82. **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.[222] 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."[223] 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 our principles and guidelines.

83. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) 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.[224] 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.[225] 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 our principles and guidelines.

84. **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

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[222] 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*).

[223] *See generally* 15 U.S.C. § 632(a)(1).

[224] *1992 Census, supra*, at Firm Size 1-123.

[225] 13 C.F.R. § 121.201, SIC code 4813.

than radiotelephone (wireless) companies.[226] According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.[227] 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 our principles and guidelines.

85. **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.[228] According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.[229] 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 our principles and guidelines.

86. **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.[230] According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.[231] 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

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[226] *Id.*

[227] *Telecommunications Industry Revenue*, Figure 2.

[228] 13 C.F.R. § 121.201, SIC code 4813.

[229] *Telecommunications Industry Revenue*, Figure 2.

[230] 13 C.F.R. § 121.201, SIC code 4813.

[231] *Telecommunications Industry Revenue*, Figure 2.

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 our principles and guidelines.

87. **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.[232] According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.[233] 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 our principles and guidelines.

88. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[234] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[235] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[236] 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.

89. **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 Communications Services, Not Elsewhere Classified (NEC).[237] This definition provides that a

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[232] 13 C.F.R. § 121.201, SIC code 4813.

[233] *Telecommunications Industry Revenue*, Figure 2.

[234] The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[235] BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757, 22.759.

[236] 13 C.F.R. § 121.201, SIC code 4812.

[237] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

small entity is expressed as one with $11.0 million or less in annual receipts.[238] 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.[239] The Census report does not provide more precise data.

90. **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 our principles and guidelines.

91. **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.[240] Consequently, we estimate that there are fewer than 1,092 message telephone service providers that may be affected by our principles and guidelines.

92. **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.[241] 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.[242] 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

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[238] 13 C.F.R. § 120.121, SIC code 4899.

[239] *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).

[240] *International Telecommunications Data,* All Carriers: International Message Telephone Resale Service at Tbl. D1.

[241] 13 C.F.R. § 121.201, SIC code 4812.

[242] *1992 Census, Series UC92-S-1,* at Table 5, SIC code 4812.

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.[243] 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.

93. **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.[244] With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small 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.

94. **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.[245] 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

[243] *Telecommunications Industry Revenue,* Figure 2.

[244] 13 C.F.R. § 121.201, SIC code 4812.

[245] *Id.*

paging or "other mobile" services, which are placed together in the data.[246] 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.

95. **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,[247] 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.[248] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

96. **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.[249] 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.[250] These regulations defining "small entity'' in the context of broadband PCS auctions have been approved by the SBA.[251] No small businesses within the SBA-approved definition bid

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[246] *Telecommunications Industry Revenue,* Figure 2.

[247] 13 C.F.R. § 121.201, SIC code 4812.

[248] *Telecommunications Industry Revenue*, Figure 2.

[249] *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*, WT Docket No. 96-59, 11 FCC Rcd 7824, 7850-52 (1996), 61 FR 33859 (July 1, 1996) (*Broadband PCS Competitive Bidding Order*); *see also* 47 C.F.R. § 24.720(b).

[250] *See Broadband PCS Competitive Bidding Order*, 11 FCC Rcd at 7852.

[251] *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).

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.[252] 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.

97. **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.

98. **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.[253] 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.

99. 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.

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[252] FCC News, *Broadband PCS, D, E and F Block Auction Closes, No.* 71744 (released January 14, 1997).

[253] *See* 47 C.F.R. § 90.814(b)(1).

100. **Cable Service Providers.** 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.[254] 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.

4. Summary of Projected Reporting, Recordkeeping and other Compliance Requirements

101. None.

5. Steps Taken to Minimize the Significant Economic Impact of This Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered

102. In this Order, we decline to adopt many of the proposals made in the *Notice* that would be most costly for subject carriers to implement. For example, we decline to adopt our proposal to require carriers to indicate each new service ordered by a customer each month. We also decline to require that carriers provide a detailed breakdown of their costs incurred due to federal regulatory action, and instead permit carriers to use their discretion to describe the nature and purpose of these charges to their customers. We have adopted general principles rather than stringent rules governing the organization of, and information included in, customer bills. We also exempt CMRS carriers from certain of our requirements.[255] By implementing principles through broad guidelines, we allow carriers considerable discretion to satisfy their obligation in a manner that best suits their needs and those of their customers, thus minimizing the economic impact on small carriers to the greatest possible extent. The principles adopted here are common-sense requirements that make good business sense, and we believe that many, if not most, subject carriers already conform to these requirements. Many carriers will therefore find that little or no change to their existing billing practices will be needed.

103. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness

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[254] 13 C.F.R. § 121.201, SIC 4841.

[255] *See infra* Section II(A), Section III(A).

Act of 1996.[256] In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.[257]

B. Final Paperwork Reduction Act of 1995 Analysis

104. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and the Office of Management and Budget (OMB) has approved some of its requirements in OMB No. 3060-0854. Among its recommendations, OMB "strongly encourage[d]" us not to adopt an approach that imposes undue burden on wireless carriers, and "urges flexibility be given to small companies that may experience significant cost" as a result of our proposals.[258] In this Order, we have exempted CMRS carriers from certain of the requirements we adopt to promote truth-in-billing.[259] Moreover, we have established general principles and guidelines, rather than rigid formatting rules, which provide sufficient flexibility to small carriers to meet these requirements without incurring undue cost. Some of the proposals have been modified or added, however, and therefore some of the information collection requirements in this item are contingent upon approval by the OMB.

C. Initial Regulatory Flexibility Analysis for Policies Proposed in the Further Notice

105. As required by the RFA, the Commission has prepared this present IRFA of the possible, significant, economic impact on small entities of the policies and rules proposed in this Further Notice.[260] 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 Further Notice provided below in section IV(E). The Commission will send a copy of this Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[261] In addition, the Further Notice and IRFA (or summaries thereof)

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[256] *See* 5 U.S.C. § 801(a)(1)(A).

[257] *See* 5 U.S.C. § 604(b).

[258] OMB Action at 2.

[259] *See infra* Section II(A), Section III(A).

[260] *See supra* Section III.

[261] *See* 5 U.S.C. § 603(a).

will be published in the Federal Register.[262]

106. *Need for, and Objectives of, the Proposed Rules.* This Further Notice seeks comment on a specific proposed rule concerning labelling of charges relating to federal regulatory action. In addition, the Further Notice seeks comment on whether certain of our truth-in-billing requirements should be applicable to CMRS carriers. The proposals made in this Further Notice are necessary to ensure that consumers receive clear and accurate telecommunications bills.

107. *Legal Basis.* The proposed action is authorized under Sections 4(i) and 4(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).

108. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* For purposes of this Further Notice, the Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the SBA, "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. In the FRFA pertaining to this action, we described in detail the small entities potentially subject to the rules adopted in this Order. These same entities possibly would by affected by the proposal made in this Further Notices. For purposes of this IRFA, therefore, we incorporate the list of potentially affected entities contained in section IV(A)(3).

109. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* We seek comment on a proposal designed to increase the accuracy and understandability of telephone bills to consumers. Comment is requested on a proposal to require uniform labels on line-item charges resulting from federal regulatory action.

110. *Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rule.* None.

111. *Any significant alternatives minimizing impact on small entities and are consistent with stated objectives.* None.

[262] *See id.*

D. Initial Paperwork Reduction Act of 1995 Analysis for the *Further Notice*

112. The *Further Notice* portion of this Order contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the Further Notice of Proposed Rulemaking portion of this Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the Further Notice of Proposed Rulemaking; OMB comments are due 60 days from date of publication of this Order 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 forms of information technology.

E. Comment Filing Procedure

113. 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 concerning the standardized labels for charges relating to federal regulatory action no later than 14 days after publication of this *Further Notice* in the Federal Register. Parties shall file comments concerning application of the truth-in-billing principles and guidelines to CMRS carriers no later than 30 days after publication of the *Further Notice* in the Federal Register. Parties may file reply comments no later than 21 days after publication of the *Further Notice* in the Federal Register concerning charges relating to federal regulatory action, and no later than 45 days after Federal Register publication concerning the CMRS issues raised in the *Further Notice*. Comments will be limited to 15 pages, not including appendices. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

114. 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, 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.

115. 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, The Portals, 445 Twelfth Street, S.W., Washington, D.C. 20554.

116. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to David Konuch of the Common Carrier Bureau's Enforcement Division, The Portals, 445 Twelfth Street, S.W., Washington, D.C. 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. Spreadsheets should be saved in an Excel 4.0 format. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case [CC Docket No. 98-170]), 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., The Portals, Rm. CY-B400, 445 Twelfth Street, S.W., Washington, D.C. 20554.

F. Further Information

117. For further information concerning this proceeding, contact David Konuch, Enforcement Division, Common Carrier Bureau at (202) 418-0199 (voice), (202) 418-0485 (TTY).

118. Alternate formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 (voice), (202) 418-2555 (TTY), or at mcontee@fcc.gov. The First Report and Order and Further Notice of Proposed Rulemaking can be downloaded in WP or ASCII text at: http//www.fcc.gov/dtf/.

V. ORDERING CLAUSES

119. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 254, 258, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 254, 258, and 403 that this First Report and Order IS HEREBY ADOPTED,

effective 30 days after publication of a summary in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

120. IT IS FURTHER ORDERED that Part 64 of the commission's rules, 47 C.F.R. § 64, IS AMENDED as set forth in Appendix B hereto.

121. IT IS FURTHER 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 Further Notice of Proposed Rulemaking IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

122. IT IS FURTHER ORDERED that, to the extent issues from CC Docket No. 97-181, *Defining Primary Lines*, are resolved here, we incorporate the relevant portions of the record in that docket.

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

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A - Final Rules

1. Part 64 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

Subpart U -- Truth-in-Billing Requirements for Common Carriers

64.2000 Purpose and scope

(a) The purpose of these rules is to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service. These rules are also intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.

(b) These rules shall apply to all telecommunications common carriers, except that rule 64.2001(a)(2), 64.2001(b), and 64.2001(c) shall not apply to providers of Commercial Mobile Radio Service as defined in section 20.9 of the Commission's rules, or to other providers of mobile service as defined in section 20.7 of the Commission's rules, unless the Commission determines otherwise in a Further Notice of Proposed Rulemaking.

(c) *Preemptive effect of rules.* The requirements contained in this subpart are not intended to preempt the adoption or enforcement of consistent truth-in-billing requirements by the states.

64.2001 Truth-in-Billing Requirements

(a) *Bill organization.* Telephone bills shall be clearly organized, and must comply with the following requirements:

(1) the name of the service provider associated with each charge must be clearly identified on the telephone bill.

(2) where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider, and the billing entity must provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service.

(i) "Clear and conspicuous notification" means notice that would be apparent to a reasonable consumer.

(ii) "New service provider" is any provider that did not bill for services on the previous billing statement. The notification should describe the nature of the relationship with the customer,

including a description of whether the new service provider is the presubscribed local exchange or interexchange carrier.

(b) *Descriptions of billed charges.* Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

(c) *"Deniable" and "Non-Deniable" Charges.* Where a bill contains charges for basic local service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic, local service, and charges for which non-payment will not result in such disconnection. The carrier must explain this distinction to the customer, and must clearly and conspicuously identify on the bill those charges for which non-payment will not result in disconnection of basic, local service. Carriers may also elect to devise other methods of informing consumers on the bill that they may contest charges prior to payment.

(d) *Clear and Conspicuous Disclosure of Inquiry Contacts.* Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

APPENDIX B

PARTIES FILING COMMENTS TO THE *NOTICE OF PROPOSED RULEMAKING* RESPONSIVE PLEADINGS CC DOCKET NO. 98-170

Air Touch Communications (Air Touch)
America's Carriers Telecommunications Association (ACTA)
American Association of Retired Persons (AARP)
American Federation of Teachers (AFT)
American Public Communications Council (APCC)
Americatel Corporation (Americatel)
Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T
Bell Atlantic
Bell Atlantic Mobile, Inc. (Bell Atlantic Mobile)
BellSouth Corp. (BellSouth)
Billing Reform Task Force (BRTF)
Bills Project
Cable and Wireless USA, Inc. (C&W)
California Public Utilities Commission and the People of the State of California (California Commission)
Cellular Telecommunications Industry Association (CTIA)
Century Telephone Enterprises, Inc. (Century)
Coalition to Ensure Responsible Billing (Billing Coalition)
CommNet Cellular Inc. (CommNet)
Commonwealth Telephone Company (Commonwealth)
Competitive Telecommunication Association (CompTel)
DETECON, Inc. (Detecon)
Education and Library Networks Coalition (ELNC)
Electronic Commerce Association (ECA)
Irene A. Etzkorn
Excel Communications, Inc. (Excel)
Federal Trade Commission (FTC)
Florida Public Service Commission (Florida Commission)
Frontier Corp. (Frontier)
Georgia Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs (Georgia)
Global Telecompetition Consultants, Inc. (GTC)
GST Telecom Inc. (GST)

GTE Service Corp. (GTE)
GVNW Inc./Management (GVNW)
Independent Telephone & Telecommunications Alliance (ITTA)
Kansas Corporation Commission (Kansas Commission)
Liberty Cellular, Inc. (Liberty)
Maine Public Utilities Commission (Maine Commission)
MCI Telecommunications Corp. (MCI)
Media One Group, Inc. (Media One)
Minnesota Office of Attorney General (Minnesota OAG)
Mississippi Public Service Commission (Mississippi Commission)
Missouri Public Utilities Commission (Missouri Commission)
National Association of Attorneys General (NAAG)
National Association of Consumer Agency Administrators (NACAA)
National Association of State Utility Consumer Advocates (NASUCA)
National Consumers League (NCL)
Nevadacom, Inc. (Nevadacom)
New Networks Institute (NNI)
New York State Consumer Protection Board (NYCPB)
New York State Department of Public Service (NYDPS)
Nextel Communications, Inc. (Nextel)
Northwestern Indiana Telephone Company, Inc. (NITCO)
Omnipoint Communications, Inc. (Omnipoint)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
Personal Communications Industry Association (PCIA)
Petroleum Communications, Inc. (Petroleum)
Pilgrim Telephone, Inc. (Pilgrim)
Primeco Personal Communications, L.P. (Primeco)
Project Mutual Telephone Cooperative Association (PMT)
Public Service Commission of West Virginia (West Virginia Commission)
Public Service Commission of Wisconsin (Wisconsin Commission)
Public Utilities Commission of Ohio (Ohio Commission)
Public Utility Commission of Texas (Texas Commission)
Quality Communications Inc. (QCI)
Qwest Communications Corporation (Qwest)
Rural Cellular Association (RCA)
Rural Telecommunications Group (RTG)
Rural Telephone Coalition (RTC)
SBC Communications, Inc. (SBC)
Small Business Alliance for Fair Utility Regulation (Small Business)
Southern Communications Services, Inc. (SCS)
Sprint Corporation (Sprint)

Telecommunications Resellers Association (TRA)
Teligent, Inc. (Teligent)
Texas Citizen's Action (TCA)
Texas Office of Public Utility Counsel (TOPC)
Time Warner Telecom, Inc. (Time Warner)
United States Cellular Corporation (US Cellular)
United States Telephone Association (USTA)
U S WEST Communications, Inc. (U S WEST)
USP&C
Utility Consumers' Action Network (UCAN)
Vermont Public Service Board and Vermont Department of Public Service (Vermont Commission)
Washington Utilities & Transportation Commission Staff (Washington Commission Staff)
Wyoming Public Service Commission (Wyoming Commission)

PARTIES FILING REPLY COMMENTS TO *NOTICE OF PROPOSED RULEMAKING* RESPONSIVE PLEADINGS CC DOCKET NO. 98-170

American Public Communications Council (APCC)
Americatel Corporation (Americatel)
Ameritech
Asian Pacific Islander American Consumer Coalition (APIACC)
AT&T
Bell Atlantic Mobile, Inc. (BAM)
BellSouth Corporation (BellSouth)
Billing Reform Task Force (BRTF)
Cellular Telecommunications Industry Association (CTIA)
Century Telephone Enterprises, Inc. (Century)
Coalition to Ensure Responsible Billing (Billing Coalition)
Comcast Cellular Communications, Inc. (Comcast)
Commonwealth Telephone Company (Commonwealth)
GVNW Inc./Management (GVNW)
MCI Telecommunications Corp. (MCI)
National Association of State Utility Consumer Advocates (NASUCA)
Nextel Communications, Inc. (Nextel)
Paging Network, Inc. (Paging Network)
Personal Communications Industry Association (PCIA)
Pilgrim Telephone, Inc. (Pilgrim)
PrimeCo Personal Communications, L.P. (PrimeCo)
Rural Utilities Service (RUS)
SBC Communications, Inc. (SBC)
Sprint Corporation (Sprint)
Texas Office of Public Utility Counsel (TOPC)
United States Telephone Association (USTA)
U S WEST Communications, Inc. (U S WEST)

Separate Statement
of
Commissioner Susan Ness

Re: Truth-in-Billing and Billing Format

Ignorance is *not* bliss. Confusing or misleading bills from communications carriers are *not* good for consumers, or for competition. This agency *does* have a role to play in making sure that bills are fair, reasonable, and intelligible.

When we initiated this proceeding last September, I expressed my hope that the Notice would enable us to work with carriers, consumers, and other governmental entities to improve the billing process. I have been encouraged by the progress that has resulted. Many in industry have stepped up to their responsibility to improve their bills to make them more intelligible, more consumer-friendly. Slamming and cramming will be easier to detect, and therefore will be less likely to occur in the first place.

At the same time, the rules we are adopting have sufficient flexibility to allow for individualized experimentation by carriers. As new services and bundles are brought to market, we need not -- and do not -- prevent carriers from crafting their bills in creative ways that meet their competitive needs, so long as consumers' fundamental rights are protected.

I remain concerned about the prospect for misleading line items. Additional changes lie ahead in universal service and access charges, and we have already seen how some carriers have exploited the occasion of change to confuse consumers and, in some instances, to increase aggregate charges even as aggregate costs are declining. Competition should go a long way to ensuring that consumers get more, and pay less. But continued vigilance on billing practices will be essential to ensure that consumers are not misled or mistreated.

Finally, I see no inherent reason why *wireless* carriers should not be subject to the same general obligation as wireline carriers to render bills that are fair, clear, and truthful. But I am mindful that the billing practices of wireless carriers have generated only an incredibly small number of complaints. Given that any rules -- even flexible ones -- impose some costs (which ultimately are paid by consumers), I am reluctant to establish any requirements to cure a non-existent problem. For this reason, at this time, I am inclined to forbear from applying most of the specific rules we promulgate today to wireless carriers.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL, CONCURRING

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

When we initiated this proceeding several months ago, I wrote separately to express my firm support for the Commission taking steps to ensure that customers have accurate, meaningful information in a format they can understand. I underscored that the proper functioning of a competitive market depends on consumers having such information. On those bases, I was pleased that we had initiated this proceeding, just as I am now pleased that we are taking additional steps in this *Order* to address the egregious problems of slamming, cramming and related consumer confusion. I also support our decision here that, to the extent we impose requirements in this area, they will for the moment be broad and flexible in form, so as to allow carriers to minimize compliance costs and to differentiate their billing practices for competitive purposes.

As a devout advocate of vigorous enforcement, I am convinced that the government – whether this agency, another federal agency or the states – can play a significant, beneficial role in protecting consumers from demonstrable harms such as slamming, even in the context of competitive telecommunications markets. Although policymakers may disagree about the extent, form or timing of consumer protection efforts, I believe it is entirely appropriate for government to become concerned if carriers engage in abusive practices, particularly where competitive choices by consumers and voluntary actions by the industry cannot effectively stem such abuses.

Some of These Requirements Seem Unnecessary or Ill-Suited to Achieve Their Stated Purposes

Regrettably, however, I am not fully convinced of the necessity or value of some of the rules we adopt in this *Order*. I fail to understand, for example, why we feel the need to require carriers to put their names on bills when the carrier bills directly for its own services, a practice that occurs among both wireline long distance companies and wireless companies. Is there any factual or logical reason to think that a carrier would send a bill to a consumer without indicating whom the consumer should pay? It is difficult to dispute the value of such information, but equally difficult to imagine the omission of such information in a commercial enterprise, absent this federal requirement.

I am similarly troubled by our proposal to adopt uniform labels for line items that carriers include on their bills to recover their federally-mandated payments, such as access charges and contributions to universal service. In contrast to the celebrated flexibility of most

of the requirements adopted in this *Order,* the Commission proposes to require that specific words and phrases be used when a carrier chooses to recover its government-mandated universal service and other charges explicitly,[1] as we allow them to do. The *Order* offers two justifications for diverging from the reasonable flexibility it permits with respect to the other rules, neither of which seems convincing. First, the *Order* states that the line item labeling proposal will enable consumers to use the labels to "comparison shop" among carriers, so as to obtain the best deal with respect to the recovery of those federal mandates.[2] Yet our rules also allow carriers to recover their federal charges by burying the amounts passed on to consumers in their interstate rates.[3] Thus, even if we adopt uniform labels for line items, consumers will remain powerless to compare the manner in which carriers that use explicit line items to recover their federal charges against carriers that essentially hide such recovery in their other rates.

Second, the *Order* states that the line item labeling proposal will prevent such labels from becoming false or misleading. Yet I fail to understand why, if the purpose of uniform line items is truly to avoid false or misleading characterizations of these charges, the Commission refuses to make clear that carriers may indicate that their own contributions to universal service and other federal requirements *are* mandatory, and that the Commission *allows* carriers to recover the amounts associated with these requirements directly from consumers. Although some may *prefer* that carriers simply conceal recovery of their required contributions in their rates, it is beyond question that the previous Commission *expressly allowed* carriers to do so, as we recently acknowledged.[4] In any event, I remain concerned that we avoid formalisms and semantic hair-splitting regarding the extent to which the Commission is or is not responsible for the appearance of politically-unpopular line items on consumers bills. Carriers would not be putting these line items on their bills if we were not requiring them to pay the underlying charges or if we did not allow carriers to recover these charges from end users. Thus, try as we might, we cannot escape the fact that these line items do result, at bottom, from actions taken by the government to preserve and advance universal service, and to achieve other valid goals pursuant to the 1996 Act.

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1 *Order* at ¶ 54.

2 *Id.*

3 *See, e.g., Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9209, ¶ 851 (1997) (*Universal Service Order*)).

4 *Virginia State Corp. Comm'n v. MCI Telecommunications Corp.,* 1999 WL 152543, FCC 99-42, File No. E-99-01 (rel. Mar. 22, 1999), ¶ 19 (allowing carrier to recover universal service contributions from end users via line items on bills because "[t]he *Universal Service Order* generally *permits, but does not require,* carriers to recover the cost of their universal service contributions from their 'customers of interstate services'") (emphasis added) (citing *Universal Service Order*, 12 FCC Rcd at 9209, ¶ 851).

The *Order* Relies on Flawed Premises Regarding the Role of Competition in Consumer Protection

But the strongest of my misgivings about this *Order* centers around the flawed premises justifying our imposition of these requirements. First, these premises include faulty, poorly supported assertions and implicit assumptions that competitive markets are categorically and in all circumstances unable to protect consumers from the types of harms we address in this *Order*.[5] Second, I fear that these underlying premises, when juxtaposed with Congress' mandate that the Commission eliminate and forbear from unnecessary regulation, are either inconsistent with the provisions and purposes of the 1996 Act or would require the Commission to adopt requirements from which we will almost immediately forbear, a result that I find nonsensical.

Markets and Competitive Choice Provide the Most Fundamental Mechanisms for Protecting Consumers

It is axiomatic that one of the most important benefits of competition is that it gives consumers the ability to change providers to obtain the best rates, terms and conditions for their individual needs. As such, competition *empowers* consumers to leave their provider and find another if their current provider does not treat them fairly. Furthermore, the threat of consumer churn and the related downward pressure on profitability[6] provides an important *in terrorem* effect that encourages providers to do everything possible to avoid losing customers to the competition, including avoiding inaccuracies and misleading information in their bills. Simply put, the risk to providers of engaging in fraudulent practices in a competitive market is that consumers will soon discover these practices and cease to generate revenues for those providers. Of course, some minority of providers may choose, nonetheless, to misbehave in a

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[5] *See, e.g., Order* at ¶ 7 ("Even in competitive markets, however, disclosure rules *are needed* to protect consumers.") (emphasis added); *id.* at ¶ 7 n.17 ("Because mature markets also require disclosure rules, we disagree with ALTS' argument that any confusion over billing formats that exists today is merely the result of the transition to fully competitive telecommunications markets."). The erroneous notion that competitive markets are unable to protect consumers is also implicit in our apparent decision to seek comment on whether to forbear *only* from the requirements the *Order declines* to impose on CMRS carriers, rather than forbearing from all of these truth in billing requirements with respect to these carriers. *Order* at ¶ 68 ("[W]e believe that all consumers expect and should receive bills that are fair, clear, and truthful. However, absent evidence that there is a problem with wireless bills, it might not be necessary to apply the *remaining* rules in the wireless context.") (emphasis added).

[6] *See generally* Frederick F. Reicheld & Thomas A. Teal, *The Loyalty Effect: The Hidden Force Behind Growth, Profits, and Lasting Value* (Harvard Business School Press) (1996) (documenting quantitative research demonstrating that firms that retain customers dramatically improve their profitability by improving revenue growth, learning and productivity).

competitive market in ways that are not easily rectified through voluntary actions by the industry. It is for this reason that, even in a competitive market, government enforcement may be necessary to stop certain companies from continuing to engage in harmful practices.

Despite these truisms of competition, the *Order* suggests in a number of places that requirements like those we adopt here will *always* be needed in *every* market, no matter how competitive.[7] These unsupported, blanket assertions are troubling for their unstated, paternalistic judgment that consumers are ill-suited to protect themselves even when they are empowered to escape harm by choosing a new provider. Indeed, these assertions ignore the likelihood that market forces may generally be *more* effective in eliminating harms to consumers than government intervention. Recent events suggest that this likelihood is indeed real. Several major carriers (including Ameritech, Bell Atlantic and Bell South) have unveiled or will soon unveil simplified new bills that will help them to retain customers and respond to the competitive pressures imposed by billing innovations introduced by new entrants.[8] And these carriers are doing so for the most part without government mandate. I agree that we should celebrate these competitive benefits to consumers but, in the parlance of this item, it would not be "truthful or non-misleading" to suggest that these actions have resulted primarily from the actions of regulators. Rather, market forces are largely responsible for the improvements we are seeing and will continue to see.

Even worse, the *Order*'s assertions that government intervention is always necessary to protect consumers ignore the clear evidence on the record indicating that the problems of slamming, cramming and consumer confusion may not be significant in certain telecommunications markets, such as wireless, and among certain carriers, such as those that bill consumers directly only for their own services. Although complaints on these issues from wireline customers number in the tens of thousands annually, for example, complaints from wireless customers number only in the dozens – an order of magnitude fewer even if one controls for the smaller number of total wireless customers relative to wireline customers. This record suggests that it is unnecessary to impose these requirements on some carriers in order to ensure that consumers have access to useful and accurate information.

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7 *See supra* note 5.

8 *See, e.g.,* Kathy Chen, *Miracle of the Bells: the Simplified Phone Bill,* Wall St. J., Apr. 12, 1999, at B1.

The *Order*'s Assertion That These Requirements Are Necessary in All Circumstances is Inconsistent With the Act's Mandate That the Commission Eliminate and Forbear From Unnecessary Regulation

Given the record evidence that market or other factors appear to be sufficient to protect consumers in some instances, the big question that remains is: whether and to what extent companies will provide useful information *voluntarily* or whether government *intervention* will become necessary. Unlike some, I believe that Congress has already answered that question for us. Specifically, Congress has commanded that we look in the first instance to the market to determine what carriers provide their customers, and only when it is clearly demonstrated that the absence of regulation will harm consumers should we intervene.

The statute makes clear (through mandatory section 10 forbearance, biennial review, and the "pro-competitive, de-regulatory national policy framework" of the Act) that *Congress* has decided that markets should replace regulation except where actually necessary to protect consumers or to maintain just, reasonable and nondiscriminatory rates, terms and conditions.[9] As such, I feel strongly that we should only be imposing new regulations – however general or flexible – where necessary to correct well-supported, identifiable harms to consumers or "just and reasonableness" problems. Thus, I can support the application of these new requirements on certain wireline companies. I cannot, however, support imposing these same conditions on CMRS providers. Because CMRS carriers are excluded from equal access obligations, CMRS customers are less likely to experience slamming with respect to that service.[10] Further, CMRS customers also are unlikely to experience cramming with respect to that service, because CMRS carriers generally only bill for their own services, thus making

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[9] Congress was unmistakably clear in its judgment that the Commission must rely on markets and competition, rather than regulation, to oversee the development of communications and information services markets. *See* 47 U.S.C. § 160 ("[T]he Commission *shall* forbear from applying any regulation or any provision of this Act . . . if the Commission determines that . . . enforcement of such regulation or provision is *not necessary* to ensure that . . . charges, practices, classifications, or regulations . . . are just and reasonable . . . ; enforcement of such regulation or provision is not necessary for the protection of consumers; and forbearance . . . is consistent with the public interest.") (emphases added); 47 U.S.C. § 161 (requiring the Commission to review "all regulations" every two years to "determine whether *any* such regulation is no longer necessary in the public interest as the result of meaningful *economic competition* between providers of such service"); Joint Manager's Statement, S. Conf. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (conference report indicating that purpose of 1996 Act is "to provide for a *pro-competitive, de-regulatory* national policy framework designed to accelerate rapidly *private sector* deployment of advanced telecommunications and information technologies and services *by opening all telecommunications markets to competition* . . .") (emphases added).

[10] *Order* at ¶ 16.

one of the requirements we adopt here largely inapplicable.[11] In addition, the record clearly lacks substantial evidence that there are problems that need correcting in the CMRS context, as the *Order* also concedes. Although there appears to be some lack of clarity in how inquiries by CMRS customers are categorized, there is a huge magnitude of difference in the number of slamming, cramming and universal service complaints for wireless, relative to wireline.

I also reject any notion that we should allow enforcement to degenerate into imposing broadly rules with the understanding that we might forbear in the future. If the Act means anything, it means that we should not impose regulations just for the sake of uniformity or to enact some grand regulatory plan. Sure, we could impose regulations and then wait for parties to petition for forbearance, but why impose unneeded rules just so we can remove them later? Notwithstanding these shortcomings, I applaud the majority's thoughtful decision not to impose the requirement adopted here regarding descriptions of billed charges on CMRS carriers.[12]

Enforcement and Consumer Protection Should Not Provide an Excuse for Additional Regulation

Since taking office, I have spoken often about the importance, in promoting competition and deregulation, of shifting regulatory resources from drafting complex prophylactic rules to vigorous enforcement. The term "enforcement," like "competition" itself, has taken a prominent place in telecom regulatory rhetoric; no one would be caught dead saying that they did not support strong enforcement. It's like Mom and apple pie.

But we should be careful what we mean by enforcement. To be consistent with the Act, enforcement cannot become a means of extending regulation, a sort of "full employment" regulatory approach for an agency concerned about making sure it continues to play an active role as we transition to competitive markets. Rather, enforcement must be targeted so that government intervenes – only *when* and only to the *extent* – the record demonstrates that there are real, identifiable harms that the market participants' voluntary actions will not correct.

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[11] *See cf. Order*, Appendix A, 47 C.F.R. § 64.2001(a)(2) (limiting requirement of clear and conspicuous notification of new service providers to situations "where charges for two or more carriers appear on the same telephone bill").

[12] *Order*, Appendix A, 47 C.F.R. § 64.2000(b). The *Order* also declines to impose the requirements pertaining to changes in service providers, as well as to "deniable" and "non-deniable" charges, on CMRS carriers. *Id.* These rules, however, would be largely inapplicable to CMRS carriers anyway, given the nature of the charges billed and the fact that CMRS carriers generally bill directly and only for their own services.