, including show cause or forfeiture proceedings.<sup>31</sup> We seek comment on whether the Commission has jurisdiction to adopt each of the proposals in this Notice and ask commenters to address the jurisdictional basis of any additional proposals raised on the record of this proceeding.

14. We seek comment particularly on how our jurisdiction should complement that of the states and other agencies. We recognize that many states and their public utility commissions have in place or are considering requirements designed to protect their consumers from abuses associated with questionable billing practices. Furthermore, other agencies such as the Federal Trade Commission may have overlapping or concurrent jurisdiction with regard to these issues.<sup>32</sup> We intend to work closely with such entities in order to ensure that consumers are protected in all billing contexts. The proposals that we set forth in this Notice are a starting point for what we hope will be an open exchange with the states, federal agencies, consumer advocacy groups, and industry members on how best to provide consumers with information necessary to allow them to obtain the benefits of an increasingly competitive telecommunications marketplace. Together with the help of these groups, we hope to take rapid and decisive action, where appropriate, to provide consumers with clear and understandable telephone bills.

15. We are also cognizant of the First Amendment considerations that must inform our efforts to ensure that customers are truthfully informed of the significance of entries on their bills. The Supreme Court has held that, consistent with the First Amendment, the government may require a commercial message to "appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive."<sup>33</sup> On the other hand, restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment.<sup>34</sup>

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<sup>31</sup> See, e.g., *Robert E. Allen*, 7 FCC Rcd 7529, 7530 (1992) (information provided by carrier in connection with issuance of calling cards "may have persuaded many consumers to unnecessarily destroy or discard otherwise valid calling cards").

<sup>32</sup> We note that unscrupulous entities may attempt to take advantage of the differences in jurisdiction between agencies. For example, a company that sells entertainment services over the telephone (a non-common carrier activity) may try to evade FTC jurisdiction by filing a tariff with Federal Communications Commission and claiming falsely that it is a common carrier. See 15 U.S.C. § 45(a)(2). To prevent situations such as this, the Commission intends to work with other agencies to construe our respective jurisdictions in order to complement each other's consumer protection efforts.

<sup>33</sup> *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 772 n. 24 (1976).

<sup>34</sup> *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996).

## B. Organization of the Bill

16. Telephone bills should be organized to be readable and to present important information clearly and conspicuously. Telephone bills may contain charges from many companies for a broad range of products and services. New charges for new services, which a consumer may not expect to see, may be intermingled with recurring charges for current services. This can result in new charges for new services going undetected by the consumer.<sup>35</sup> Consumers have expressed frustration at being unable to detect when they have been slammed, for example, because it is not made clear in their bills that their carriers have been switched to other service providers. This problem is further compounded by unscrupulous carriers that use potentially misleading names so that consumers may believe that a carrier's name refers to a service offering, rather than being the name of the carrier.

17. One manner in which telephone bills may be better organized is to present separate categories of services (such as charges for local, long distance, and miscellaneous services) in clearly separate sections within the telephone bill, and, if possible, on separate pages.<sup>36</sup> We seek comment on whether the visual separation of different services would enhance a consumer's ability to distinguish among different services, service providers, and charges and allow consumers to determine quickly whether their bills contain any charges for services that have not been ordered or authorized, thereby deterring slamming and cramming. We also recognize that separating categories of services may become less meaningful as the distinctions between these categories evolve and blur over time, especially as providers begin to offer multiple services (*e.g.*, local exchange companies offering interstate interexchange service). Thus, we seek comment alternatively on whether bills should be organized by provider with a description of the services furnished by each provider. We note that, with regard to the Commission's pay-per-call rules, carriers that provide billing and collection services to providers of pay-per-call service must "[d]isplay any charges for pay-per-call services in a part of the bill that is identified as not being related to local and long distance telephone charges."<sup>37</sup> The TDDRA requires this segregation in order to help subscribers to recognize that such charges are related to a non-telecommunications service.<sup>38</sup> We seek comment on whether our proposals for segregation of charges for different services would serve a similar purpose in telephone bills generally. We seek comment on these proposals and on any other proposals that organize information in a clear fashion.

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<sup>35</sup> See, *e.g.*, Informal Complaint of Barbara A. Cox (filed July 27, 1998) (stating that for several months she paid her telephone bills without noticing the unauthorized charges on them).

<sup>36</sup> We note that the Senate passed a bill that would impose a similar requirement on telephone billing agents. See Anti-Slamming Amendments Bill, Sec. 103.

<sup>37</sup> 47 CFR § 64.1510(a)(2)(ii).

<sup>38</sup> *Pay-Per-Call Order*, 8 FCC Rcd at 6898.

18. In addition to having separate sections for each category of service, it may be helpful for bills to include a single page or section summarizing the current status of the customer's services, including applicable information regarding: (1) the consumer's presubscribed interstate toll carrier; (2) the consumer's presubscribed intrastate toll carrier, if such carrier is not the same as the consumer's presubscribed interstate toll carrier; (3) the consumer's presubscribed local exchange carrier; (4) any other service providers, including those providing telecommunications and non-telecommunications related services, for whom charges are being billed; (5) whether carrier or preferred carrier (PC) freezes or other blocking mechanisms have been implemented for any presubscribed telecommunications services.<sup>39</sup> We seek comment on this proposal and on any other information that would appropriately be included in the summary of the current status of the consumer's services.

19. We also seek comment on whether telephone bills should provide consumers with clear and conspicuous notification of any changes or new charges in their telephone bills. For example, we seek comment on the benefits of having each telephone bill include, near the front of the bill, a separate page or section that highlights any changes in the consumer's service status information or new charges since the consumer's last bill. This "Status Changes" page could include applicable information on: (1) changes in presubscribed carriers; (2) any new service providers for whom charges are being billed for the first time or whose charges did not appear on the last telephone bill; (3) changes in any carrier or PC freeze status or blocking mechanism status; (4) explanations of any new types of line item charges appearing on the bill for the first time. We seek comment on whether requiring carriers to provide clear and conspicuous notification of any activity in a telephone bill that was not present in the last bill, including new charges and other changes, would help consumers defend themselves against cramming, slamming, and other types of fraud. We also seek comment on any other proposals that would serve to highlight to consumers any changes that have occurred on their telephone bills.

### C. Full and Non-Misleading Descriptions

20. Carriers should provide consumers with full and non-misleading descriptions of all charges contained in their telephone bills, as well as clear identification of the service providers associated with those charges. Factors that the Commission and various state commissions and courts have considered in determining whether a carriers' statements are misleading include: the vague nature of the statements; actual consumer confusion as evidenced by telephone inquiries or letters of complaint; incomplete descriptions; the omission of additional relevant information; incorrect explanations or the failure otherwise to explain

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<sup>39</sup> A PC freeze prevents a carrier change unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent. *Slamming FNPRM*, 12 FCC Rcd at 10,676 n.4. With regard to blocking mechanisms, LECs must offer subscribers the option of blocking access to pay-per-call services. 47 CFR § 64.1508.

fully the matter at hand; false implications that the charges are unavoidable; erroneous labelling of charges; and frequent changes in the labelling of charges.<sup>40</sup>

21. Vague or inaccurate descriptions of charges make it difficult for consumers to determine exactly what they are paying for and whether they received the services that correspond to such charges. In addition, we find that in many of the calls and complaints the Commission receives, consumers have been unable to determine from reading their bills the names of service providers or the nature of the services being billed to them.<sup>41</sup> Furthermore, consumers have expressed confusion concerning carrier charges that are not directly related to the provision of service. In particular, some carriers have implemented new charges that reflect -- or are at least related to -- federally-mandated changes to the structure of IXC costs of obtaining access services from LECs and of supporting universal service mechanisms. The Commission has received numerous consumer complaints and inquiries concerning these line item charges that appear on their telephone bills without adequate information on the nature of the charges.<sup>42</sup> Some of these carriers also have apparently identified such charges as being required by the Commission, even though the Commission has not mandated such specific recovery of access and universal service costs.

### 1. Descriptions of Services and Identification of Providers

22. Both NARUC and the National Consumers League have proposed that each charge on a consumer's telephone bill be accompanied by a brief, clear, plain language description of the services rendered.<sup>43</sup> We seek comment on whether such itemization would

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<sup>40</sup> See, e.g., *id.*; *Complaint and Petition for Rulemaking Concerning Advertising of Terminal Equipment Registered under Part 68 of the Commission's Rules filed by the Telecommunications Research and Action Center*, 1 FCC Rcd 147, 148 (1986); *Sprint Communications Co., L.P. v. Ameritech Michigan*, 171 P.U.R.4th 429 (Mich P.S.C. 1996); *Sprint Communications Co., L.P. v. Ameritech Ohio*, Case No. 96-142-TP-CSS, Opinion and Order (Ohio P.U.C. Sept. 11, 1997), and Entry on Rehearing, (Ohio P.U.C. Nov. 6, 1997); *MCI Telecommunications Corp. v. Illinois Bell Tel. Co., d/b/a/ Ameritech Illinois*, Dockets Nos. 96-0075 and 96-0084, *consol.* (Illinois Commerce Comm'n Apr. 3, 1996); *MCImetro Access Transmission Services, Inc.*, 1997 WL 152654 (Minn. P.U.C. Mar. 6, 1997); *Lyon v. Matrix Telecom*, 53 C.P.U.C.2d 431 (Cal. P.U.C. 1994); *America Phone Inc. v. AT&T Communications, Inc.*, 72 P.U.R.4th 613 (S.D.P.U.C. 1986).

<sup>41</sup> See, e.g., *Informal Complaint of Robertson's Hams, Inc.* (filed July 23, 1998) (stating that the company had been crammed but was unable to identify, from the description on the telephone bill, the service that had allegedly been provided).

<sup>42</sup> See, e.g., *Informal Complaint of C. F. Cline* (filed Apr. 27, 1998) (asking about the "FCC Access Charge" on the telephone bill).

<sup>43</sup> See NARUC White Paper at 3; National Consumers League Testimony at 7.

help consumers determine the precise nature of the services for which they are being billed.<sup>44</sup> We also seek comment on the types of information that would assist consumers in understanding the charges on the bill. For example, Section 64.1510(a)(iii) of the Commission's rules requires that the bill "[s]pecify, for each pay-per-call charge made, the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call[.]"<sup>45</sup> Also, for information services that appear on a phone bill and are provided through any toll-free telephone number, the Commission's rules require that the bill shall list the toll-free number dialed.<sup>46</sup> We seek comment on whether similar requirements should apply to billing for other services on the telephone bill.

23. We propose that the name of the service provider be clearly and conspicuously identified in association with that entity's charges.<sup>47</sup> We propose that the name of the service provider itself must be included, and that listing the name of the billing aggregator or clearinghouse alone will not be sufficient, even if the aggregator or clearinghouse has full legal responsibility for the charges. We also propose that, in the case of an entity reselling the service of a facilities-based carrier, the name of the reseller must appear on the telephone bill. We seek comment on whether these proposals would help consumers determine the actual identity of the carrier that is providing service and also enable them to detect quickly if they have been slammed by another carrier. For example, if a consumer is presubscribed to a facilities-based carrier, but then is slammed by a reseller using the services of that same facilities-based carrier, the consumer is unlikely to realize that he or she has been slammed if the name of the underlying facilities-based carrier continues to appear on the bill. We also seek comment on whether these proposals would decrease consumer frustration by enabling the consumer to identify the correct carrier in the first instance, rather than being told by one entity after another that it is not the consumer's service provider. We seek comment on these proposals and on any other proposals that would help consumers to identify the entities who originate charges on their telephone bills.

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<sup>44</sup> We note that TILA and Regulation Z impose a requirement that certain credit terms be specifically itemized or included in the finance charge in order to "ensure that all costs of credit will be revealed to the consumer and minimize the possibility that such costs may be hidden in a group of seemingly legitimate non-credit charges." See *Desselles v. Mossy Motors, Inc.*, 442 F.Supp. 897, 899-900 (1978). Because slamming and cramming, like credit fraud, rely on opportunities to mislead and misinform the consumer, we tentatively conclude that our proposal will have a beneficial effect on consumers similar to those benefits gained as a result of TILA and Regulation Z.

<sup>45</sup> 47 C.F.R. § 64.1510(a)(iii).

<sup>46</sup> 47 C.F.R. § 64.1510(c)(2).

<sup>47</sup> See NARUC White Paper at 4 (proposing that telephone bills include the name of the company requesting billing).

24. We seek comment on whether telephone bills should differentiate between "deniable" and "non-deniable" charges.<sup>48</sup> Deniable charges are those charges that, if unpaid, could result in the termination of local exchange or long distance telephone service. Non-deniable charges are those charges for which basic communications services would not be terminated for non-payment. In other words, consumers must pay deniable charges because their local or long distance carriers can "deny" them service for non-payment. On the other hand, if a consumer failed to pay non-deniable charges (for example, paging services), his or her local or long-distance carrier would not deny them service. We are concerned that consumers may be confused about the risk of losing local or long distance phone service for failure to pay non-telecommunications related charges. Based on our experience with consumer complaints, we believe that many consumers pay charges that they did not authorize solely because they erroneously perceive a risk of having their service disconnected. We seek comment on methods for differentiating between deniable and non-deniable charges, such as including a prominent disclosure at the top of the page or section stating that non-payment of certain charges would not result in the termination of the customer's local exchange or long distance service. We note that the pay-per-call rules require bills to contain a statement that carriers may not disconnect local or long distance service for non-payment of charges for information services.<sup>49</sup> We seek comment on whether the expansion of this requirement to all charges for which service may not be terminated for non-payment would enable consumers to make more informed choices about the use of services and the payment of charges. We also seek comment on whether giving the consumer this type of information in the bill itself would discourage unscrupulous service providers from contacting the consumer directly to misinform the consumer as to the consequences of non-payment. We seek comment on these proposals and on any other proposals that would convey information about non-payment liability to consumers in a clear and efficient manner.

## 2. Descriptions of Charges Resulting from Federal Regulatory Action

25. We have also seen consumer concern and confusion with respect to line item charges that are related to the implementation of universal service support mechanisms and to

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<sup>48</sup> We note that the LECs included this proposal as one of their best practices to prevent cramming. *See Anti-Cramming Best Practices Guidelines* at 13; *see also*, National Consumers League Testimony at 7 (proposing that telephone bills contain only charges for telephone-related services).

<sup>49</sup> 47 CFR § 64.1510 (c)(1); *see also* 47 C.F.R. § 54.401(b) (providing that Lifeline service cannot be disconnected for non-payment of toll charges). We also note that the Virginia State Corporation Commission is seeking comment on a proposed rule that would bar local service disconnections for failure to pay long distance charges billed through the local service provider. The proposed rule would allow local service disconnections only for the nonpayment for tariffed services of the local service provider. *See SCC Seeks Continued Protection of Consumer's Right to Local Telephone Service*, Virginia State Corporation Commission Press Release (Aug. 4, 1998).

access charges.<sup>50</sup> Pursuant to the 1996 Act, the Commission undertook a fundamental overhaul of the manner in which long distance carriers pay for access to the networks of local carriers and for supporting the universal availability of telecommunications services at just, reasonable, and affordable rates.<sup>51</sup> Following this restructuring, some long distance carriers began including on their customers' bills line item charges purportedly intended to recover the costs incurred in obtaining access and in meeting their universal service obligations. While the Commission did not dictate the manner in which long distance carriers must recover these costs, both the Commission and the states have received numerous complaints and inquiries from consumers suggesting that many consumers are confused about the nature of these charges. For example, NARUC has noted that numerous interstate carriers who have implemented end user surcharges to recover universal service costs from consumers have indicated that these surcharges were mandated by the Commission, even though the Commission's access charge and universal service orders do not mandate the method of recovery for such access costs.<sup>52</sup> NARUC stated that "[t]hese surcharges have created considerable customer confusion resulting in a tidal wave of customer inquiries and complaints directed to the FCC and state commissions."<sup>53</sup> Consumer inquiries received by the Commission also indicate that these charges are often inaccurately identified, and the descriptions for some charges even imply that such charges have been imposed directly on consumers by federal law. Moreover, the amount of these charges for a particular customer

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<sup>50</sup> From January 1998 through May 1998, the Federal Communications Commission's National Call Center received approximately 10,000 calls per month from consumers with questions regarding charges on their bills.

<sup>51</sup> In the past, long distance companies have supported universal service in part through per-minute access charges paid to local carriers for originating and terminating long distance calls on their networks. These access charges generally exceeded the actual cost to the local carrier of providing this access service, resulting in an implicit subsidy from high-volume to low-volume users. In reforming the access charge structure pursuant to section 254 of the Act, the Commission sought to eliminate these implicit subsidies, and to assess access charges in a manner that more accurately reflected the manner in which costs are incurred by the local carrier. This transition included replacing certain per-minute charges previously paid by long distance carriers in part with a flat-rated charge, called the presubscribed interexchange carrier charge (PICC). See, *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15,982 (1997); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*). One of the goals of universal service is to ensure that all consumers, "including low income consumers and those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3). Section 254 also provides for certain discounted services to schools, libraries, and rural health care providers. 47 U.S.C. § 254(h).

<sup>52</sup> See NARUC Resolution.

<sup>53</sup> *Id.*

may not correspond to the actual costs to the carrier of universal service support and access charges attributable to that customer.<sup>54</sup>

26. In light of these concerns, but cognizant of the costs incurred in the billing process, as well as carriers' First Amendment rights, we seek comment on the extent to which carriers that pass on to their customers all or part of the costs of their universal service contributions or access charge obligations are also providing complete, accurate, and understandable information regarding the basis for these new charges and their amounts.<sup>55</sup> In the *Universal Service Order* implementing Section 254 of the Act, the Commission stated that, with regard to the recovery of carriers' universal service support contributions, if carriers seek to pass on all or part of their universal service contributions to their customers, carriers should include complete and truthful information regarding the contribution amount.<sup>56</sup> Although NARUC's concerns appear to focus on confusion related to IXC charges, other telecommunications carriers, such as CMRS providers, also may include universal service contributions as a separate line item on customer bills. This inquiry applies to those providers as well.

27. Commenters should address whether the Commission should prescribe "safe harbor" language that carriers, or some subset of carriers, could use to ensure that they are meeting their obligations to provide truthful and accurate information to subscribers with respect to the recovery of universal service, access, and similar charges, and how such language could be distributed most effectively. Commenters are asked to propose specific safe harbor language for inclusion in bills of service providers that choose to include charges for recovering universal service contributions as separate line items on their bills.

28. To the extent we decide to adopt safe harbor language for carriers that include a line item for universal service charges, we seek comment on the types of information that such language should include to ensure that consumers understand fully the nature and purpose of such line item charges. We seek comment on whether any safe harbor language should include a description of the scope and purpose of universal service support mechanisms. These programs help keep local telephone service affordable in rural and high-

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<sup>54</sup> See *infra* para. 31.

<sup>55</sup> The Commission recently referred several issues to the Federal-State Joint Board on Universal Service, including the issue of the extent and manner in which it is "reasonable for providers to recover universal service contributions through rates, surcharges or other means." *Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, CC Docket No. 96-45, FCC 98-160 (rel. July 17, 1998). The inquiry in this proceeding is not intended to supersede or interfere with consideration by the Joint Board, to the extent that issues in this proceeding may overlap with issues referred to the Joint Board. The Commission's evaluation in this proceeding will be informed by any recommendations the Joint Board makes with respect to these issues.

<sup>56</sup> *Universal Service Order*, 12 FCC Rd at 9211.

cost areas of the United States, support low-income consumers, and also provide certain discounted services to schools, libraries, and rural health care providers. With respect to long distance carriers, we note that since the 1996 Act, the annual costs incurred by the long distance telephone companies as a result of government-mandated obligations have been lowered by over two billion dollars, even as support for universal service has been maintained and expanded. We thus seek comment on whether long distance carriers that include a separate line item for the recovery of universal service contributions should be required to explain the net reduction in their costs of providing long distance service since enactment of the 1996 Act.

29. We also seek comment on what language might be appropriate in the case of long distance carriers that include separate line items for the recovery of access charges. As noted above, the Commission had made changes to the way long distance carriers pay for access, producing a net reduction in access charges since passage of the 1996 Act. We also note that the impact from these changes on a consumer's total bill may vary depending on that consumer's usage and how his or her carrier has decided to revise its rates to reflect these changes. Thus, we seek comment on whether IXCs that choose to recover access charge costs as separate line items on customer bills should be required to include additional language on those bills. Commenters should propose specific additional language as appropriate.

30. We also seek comment on the frequency of publication of safe harbor language. For example, should a carrier using the safe harbor language approach print such language in each monthly telephone bill? Or should carriers send safe harbor language on a one-time basis, annually, or using some other interval? Furthermore, if the safe harbor approach is inappropriate, we ask commenters to suggest alternative approaches.

31. We also seek comment on the practice of certain carriers that impose on each consumer charges that are ascribed to the payment of universal service or access charges, but that exceed the costs for these items attributable to that consumer. We seek to determine whether it is misleading or unreasonable, under Section 201(b) of the Act, for a carrier to bill a consumer for an amount identified as attributable to a particular cost while charging more than the actual cost incurred.<sup>57</sup> We note that in a competitive market, consumers may react to price increases by exploring their options with alternative companies. Consumers may be less likely to compare among service providers if they are led to believe that certain rates are fixed by the government, not the carrier or the market. This highlights the need for truthful billing by carriers with respect to their assessments and descriptions of universal service charges. We seek comment on whether it would be helpful to consumers if carriers were required to explain in customer bills their reasons for assessing a flat fee or percentage charge that exceeds the costs the carrier incurs. Should carriers attributing line items to new government action be required to disclose exact cost reductions, such as a reduction in access charge costs,

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<sup>57</sup> See 47 U.S.C. § 201(b).

or other related benefits arising from government action? Also, should carriers who assess a presubscribed interexchange carrier charge (PICC) be required to show whether the corresponding reduction in the per-minute rate was actually passed on to that individual consumer?<sup>58</sup> Should carriers include the exact cost of PICC and universal service obligations incurred as a result of serving that customer? We also seek comment on the benefits to consumers of identifying PICC and universal services charges by a standard name throughout the industry.

32. Finally, we seek comment as to whether these proposals with regard to line item charges for universal service and access charges would be too regulatory and burdensome to carriers or possibly confusing to consumers. We emphasize again that this method of recovery has not been mandated by the Commission, but where carriers attribute charges directly to certain costs or programs, we believe they should provide full disclosure of the nature and amount of those costs. Our goal is that the telephone bill should allow consumers to understand easily the basis for each charge, discount, and assessment it displays so that consumers may compare among service providers and offerings to select the best value.<sup>59</sup>

#### **D. Provision of Consumer Inquiry/Complaint Information**

33. Each telephone bill should contain all the necessary information to enable a consumer to take action on his or her own behalf to dispute the charges contained in the bill.<sup>60</sup> Consumer complaints received by the Commission underscore that the failure of some carriers to provide consumers with readily available and accurate information regarding billing disputes creates considerable frustration for these consumers.<sup>61</sup> We find that, particularly with slamming and cramming, consumers often experience considerable difficulty in contacting the entity whose charges appear on the telephone bill. This results in delayed resolution and oftentimes in the consumer's inability to correct even straightforward billing problems without

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<sup>58</sup> See explanation of PICC at note 51, *supra*.

<sup>59</sup> We note that TILA was intended to guarantee "the meaningful disclosure of credit terms so that consumers can more readily compare different financing options and their costs." See *Valentine v. Influential Savings and Loan Association*, 572 F.Supp. 36, 37 (1983).

<sup>60</sup> We note that the FTC's pay-per-call rules require a billing entity to disclose on the billing statement, or on other material accompanying the billing statement, the method by which the customer may provide notice to initiate a billing review to dispute a charge for a telephone-billed purchase. See 16 C.F.R. § 308.7(c).

<sup>61</sup> See, e.g., Informal Complaint of Roger Fritts (filed Aug. 4, 1998) (stating that he called three different providers before speaking to the entity that slammed his telephone line); Informal Complaint of L. O. DaSilva (filed July 10, 1998) (stating that when his lawyer called the provider named on the bill, he was told that the named provider was an affiliate and that he would have to call a different number in order to obtain the address of the actual provider).

the intervention of other parties such as the LEC, the state public service commission, or the Commission.

34. The LECs, NARUC, and the National Consumers League have made proposals that would require each telephone bill to include, in addition to the name of each service provider, a business address and toll-free telephone number for the receipt of consumer inquiries and complaints.<sup>62</sup> We seek comment on whether these requirements would enable consumers to initiate action to resolve any billing questions or inquiries. We note that consumers have also complained of receiving inaccurate information from carriers' customer service representatives. We believe that the principle of truth-in-billing extends beyond the scope of the telephone bill itself to require carriers to train properly their customer service representatives to give accurate and non-misleading information to consumers who contact them with complaints and inquiries. We note that a carrier's provision of inaccurate and misleading information to a consumer who calls in with a question or complaint could be considered an unjust and unreasonable practice in violation of Section 201(b) of the Act.<sup>63</sup> We seek comment on how to ensure that carriers provide consumers with correct information when consumers call with complaints or inquiries, and on any other proposals to ensure that consumers receive all information necessary to resolve billing disputes.

### III. PROCEDURAL MATTERS

#### A. Ex Parte Presentations

35. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>64</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>65</sup>

#### B. Initial Paperwork Reduction Act Analysis

36. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to

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<sup>62</sup> See *Anti-Cramming Best Practices Guidelines* at 13; NARUC White Paper at 3; National Consumers League Testimony at 7.

<sup>63</sup> See 47 U.S.C. § 201(b).

<sup>64</sup> See *Amendment of 47 C.F.R. 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, Report and Order, 12 FCC Rcd 7348, 7356-57, 27 (citing 47 C.F.R. 1.1204(b)(1)) (1997).

<sup>65</sup> See 47 C.F.R. 1.1206(b)(2), as revised.

comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13.<sup>66</sup> Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from the date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

### C. Initial Regulatory Flexibility Analysis

37. As required by the Regulatory Flexibility Act (RFA),<sup>67</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in Section III. D. below. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

38. *Need for and Objectives of the Proposed Rules.* This Notice seeks comment on whether the Commission should promulgate specific rules concerning billing disclosures. Comment is requested on proposals regarding: (1) the manner in which carriers organize their telephone bills; (2) descriptions of services and carriers; and (3) the provision of the names and toll-free telephone numbers of service providers for the receipt of consumer inquiries and complaints. We are issuing the Notice to seek comment on the extent to which consumers need clearer and more accurate information, and on specific proposals. Based upon the comments received in the Notice, we may issue new rules regarding billing information.

39. *Legal Basis.* The proposed action is supported by sections 1, 4(i) and (j), 201, 208, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 208, 254, and 303(r).

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<sup>66</sup> A supporting statement, prepared in accordance with the Paperwork Reduction Act, that details the Commission's estimates with respect to the burdens imposed by the proposals in this Notice is available from the Commission or from the Office of Management and Budget.

<sup>67</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

40. *Description and Estimate of the Number of Small Entities That May Be Affected by this Notice.* The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>68</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>69</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>70</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>71</sup>

41. The small entities possibly affected by the proposed rules, if adopted, include wireline, wireless, satellite, and other entities, as described below. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities having no more than 1,500 employees.<sup>72</sup> In the FRFA to the *Universal Service Order*, we described and estimated in detail the number of small entities that would be affected by the new universal service rules.<sup>73</sup> Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term

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<sup>68</sup> 5 U.S.C. § 605(b).

<sup>69</sup> *Id.* § 601(6).

<sup>70</sup> *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>71</sup> Small Business Act, 15 U.S.C. § 632.

<sup>72</sup> 13 C.F.R. § 121.201.

<sup>73</sup> *Universal Service Order*, 12 FCC Rcd at 9227-9243.

"small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."<sup>74</sup>

42. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).<sup>75</sup> According to data in the most recent report, there are 3,459 interstate carriers.<sup>76</sup> These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

43. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>77</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."<sup>78</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

44. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless)

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<sup>74</sup> See 13 CFR § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

<sup>75</sup> FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier)* (Nov. 1997) (*Telecommunications Industry Revenue*).

<sup>76</sup> *Id.*

<sup>77</sup> U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

<sup>78</sup> See generally 15 U.S.C. § 632(a)(1).

companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>79</sup> According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>80</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

45. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>81</sup> According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.<sup>82</sup> We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

46. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>83</sup> According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they

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<sup>79</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>80</sup> 13 CFR § 121.201, SIC code 4813.

<sup>81</sup> *Id.*

<sup>82</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>83</sup> 13 CFR § 121.201, SIC code 4813.

were engaged in the provision of interexchange services.<sup>84</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

47. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.<sup>85</sup> According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.<sup>86</sup> We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

48. *Resellers* (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.<sup>87</sup> According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.<sup>88</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

49. *International Services.* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to

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<sup>84</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>85</sup> 13 CFR § 121.201, SIC code 4813.

<sup>86</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>87</sup> 13 CFR § 121.201, SIC code 4813.

<sup>88</sup> *Telecommunications Industry Revenue*, Figure 2.

Communications Services, Not Elsewhere Classified (NEC).<sup>89</sup> This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.<sup>90</sup> According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9,999 million.<sup>91</sup> The Census report does not provide more precise data.

50. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>92</sup> According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>93</sup> Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.<sup>94</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

51. *220 Mhz Radio Services.* Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>95</sup> With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small

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<sup>89</sup> An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

<sup>90</sup> 13 CFR § 120.121, SIC code 4899.

<sup>91</sup> *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

<sup>92</sup> 13 C.F.R. § 121.201, SIC code 4812.

<sup>93</sup> *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

<sup>94</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>95</sup> 13 C.F.R. § 121.201, SIC code 4812.

business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than \$6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted *supra*), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

52. *Private and Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>96</sup> At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.<sup>97</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

53. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,<sup>98</sup> and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.<sup>99</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> *Telecommunications Industry Revenue*, Figure 2.

<sup>98</sup> 13 C.F.R. § 121.201, SIC code 4812.

<sup>99</sup> *Telecommunications Industry Revenue*, Figure 2.

Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

54. *Broadband Personal Communications Service.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>100</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>101</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>102</sup> No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.<sup>103</sup> Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

55. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

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<sup>100</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96-278, WT Docket No. 96-59, paras. 57- 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

<sup>101</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (July 1, 1996).

<sup>102</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

<sup>103</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

56. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>104</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>105</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>106</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

57. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>107</sup> In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA, approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

58. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

59. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the proposed rules, if adopted, include these eight entities.

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<sup>104</sup> The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

<sup>105</sup> BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757, 22.759.

<sup>106</sup> 13 C.F.R. § 121.201, SIC code 4812.

<sup>107</sup> See 47 C.F.R. § 90.814(b)(1).

60. *Telex.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to telex. The most reliable source of information regarding the number of telegraph service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 5 facilities based and 2 resale provider reported that they engaged in telex service. Consequently, we estimate that there are fewer than 7 telex providers that may be affected by the proposed rules, if adopted.

61. *Message Telephone Service.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to message telephone service. The most reliable source of information regarding the number of message telephone service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 1,092 carriers reported that they engaged in message telephone service.<sup>108</sup> Consequently, we estimate that there are fewer than 1,092 message telephone service providers that may be affected by the proposed rules, if adopted.

62. The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating no more than \$11 million in revenue annually.<sup>109</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue. We note that cable system operators are included in our analysis due to their ability to provide telephony.

63. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* We seek comment on methods to provide complete, accurate, and understandable information to consumers in their telephone bills. Comment is requested on proposals regarding: (1) the manner in which carriers organize their telephone bills; (2) descriptions of services and carriers; and (3) the provision of the names and toll-free telephone numbers of service providers for the receipt of consumer inquiries and complaints.

64. *Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* As noted, we seek comment on proposals regarding: (1) the manner in which carriers organize their telephone bills; (2) descriptions of services and carriers; and (3) the provision of the names and toll-free telephone numbers of service providers for the receipt of consumer inquiries and complaints. Such proposals could provide

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<sup>108</sup> *International Telecommunications Data*, All Carriers: International Message Telephone Resale Service at Tbl. D1.

<sup>109</sup> 13 C.F.R. § 121.201, SIC 4841.

consumers with the necessary information to enable them to reap the benefits of the competitive telecommunications marketplace while at the same time protecting themselves from unscrupulous competitors. We seek comment on any alternatives that might be especially beneficial to small entities.

65. *Federal Rules that May Duplicate, Overlap, or Conflict With the Notice:*  
None.

#### **D. Deadlines and Instructions for Filing Comments**

66. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days after Federal Register publication, and reply comments on or before 45 days after Federal Register publication. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>110</sup>

67. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

68. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

69. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Anita Cheng, Federal Communications Commission, Common Carrier Bureau, 2025 M Street, N.W., Sixth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette

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<sup>110</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98-170); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

70. Written comments by the public on the proposed and/or modified information collections are due 30 days after publication of this Notice in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

#### IV. CONCLUSION

71. The problem of inaccurate, deceptive, or unclear charges and information on telephone bills is a growing concern for consumers, the states, the Commission, Congress, and all other entities that deal with consumer protection. The telecommunications market of today requires a telephone bill that reflects the profusion of services that are available from a multitude of providers. We initiate this proceeding to evaluate how telephone bills can provide necessary information in a manner that allows consumers to take full advantage of the benefits of this robust competition while also empowering them to protect themselves from unscrupulous providers. Accordingly, we offer proposals based on three truth-in-billing guidelines that will improve consumer understanding of their telephone bills. First, bills should be organized to be readable and to present important information clearly and conspicuously. Second, bills should contain full and non-misleading descriptions of all charges. Third, bills should clearly and conspicuously disclose all information necessary for consumers to make inquiries about charges on their bills. We seek comment on these guidelines, our proposals, and any other proposals that effectively will provide consumers with the necessary information to protect themselves from fraudulent or deceptive practices and to make comparisons to determine the best value for themselves.

#### V. ORDERING CLAUSES

72. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 254, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-

209, 254, and 403 that this Notice of Proposed Rulemaking IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

73. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification and Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

**Separate Statement of  
Commissioner Susan Ness**

Re: *Truth-in-Billing and Billing Format*

*Change* can be confusing for consumers, and there is a lot of change underway in the communications industry. *Choice* can be confusing for consumers, and for most communications services there is a wide array of choices to be made among providers -- and even among offerings from a single provider.

I don't think it's the FCC's job to eliminate all confusion, but we can and should try to eliminate unnecessary confusion.

Today, consumer bills for communications services are complicated. We can't change that. But there is a legitimate governmental concern when bills are unintelligible or misleading or both, especially when those features make it easier for carriers or other service providers to extract more money from consumers' pockets than they could if the market was fully competitive and consumers were not being confused or misled.

I do not believe it necessary for the government to require -- or to forbid -- specific line items on consumers' bills. My main concern is with the bottom line, and I am happy that the Commission has managed to maintain and expand universal service, increase economic efficiency in the structure of access charges, and lower overall costs for interstate carriers.

As a result of our decisions, most consumers are getting more, and paying less.

But some consumers, though they are in fact better off, may not feel better off. This is partly because of the inadequate explanations they have received for individual line items that have appeared on their bills.

Other consumers actually are worse off, because carriers may have used the opportunity to confuse consumers and make them feel that some governmental actions require higher bills. Rate hikes should not masquerade as government-mandated fees.

Let me be clear. I do not believe it is a legitimate goal of government to impose costs on carriers and then try to prevent them from telling consumers about it. But, if government takes pains to lower carriers' costs in one area by more than they are going up in another, I

have yet to hear a principled explanation why a carrier should tell the consumer about the latter but not the former.

Also, I have yet to hear anyone explain why trained customer service representatives routinely give out inaccurate information about the aggregate effects of access charge and universal service changes.

I am glad that consumer complaints about telephone bill line items are declining, but I still believe that there is more confusion and misinformation than necessary. I also believe that confusing billing formats exacerbate the problems of slamming and cramming, about which complaints continue to grow.

Consumers are entitled to bills that are intelligible and legitimate. Carriers, too, benefit when consumers can have confidence that their bills are legitimate and that they are receiving the full measure of savings they are due. It is my hope that this Notice will help us work with carriers, consumers, and other governmental entities to ensure that this is the case.

**SEPARATE STATEMENT OF  
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

*Re: Notice of Proposed Rulemaking, Truth-in-Billing and Billing Format;  
(CC Docket 98-170)*

While I support the adoption of this item, I write separately to express my concerns with this agency's direct involvement in commercial billing issues and whether this exercise is a wise use of limited Commission resources.

First, I have deep reservations about the extent of the Commission's authority over the commercial relationship between carriers and their customers. I am not convinced that the Commission has specific statutory authority to regulate a bill's description of that commercial relationship or even the truthfulness of that correspondence. I am especially concerned, however, about regulation of billing when there is nothing factually inaccurate about the carrier's description but it does not reflect the government's preferred explanation. In this regard, I echo Commissioner Powell's concern that the proposals contained in this item not be used to pressure carriers, even indirectly, to remove or alter any current line items or charges; neither should these proposal be interpreted as suggesting that carriers have misrepresented any facts.<sup>111</sup> I appreciate that this Notice is indeed sensitive to these issues, however, and that it seeks comment on the extent of the Commission's jurisdiction in this area. For those reasons, I support the item and encourage parties to comment on the limits of this agency's authority.

Second, as this item acknowledges, there are other federal agencies that may have overlapping or concurrent jurisdiction with regard to these billing issues. In particular, the Federal Trade Commission may have not only overlapping jurisdiction but more direct authority, as well as considerably more expertise in the area of consumer protection and fair advertising. As such, I am reluctant to devote what will be considerable FCC staff resources to these issues when another agency may have substantially more staff that specialize in consumer fraud issues.

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<sup>111</sup> Indeed, as I have stated before, while the method of recovery is not required, the underlying contributions by the carriers are mandated by the government. "[N]o carrier should have its billing information restricted or limited by the Commission. The Commission has explicitly provided carriers with the flexibility to decide how to recover their payments, including as charges on consumers bills, and I am concerned by implications that such charges are fraudulent or misrepresentations." *Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579*, rel. May 8, 1998.

**SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL**

*Re: Notice of Proposed Rulemaking, In the Matter of Truth-in-Billing and Billing Format (CC Docket No. 98-170).*

I write separately to express my firm support for the Commission taking steps to give customers accurate, meaningful information in a format they can understand. Indeed, the proper functioning of a competitive market depends on consumers having such information. As a telephone customer and purported expert on telecommunications regulation, I am often personally confounded by my bill. On these bases, I am pleased that we are initiating this proceeding.

For future reference, however, I should underscore one point. It is my sincere expectation that the proposal to adopt "safe harbor" language for use by carriers who choose to recover their universal service contributions and access charge costs through explicit line items on customers bills not degenerate into an effort to pressure long distance companies, even indirectly, to remove such line items. I believe this *Notice* is sensitive to this point, and, based on the development of this *Notice*, I have every confidence that this sensitivity will be carried throughout the proceeding. In another context, I have detailed my concerns about efforts to pressure carriers to remove line items and any suggestion that carriers are guilty of fraud or misrepresentation simply because they inform their customers that a component of their payments will be used to recover contributions mandated by the government.<sup>112</sup> Cost recovery issues involving universal service and access charges are highly technical and hotly contested. Legitimate arguments in this debate have been raised by both sides and I, for one, have not resolved which arguments are most persuasive, nor have I concluded whether the "safe harbor" approach is wise or even useful. I encourage commenters to address whether the adoption of safe harbor language would prompt carriers to present their side of the story, thereby subjecting consumers to conflicting arguments that may do nothing to reduce their confusion.

Having expressed these expectations, I look forward to working with my colleagues to ensure that consumers have access to knowledge that will truly help them make more informed buying decisions.

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<sup>112</sup> See generally Separate Statement of Commissioner Michael K. Powell, Dissenting, *Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579* (May 8, 1998). I recognize that the Commission did not mandate explicit cost recovery for universal service contributions from end users, but it did expressly allow it. Moreover, although the method of recovery is not mandatory, the underlying costs and contributions are incurred as a result of government-mandated programs, and I believe carriers do have a right to make that known to their customers.

## Separate Statement of Commissioner Gloria Tristani

*Re: Truth-in-Billing and Billing Format*

The Telecommunications Act of 1996 intended for competition to take hold and bring lower prices and more choice. Slowly but surely, that is happening.

Even though competition is gradually spreading to residential areas, it seems that most consumers do not feel better off as a result of the Telecommunications Act of 1996. A chief cause of their displeasure is their monthly phone bill. The problem is not so much that consumers feel they are paying too much for telephone service, although some probably feel that way. It is that people can barely understand what they're paying for.

Today's Notice asks whether there is a useful role for the government can play here. I am convinced there is. With respect to lawful charges, consumers need to understand what they're paying for. With respect to unlawful charges, consumers need to be able to identify any changes in their bill quickly and easily so they can spot a charge for a service they didn't request.

The reason I believe that some rules are necessary is that there is widespread confusion about individual charges on phone bills, and the parties responsible don't necessarily have the incentive to fix the problem. This confusion is caused by two types of charges: (1) charges imposed as a result of a more efficient regulatory pricing model that ultimately will make subsidies explicit. (2) charges imposed for services the consumer did not request -- a practice known as "cramming."

First, I would note that carriers are not insulated from basic rules of fair dealing just because the new charge is related to a regulatory action. New charges with names like "line charge" or "connection charge" have appeared on millions of phone bills and tell the consumer nothing about what the charge is really for. So millions of consumers scratch their heads, wonder why the government decided to fix what wasn't broken, and grudgingly pay their bills. It's enough to give competition a bad name.

In other cases, the new charge is not only vague but inaccurate, such as "FCC-mandated surcharge." In addition to being misleading, this type of description dissuades the customer from shopping around, since a customer is likely to think that all carriers are subject to the same charge.

In still other situations, while the charge itself may be described accurately, the amount may be unreasonably high. For example, the FCC allowed incumbent local telephone companies to impose a 53 cent monthly charge on long distance carriers for each primary residential line served by a long distance carrier. That charge helps offset the local carrier's cost of providing its customers with access to the long distance network.

However, some long distance carriers "pass through" that charge to their customers not as 53 cents per month, but as a dollar a month, and in some cases more. The reason, they claim, is that they are unable to differentiate primary residential lines from non-primary lines, so they "blend" the 53 cent charge with a higher monthly charge that the Commission intended only for non-primary lines. This produces a charge of a dollar or more in many cases. And while local and long distance carriers engage in a regulatory food fight over whose fault this is, millions of consumers pay a charge that exceeds what this Commission intended when it created gradual, phased-in plan for removing subsidies from long distance telephone rates. The Truth-in-Billing proceeding will examine whether "blending," among other things, amounts to an unreasonable practice by long distance carriers.

The second category of charges addressed in today's Notice -- unlawfully imposed charges -- result from the practice of "cramming." Unscrupulous operators recently began capitalizing on the growing confusion associated with phone bills by paying local phone companies to add charges to bills that, unbeknownst to the phone companies, were for services the customer neither ordered nor received. Given the proliferation of charges on a phone bill, a fraudulent charge easily could be easily overlooked -- and paid -- for months.

Today's Notice asks whether we should require carriers to change the format of their bills to better expose fraudulent charges. One promising idea is to require carriers to have a single page that identifies any new charges in that month's bill. This and other ideas that we propose today are aimed at shedding light in an area where some would prefer darkness. I look forward to completing this proceeding expeditiously and taking the guesswork out of paying the phone bill.

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