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

SEP - 4 2009

In the Matter of	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
IP-Enabled Services	)	WC Docket No. 04-36

NOTICE OF INQUIRY

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Comment Date: October 13, 2009
Reply Comment Date: October 28, 2009

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Inquiry (Notice or NOI), we seek comment on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services.

2. We initiate this proceeding for several reasons. Protecting and empowering American consumers is a core responsibility of the Commission. It has been over a decade since we adopted Truth-in-Billing rules and four years since we last refreshed the record on consumer information issues. In both instances, the Commission concluded that consumers were experiencing significant confusion regarding their bills[1] – and available evidence suggests that this remains true today.[2]

3. Equally important, the intervening years have been characterized by extraordinary ferment in the marketplace, including the introduction of new categories of service (such as broadband Internet access and voice over Internet Protocol (VoIP)) as well as new pricing plans (such as bundled "triple-play" voice, video, and broadband Internet access service). These changes have benefited consumers in many ways—but may have also generated a great deal of new information for consumers to digest and have created new sources of uncertainty and confusion.[3] Advances in technology, such as usage alerts delivered via text message, other usage controls, and online comparison tools, have also opened new opportunities to improve the kind and degree of information available to consumers.[4] And during this period, American consumers' usage of and total spending on communications services has also increased substantially.[5] In light of these important developments and the passage of time since our last, more narrow, examination of these issues, we believe it is appropriate for the Commission to build a factual

[1] *See Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492, 7494-95, para. 3 (1999) (*First Truth-in-Billing Order*); *Truth-in-Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6468, para. 39 (2005) (*Second Truth-in-Billing Order and FNPRM*).

[2] *See infra* Section II.E.

[3] The issue of how changes in the amount of information available to consumers affect their welfare falls under the field of "information economics," described for example in Stigler, George J. (1961) "The Economics of Information," *Journal of Political Economy*, 69 (June) 213 - 225.

[4] *See infra* Section III.D.

[5] More consumers than ever are subscribing to fixed voice, wireless voice and data, broadband Internet access service, and subscription video services, and usage and average expenditures are also on the rise. For example, the Bureau of Labor Statistics reports that annual household expenditure on communications rose from $1,438 in 2002 to $1,844 by 2007. The Bureau of Labor Statistics figures cover average household expenditures on fixed and mobile voice, pay TV, and Internet (weighted by penetration). *See Bureau of Labor Statistics Consumer Expenditure Survey 2002-2007.*

record to assess whether there are opportunities to protect and empower consumers through policies addressing information disclosure.

4. The Commission's approach to information disclosure issues has traditionally focused on the formatting of consumer bills, which is relevant after a consumer has already selected a service provider. This Notice asks questions about the information available to consumers at all stages of the purchasing process, including: (1) choosing a provider, (2) choosing a service plan, (3) managing use of the service plan, and (4) deciding whether and when to switch an existing provider or plan. In seeking more information on these topics, we are particularly interested in understanding cost-effective best practices in information disclosure from within the communications sector—as well as familiar examples from other areas, such as nutrition labeling on food products, fuel efficiency for automobiles, energy efficiency for household appliances, rates and fees for credit cards, and labeling for prescription drugs.[6]

5. In conducting this inquiry, we are cognizant of the importance of identifying disclosure policies that have a high ratio of consumer benefit to industry cost. If designed correctly, disclosure policies are among the least intrusive regulatory measures at the Commission's disposal.[7] Moreover, access to accurate information plays a central role in maintaining a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services.[8] It empowers consumers by allowing them to choose services that better meet their needs and match their budgets. And it is essential to ensuring consumers are not subject to surprise charges and can avoid products and services that fall short of their expectations.

6. Particularly promising are efforts to understand how the formatting and display of information can enhance its usefulness to consumers. It is widely understood that information buried deep in the "fine print" is far less useful to consumers than information displayed clearly and prominently.[9] We look forward to learning about how recent research into how consumers process information can inform the Commission's approach to this important topic.

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[6] *See infra* para. 47.

[7] *See* Howard Beales, Richard Craswell & Steven C. Salop, *The Efficient Regulation of Consumer Information*, 24 J. L. & ECON. 491 at 513 (1981); Howard Beales, Richard Craswell & Steven C. Salop, *Information Remedies for Consumer Protection*, 71 AM. ECON. REV. 410 at 411 (Papers & Proceedings, May 1981).

[8] *See, e.g.*, *Enhancing Competition in Telecommunications: Protecting and Empowering Consumers*, Ministerial Background Report, Directorate for Science, Technology and Industry, Committee for Information, Computer and Communications Policy, Organization for Economic Co-operation and Development, June 2008, at 4 (As noted in a recent study on enhancing competition in telecommunications, informed consumers "are necessary to stimulate firms to innovate, improve quality and compete in terms of price. In making well-informed choices between suppliers, consumers not only benefit from competition, but they initiate and sustain it."). This report is available at http://www.oecd.org/dataoecd/25/2/40679279.pdf.

One recent article suggests that competitive pressures between firms may undermine full disclosure and explain why only high quality firms choose to disclose. *See* Oliver Board, "Competition and Disclosure," The Journal of Industrial Economics, Vol. 57, Issue 1, pp. 197-213, March 2009 (concluding that in such a setting, mandatory disclosure laws can promote competition and raise consumer surplus at the expense of firm profits, potentially increasing the efficiency of the market).

[9] *See generally, e.g.*, Richard H. Thaler and Cass R. Sunstein, *Nudge*, Yale University Press 2008. One prominent example is the case of Internet privacy statements, as discussed in A. M. McDonald and L. F. Cranor, "The Cost of

(continued....)

7. Equally important, we are aware there are many new technological tools available today that were not in the marketplace when the Commission last addressed this set of issues. We are particularly interested in understanding whether these new technologies can be harnessed to empower customers and make it easier for them to access and analyze information about communications services.[10] We seek comment on what tools may already be available and whether new tools can be developed to improve the consumer purchasing experience. We also seek information about data—from communications service providers, academic researchers, consumer groups, or third-party analysts—that can shed light on the general state of consumer awareness about the purchase of communications services and opportunities to improve consumer welfare.[11]

II. BACKGROUND

A. The Truth-in-Billing Orders

8. In 1999, the Commission released the *First Truth-in-Billing Order*[12] to address concerns that there was growing consumer confusion related to billing for telecommunications services and an increase in the number of entities willing to take advantage of this confusion through practices such as slamming and cramming.[13] The Commission at that time concluded that truth-in-billing requirements were necessary to deter carriers from engaging in unjust and unreasonable practices in violation of section 201(b).[14] Citing as its authority sections 201(b) and 258(a) of the Communications Act of 1934, as amended (the "Act"),[15] the Commission decided to take a flexible approach by adopting "broad, binding principles" to promote truth-in-billing, rather than mandating more detailed rules to govern the details or format of carrier billing practices.[16]

(continued from previous page)...
Reading Privacy Policies," *I/S: A Journal of Law and Policy for the Information Society*, 2008 Privacy Year in Review Issue.

[10] *See infra* Section III.D.

[11] We recognize that this NOI may include some areas of inquiry that touch on specific issues currently pending before the Commission in other proceedings. We emphasize that this NOI is not intended to preclude us from taking action on matters in other proceedings based on the record in those proceedings.

[12] *See First Truth-in-Billing Order*, 14 FCC Rcd 7492.

[13] "Slamming" is the unlawful practice of changing a subscriber's selection of a provider of telephone service without that subscriber's knowledge or permission. "Cramming" is the practice of placing unauthorized, misleading or deceptive charges on a consumer's bill. *See, e.g., Long Distance Direct, Inc.*, File No. ENF-99-01, Memorandum Opinion and Order, 15 FCC Rcd 3297 (2000) (assessing a forfeiture for slamming and cramming violations pursuant to sections 201(b) and 258 of the Act); *see also FCC and Industry Announce Best Practices Guidelines to Protect Consumers From Cramming*, 1998 WL 406058 (July 22, 1998).

[14] *First Truth-in-Billing Order*, 14 FCC Rcd at 7506, para. 24.

[15] Section 201(b) requires that common carriers' "practices ... for and in connection with ... communications service, shall be just and reasonable, and any such ... practice ... that is unjust or unreasonable is hereby declared to be unlawful ...." 47 U.S.C. § 201(b). Section 258(a) makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. § 258(a).

[16] *See First Truth-in-Billing Order*, 14 FCC Rcd at 7498, para. 9.

9. In general, those truth-in-billing principles, which are codified at section 64.2401 of the Commission's rules, require that customer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new providers; (2) contain full and non-misleading descriptions of charges that appear therein; and (3) contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or to contest charges on the bill.[17] The Commission determined that, although these principles and section 201(b) apply to all carriers, including wireless carriers, it would be appropriate to exempt Commercial Mobile Radio Service (CMRS) providers from three of the codified requirements because they were deemed either inapplicable in the CMRS context, or unnecessary given the lack of complaints at that time.[18] In a Further Notice, however, the Commission sought comment on whether these rules should apply to CMRS carriers in the future.[19]

10. In the 2005 *Second Truth-in-Billing Order*, the Commission eliminated the exemption for CMRS carriers from the requirement that billing descriptions be brief, clear, non-misleading and in plain language.[20] The Commission also reiterated and emphasized certain requirements of the truth-in-billing rules.[21] In the associated *Second Truth-in-Billing FNPRM*, the Commission noted that consumers were still experiencing confusion about their bills.[22] Accordingly, the Commission proposed additional measures to provide consumers with clear information on their bills.[23] Those proposals have not, however, been acted upon.

B. Voluntary Industry Standards

11. In 2003, CTIA – an industry trade group representing wireless communications providers – and a number of wireless carriers voluntarily adopted a "Consumer Code" to facilitate the provision of

[17] *First Truth-in-Billing Order*, 14 FCC Rcd at 7496, para 5. *See also* 47 C.F.R. § 64.2401.

[18] *First Truth-in-Billing Order*, 14 FCC Rcd at 7501-02, paras. 15-16. *See also* 47 C.F.R. § 64.2400(b) (exempting CMRS providers from 47 C.F.R. § 64.2401(a)(2) (requiring that charges be separated by service provider where charges for two or more carriers appear on the same telephone bill), (b) (requiring charges contained on telephone bills to be accompanied by brief, clear, non-misleading, plain language descriptions of the service or services rendered, and (c) (requiring carriers to distinguish on telephone bills 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)).

[19] *First Truth-in-Billing Order*, 14 FCC Rcd at 7535, para. 68.

[20] *Second Truth-in-Billing Order*, 20 FCC Rcd at 6468, para. 39.

[21] *See id.*, 20 FCC Rcd at 6460-62, paras. 25-29. For example, the Commission reiterated that non-misleading line items are permissible under our rules, but noted that it is misleading to represent discretionary line item charges in any manner that suggests they are taxes or charges required by the government. In addition, the Commission clarified that the burden rests upon the carrier to demonstrate that any line item that purports to recover a specific governmental or regulatory program fee conforms to the amount authorized by the government to be collected.

[22] *Second Truth-in-Billing FNPRM*, 20 FCC Rcd at 6468, para. 39.

[23] *See generally Second Truth-in-Billing FNPRM*. Specifically, the Commission: (1) tentatively concluded that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges; (2) sought comment on the distinction between "government mandated" and other charges; (3) sought comment on whether it is unreasonable to combine federal regulatory charges into a single line item; and (4) tentatively concluded that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services.

accurate information to consumers by wireless service providers.[24] The CTIA Consumer Code requires, among other things, that signatory carriers voluntarily agree to take certain steps to disclose rates and terms of service to consumers. In particular, the Code requires those companies that sign it to disclose "the amount or range of any . . . fees or surcharges that are collected and retained by the carrier,"[25] and to separately identify carrier charges from taxes on billing statements.[26] Carriers that sign the Code are allowed to display a "Seal of Wireless Quality/Consumer Information" if they certify each year that they are in compliance with the Code.[27]

C. Broadband Internet Access Services

12. Interconnected VoIP service enables users, over their broadband connections, to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN.[28] On March 10, 2004, the Commission initiated a proceeding to examine issues relating to IP-enabled services – services and applications making use of IP, including, but not limited to, VoIP services.[29] In the *IP-Enabled Services Notice*, the Commission noted that some IP-enabled services, to the extent they are viewed as "replacements for traditional voice telephony[,]" raise "social policy concerns" relating to emergency services, law enforcement, disabilities access, consumer protection, and universal service.[30] With regard to consumer protection matters, the Commission sought comment on whether billing-related requirements such as truth-in-billing and anti-slamming measures – or any other consumer protections – should apply to "any providers of VoIP or other IP-enabled services."[31]

13. In 2005, the Commission also sought comment on whether regulation similar to our truth-in-billing requirements was necessary to ensure that the interests of broadband Internet access

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[24] *See* http://www.ctia.org/content/index.cfm/AID/10352 (*CTIA Consumer Code*).

[25] *CTIA Consumer Code*, Item One.

[26] *CTIA Consumer Code*, Item Six: "On customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal, state, or local governments. Carriers will not label cost recovery fees or charges as taxes."

[27] According to CTIA, there are currently thirty-one CMRS providers listed as Consumer Code participants: http://www.ctia.org/content/index.cfm/AID/10623 (visited August 25, 2009).

[28] *See* 47 C.F.R. § 9.3 (defining "interconnected VoIP service" as "a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network"); *see also IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (2005) (*VoIP 911 Order*), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 C.F.R. § 54.5 (defining "interconnected VoIP provider").

[29] *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services Notice*).

[30] *IP-Enabled Services Notice*, 19 FCC Rcd at 4886-87, para. 36. The notice further considered whether a service's functional equivalence to, or substitutability for, traditional telephony provides a basis for determining the appropriate regulatory treatment of that service. *Id.* at 4887, para. 37.

[31] *IP-Enabled Services Notice*, 19 FCC Rcd at 4910-11, para. 72.

consumers are adequately protected.[32] In the *Broadband Consumer Protection NRPM*, the Commission noted its desire to ensure that its consumer protection objectives would continue to be met as the industry shifts from narrowband to broadband services.[33] In light of the fact that the agency had received complaints about the billing practices of broadband Internet access services providers, including complaints related to double billing, billing for unexplained charges, and billing for cancelled services, the Commission asked whether it should exercise Title I authority to impose requirements on broadband Internet access service providers "that are similar to our truth-in-billing requirements or are otherwise geared toward reducing slamming, cramming, or other types of telecommunications-related fraud."[34]

D. Subscription Video Services

14. The Commission already has in place limited rules relating to cable operators' billing practices. Our rules permit cable operators to list as separate line items charges that reflect franchise fees, other governmental fees or taxes, and the cost of compliance with certain franchise obligations.[35] At the same time, however, the charge identified on the bill as the "total charge" must include all such fees and itemized costs.[36] No similar rules apply to satellite television services, nor has the Commission initiated any proceedings on the issue.

E. Consumer Complaint Data

15. Recent consumer complaint data suggests that consumers continue to experience confusion and uncertainty surrounding the communications services to which they subscribe. For example, a recent survey by the Government Accountability Office (GAO) found that one-third of wireless phone customers who pay their own bills found unexpected charges or had problems understanding their bills.[37] Further, one in five customers who contacted customer service were dissatisfied with their carrier's efforts to resolve the problem.[38] Notably, billing-related inquiries and

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[32] *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services;* Computer III *Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review — Review of* Computer III *and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era*, WC Docket No. 04-242, 05-271, CC Docket Nos. 95-20, 98-10, 01-337, 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14929-35, paras. 146-159 (2005) (*Wireline Broadband Internet Access Services Order* or *Broadband Consumer Protection NPRM*), *petitions for review denied, Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

[33] *Broadband Consumer Protection NPRM*, 20 FCC Rcd at 14929-30, para. 146.

[34] *Broadband Consumer Protection NPRM*, 20 FCC Rcd at 14933, para. 153.

[35] 47 C.F.R. § 76.985(a)

[36] 47 C.F.R. § 76.985(b).

[37] *See Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC's Efforts to Assist Consumers with Complaints*, Testimony before the U.S. Senate, GAO-09-800T, June 17, 2009, http://www.gao.gov/new.items/d09800t.pdf (indicating that 12 percent of wireless subscribers were dissatisfied with billing) (*GAO Report*).

[38] *Id.*

complaints are consistently among the top categories of consumer complaints filed with the FCC and state utility commissions.[39] Consumer complaints at the FCC relating to billing and rates for wireline services increased from 8,965 in 2006 to 13,486 in 2008, an increase of 50 percent, while the number of wireline telephone subscribers decreased 10 percent between June 2006 and June 2008.[40] Consumer complaints at the FCC relating to billing and rates for wireless services increased from 8,822 in 2006 to 10,930 in 2008, an increase of approximately 24 percent, while the number of wireless subscribers during the same period increased by 16 percent.[41]

III. DISCUSSION

16. As noted above, we have initiated this Inquiry to examine whether there are opportunities to protect and empower consumers by ensuring sufficient access to relevant information about communications services. As discussed below, we seek comment on how to provide consumers with better access to clear, easily understandable information they need to choose a provider, to choose a service plan, manage use of the service plan, and decide whether and when to switch an existing provider or plan. Better access to clear information is particularly important in light of the substantially increased number of delivery platforms and service options that have become available since we last examined consumer information disclosures. In undertaking this inquiry, we emphasize that we are seeking as much concrete data as possible on the questions posed in this NOI. Commenters should specifically identify any data that is already publicly available, and data that may be in the hands of service providers, third-party analysts, market research firms, or others. We are also interested in any research or academic studies that may help inform our decision making.

A. Services Addressed by this Inquiry

17. The rules we currently have in place, the truth-in-billing rules, cover only providers of wireline and wireless voice services. Thus, we begin by asking whether the Commission's existing truth-in-billing rules and/or consumer information-related rules that might develop out of this proceeding should be applied to other services, such as broadband Internet access service and subscription video services. In this regard, we seek comment on how effective the current truth-in-billing rules have been in addressing consumers' confusion about their bills. We ask commenters to identify the specific rules that continue to provide important protections for consumers and those that are no longer necessary given the current marketplace. We are particularly interested in any data and research to support commenters' views.

[39] *See FCC Quarterly Reports On Informal Consumer Inquiries and Complaints* (2006-2008) at http://www.fcc.gov/cgb/quarter/welcome.html; Testimony of the New York State Consumer Protection Board – Consumer Protections for Wireless Telephone Customers in New York State, March 13, 2006 (noting that more than two-thirds of consumer complaints were about billing or rate issues); Florida Public Service Commission's Consumer Activity Reports, http://www.psc.state.fl.us/publications/reports.aspx.

[40] In June 2006, there were 172.1 million wireline telephone subscribers; in June 2008, that number had dropped to 154.6 million subscribers. *See Local Telephone Competition, Status as of June 30, 2008*, July 2009 (Table 1: End-User Switched Access Lines Reported).

[41] CTIA reported that there were 233 million wireless subscribers in 2006 and 270 million wireless subscribers in 2008. *See CTIA's Wireless Industry Indices, Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2008 Results* (rel. May 2009) at 15.

18. We note growing evidence of consumers substituting interconnected VoIP for traditional voice telephone service.[42] We seek comment, particularly in light of this trend, on the benefit that consumers would derive if we were to extend truth-in-billing or other consumer information rules to these providers relative to the burden that doing so would impose on the providers.

19. We also seek comment on whether certain rules may not be necessary or make sense for some services. For instance, the truth-in-billing rules require that carriers separate charges by service provider and clearly identify those charges for which non-payment will (or will not) result in disconnection of basic local service.[43] CMRS providers are currently exempt from these requirements.[44] We seek comment on whether CMRS providers should continue to be exempt from these requirements. If we were to extend the truth-in-billing rules to broadband Internet access service and subscription video services, would it make sense to exempt providers of these services from this or other provisions as well?

20. We seek comment on whether, if the Commission were to apply consumer information or truth-in-billing requirements to other service providers, complaints against those service providers should be handled in the same manner as informal complaints against common carriers? As discussed more fully below, we seek comment on our legal authority regarding the handling of non-common carrier complaints.

21. We recognize that some parties have raised First Amendment concerns in this area.[45] Under the framework established in *Central Hudson*, a regulation of commercial speech will be found compatible with the First Amendment if: (1) there is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest.[46] As the Commission previously concluded in the *Truth-in-Billing First Report and Order*, the government has a substantial interest in ensuring that consumers

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[42] A recent forecast from Pike & Fisher's Broadband Advisory Services estimates that approximately 8.5 million more U.S. households will start using VoIP for their home phone service over the next two years, bringing the total number of VoIP connected households to nearly 30 million by 2010. *See* http://www.cellular-news.com/story/34147.php?source=newsletter.

[43] 47 C.F.R. § 64.2401(a)(2), (c).

[44] *See* 47 C.F.R. § 64.2401(b). On February 28, 2002, the Commission released a Notice of Proposed Rulemaking, in which it sought comment on a proposal to create a consumer complaint process patterned after our Section 208 informal complaint rules, and to extend this process to all entities we regulate. *Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission,* Notice of Proposed Rulemaking, *Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers, and 2000 Biennial Regulatory Review*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CI Docket No. 02-32, 17 FCC Rcd 3919 (2002). Currently, the informal complaint rules apply only to complaints against common carriers. 47 C.F.R. § 1.716-1.719 and 47 U.S.C. § 208. In the NPRM, the Commission noted that we handle informal complaints against regulated entities other than common carriers in a less structured manner, which results in a lack of predictability for consumers in filing complaints and for industry in receiving and responding to complaints.

[45] *See, e.g., First Truth-in-Billing Order*, 14 FCC Rcd at 7530-33, paras. 60-64 (rejecting the suggestion that standardized labels would violate the First Amendment).

[46] *Central Hudson Gas & Electric Corp. v. Public Service Commission,* 447 U.S. 557, 566 (1980). Commercial speech that is potentially misleading has less First Amendment protection, and misleading commercial speech is not protected at all and may be prohibited. *Id.* at 563-64.

are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace.[47] Moreover, "regulations that compel 'purely factual and uncontroversial' commercial speech are subject to more lenient review than regulations that restrict accurate commercial speech."[48]

22. We encourage parties to address First Amendment issues in their comments, particularly with respect to any specific proposals made. We ask parties to address how any proposed regulation meets the requirements of the three prongs of the *Central Hudson* test. Parties should address specifically how proposals harmonize with Commission precedent in this area and relevant case law.

B. Identifying the Information that Consumers Need

23. Consumers need different kinds of information at different stages of choosing and using telecommunications services, particularly in light of the increasing complexity and number of available choices. Consumers need information to help them: (1) choose a provider, (2) choose a service plan, (3) manage use of the service plan, and (4) decide whether and when to switch an existing provider or plan. To choose a provider, consumers need information on the availability and quality of network services and related equipment (coverage and reliability), various provider fees for similar services, and full disclosure of the contractual commitments they are undertaking. To choose a service plan, they need to be able to compare and contrast service plans offered by different providers and assess the full costs of each option. To use a service plan well, they need accurate and transparent billing statements, clear usage information, and accurate disclosures about changes in fees or terms of service during the relevant period. We seek comment on whether consumers need information displayed in a consistent format that allows them to compare their current service with the new and increasing offerings of other providers. These needs apply to a wide variety of communications services, including traditional fixed voice; wireless voice and data; broadband Internet access service; and subscription video services. We seek comment on whether this framework is the correct approach or if a different approach may be more appropriate.

24. This NOI seeks input on the kinds of information that will be most useful to consumers at each stage of the process and how available that information is now. We also seek input on any other factors that should be added to this framework for understanding consumer decisions. The following paragraphs give some examples of key questions that fall under this framework. We also seek comment generally on how best to educate consumers about the information that is, or should be, available to them regarding communications service options. In addition, we seek comment on how input from people with disabilities and organizations that represent them might be considered earlier in the process so that service providers can integrate that input when formulating their initial disclosure policies for each of the stages of the purchasing process.

1. Choosing a Provider

25. We seek to better understand the variety of factors consumers must consider when assessing providers of communications services. For instance, how are consumers given information about their contractual commitments to service providers, and the trial periods and termination fees in those contracts? How well do consumers understand the commitments they are making in choosing a

[47] *First Truth-in-Billing Order,* 14 FCC Rcd at 7531, para. 61.

[48] *See, e.g., New York State Restaurant Association v. New York City Board of Health,* 556 F.3d 114, 132 (2nd Cir. 2009) (upholding New York City health code requiring restaurants to post calorie content information on their menus and menu boards, *citing Zauderer v. Office of Disciplinary Counsel,* 471 U.S. 626, 637 (1985); *National Elec. Mfrs. Ass'n v. Sorrell,* 272 F.3d 104, 113 (2nd Cir. 2001) (upholding Vermont statute prescribing labeling requirements on mercury containing lamps).

provider, including particular contractual provisions, costs for initiating new service, equipment costs, and early termination fees?

26. *Service Quality.* We seek input about what information helps consumers assess the service quality being offered by each provider and the different dimensions of service quality.[49] Service quality can include coverage areas for wireless voice and data services, broadband speeds, and the quality of different video services (cable and satellite). For example, a wireless consumer's experience is likely to reflect such factors as the extent of geographic coverage, the number of dropped calls, signal strength within that consumer's home and workplace, speed of data throughput, and many others.[50] A broadband Internet access consumer's experience is likely to reflect peak and average throughput, upload and download speeds, and the extent of network outages. We seek comment on the dimensions of service quality for different communications services and the availability and usefulness of information on these issues for consumers who are considering such services.

27. *Equipment Quality.* Consumers may also choose communications service providers based on the equipment available from those providers. For wireless service, how accurate and helpful is the information they receive on choice of handsets and costs – both when they initially sign up with a service provider, and when they upgrade to a new handset? How well do consumers understand their options for returning or exchanging equipment if they have difficulty using it?[51] Do consumers have the information they need to weigh the benefits of particular equipment against the other pros and cons of signing up with a specific provider? For the broadband Internet access service and video parts of the bundle, do consumers have the information they need to choose between different hardware options, such as satellite dishes and Digital Video Recorders?

2. Choosing a Service Plan

28. We also seek comment on what information consumers need when choosing a service plan or payment option. We seek answers to a variety of questions regarding current advertising practices and what changes may be necessary to ensure consumers receive accurate and understandable facts on which to base a choice of service plans or payment options.

29. *Advertising.* We seek comment on whether advertised prices generally include all costs and fees. If not, how can consumers compare the competitive options available to them? Does any data demonstrate how advertised rates influence consumer decisions about choosing service plans?

30. *Promotional pricing.* Do the promotional prices offered by many communications providers generally include all costs and fees that allow consumers to compare the competitive options

[49] For instance, a recent OFCOM report indicates that actual broadband speeds in the United Kingdom reach only 57% of the average advertised speed. UK Broadband Speeds 2009: Research Report, OFCOM, pgs. 9, 22, *available at* http://www.ofcom.org.uk/research/telecoms/reports/broadband_speeds/broadband_speeds/broadbandspeeds.pdf. Consumers may benefit from receiving more information about the difference between advertised and actual speeds.

[50] We note that prior to 2002, the Commission's rules required each cellular licensee to provide prospective subscribers with information regarding the service area (*i.e.*, a coverage map) for that provider. *See generally Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, Second Report and Order, 17 FCC Rcd 18485, 18489, para. 8 (2002) (eliminating provision requiring cellular carriers to provide subscribers with service area information).

[51] We note that the Commission's wireless hearing aid compatibility rules require service providers to provide information about, and allow consumers to test, in retail stores owned and operated by the service providers, the hearing aid compatibility of the different handsets they offer. *See* 47 C.F.R. § 20.19.

available to them? What data demonstrates how these promotional rates affect consumer decisions about service plans? Do consumers understand how promotional prices, now used in the sale of broadband Internet access services and bundled services, will change over the course of the contract? Are consumers getting enough information about the trial period in which a contract can be canceled? Do they find this a sufficient time period to gain the experience and information they need on cost and service issues? How well do consumers now understand their contractual obligations with these promotional plans and their options if they experience poor service quality?

31. *Point-of-sale disclosures.* In addition, we seek comment more generally on whether consumers are receiving adequate point-of-sale disclosures. Do consumers receive sufficient information to understand, prior to subscribing to a service, the full range of potential costs and fees associated with that service? Are disclosures that are currently being provided useful and easy to understand?[52] For example, are early termination fees being clearly disclosed including whether and how such fees are prorated? Do consumers understand how such fees will be prorated if they terminate service before the end of the contract? What point-of-sale disclosures are most important for wireless data plans, now growing in popularity with the use of smart phones and netbooks? Should wireless providers be required to disclose the cost of any "free" or "discounted" handset or other end-user device, such as a netbook that is recovered through monthly service payments made by the subscriber? We seek comment on these point-of-sale disclosures and any others that interested parties may identify that may assist consumers in understanding, prior to signing a contract, the charges that will appear on their bills.

32. We seek comment on whether the most effective way to ensure that consumers are protected is through voluntary industry codes, such as the CTIA Consumer Code. The CTIA Consumer Code provides that wireless providers disclose to consumers information on calling area plans, charges that may differ by time period such as nights and weekends, roaming or off-network charges, charges for excess or additional minutes, long distance charges, and activation fees.[53] Does the CTIA Consumer Code address all of the point-of-sale disclosures that wireless service consumers need in order to fully understand what service is being offered, at what price, and on what terms? Should the CTIA Consumer Code be used as a model for other types of communications service providers? Are there refinements to the Code that should be undertaken to benefit consumers? What information along these lines could consumers of other services benefit from?

33. *Bundling.* Do consumers receive adequate information when several services are bundled? For bundled services, do consumers receive full disclosure in advance that terminating one of the services in the bundle will result in price increases for the remaining services, or in a penalty, such as an early termination fee? Are bills sufficiently clear and detailed for consumers to compare the price for bundled services to the price for the same services purchased individually? If consumers are not satisfied with one of their bundled services, do they have a way to dispute what they are paying for that service without having the rest of their services cancelled?

[52] In the *Second Truth-in-Billing Order and FNPRM*, the Commission noted that various parties at that time expressed support for mandating point-of-sale disclosures. *Second Truth-in-Billing Order and FNPRM*, 20 FCC Rcd at 6477, para. 55. In response to the concerns expressed by these parties, the Commission tentatively concluded that carriers must disclose the full rate, including any non-mandated line items, and a reasonable estimate of government mandated surcharges to the consumer at the point of sale. *Id.* The Commission has not, however, acted on those proposals. We encourage parties to refresh the record on that issue.

[53] *CTIA Consumer Code*, Item One.

34. *Equipment.* Do consumers receive information about the cost of buying versus renting equipment, such as wi-fi routers and modems? Do they receive enough information about whether equipment can be bought from a third party, rather than the service provider?

3. Managing Use of the Service Plan

35. We also seek comment on the information consumers need to manage the use of the service plans they have chosen. This inquiry extends not only to the adequacy of the information consumers currently receive on their bills, but the additional disclosures that may be necessary to enable better use and cost control under their existing service plan. We consider empowering consumers to better manage service plans critical in an era where multiple services are bundled into a single bill, and where billing technologies may have improved sufficiently to provide consumers detailed, real-time information on usage and the potential for incurring "overage" charges. Therefore, we seek to determine how to eliminate confusion and provide additional billing information to empower consumers to make better use of service plans.

36. *Traditional Truth-in-Billing Rules.* The telephone bill is one of the consumer's primary sources of information regarding the services rendered by a provider and charges assessed for those services. Section 64.2401 of the Commission's rules requires that telephone bills be "clearly organized" and that charges contained on the bill be accompanied by "a brief, clear, non-misleading, plain language description of the service or services rendered."[54] Are the truth-in-billing rules working and having the desired effect in making bills easier to understand? Does any quantifiable data describe whether and to what extent consumers still find their bills confusing and whether carriers are complying with the requirements? Can commenters provide any recent data addressing these issues? As noted above, we also seek comment on whether there are specific truth-in-billing rules that are no longer necessary in the current marketplace. If so, commenters should specify which rules and why they are no longer useful to consumers. Are there any additional measures that service providers could take to alleviate remaining confusion, such as additional consumer outreach and education, or explanatory information on provider websites? Is there another aspect of the bill's format that consumers find confusing? As we discuss in more detail below, formatting can have as much of an impact on consumer decisions as the types of information itself. Does consumer confusion derive from the format of the bill itself, the description of the charges that appear on the bill, or both? When consumers purchase bundled services (such as fixed voice, wireless voice or data, subscription video, and broadband Internet access services) are there elements of the bill that they find confusing? We are interested in whether service providers are receiving complaints about the clarity of their bills, and what steps they have taken in response. We request comment on whether the adoption of standardized labels for line items associated with federal regulatory action would be helpful to consumers and we encourage commenters to suggest the information that would be useful for consumers to have contained in such labels.[55]

37. As noted above, industry initiatives such as the CTIA Consumer Code for wireless service have provided voluntary guidelines for billing statements. Can the extent to which those

[54] *See* 47 C.F.R. § 64.2401(a), (b).

[55] We note that in the *First Truth-in-Billing Order,* the Commission adopted a guideline (but not a binding requirement) that line-item charges associated with federal regulatory action should be identified through standard and uniform labels across the industry. *First Truth-in-Billing Order*, 14 FCC Rcd at 7525-26, para. 54. The Commission sought comment on specific labels that carriers might adopt for line-item charges, while tentatively concluding that such labels would help to identify particular line item charges and provide consumers with a basis for comparison among carriers, without unduly burdening carriers. *First Truth-in-Billing Order*, 14 FCC Rcd at 7537, para. 71.

voluntary guidelines have been effective in addressing concerns with billing practices be quantifiably measured? Are there additional industry or state sponsored billing initiatives already underway and is there any data indicating the effectiveness of such programs? Are there measures the Commission could undertake to facilitate voluntary initiatives among service providers?

38. Some consumer confusion appears to relate to line-item charges associated with federal regulatory actions, such as universal service, local number portability, 911, and access charges.[56] We seek comment on the extent to which this is the case, and on how we, and the industry, can better educate consumers about the nature and purpose of such charges.[57]

39. A relatively new development is the bundling of telephone services with video and Internet services into a single package with a single bill. Currently, telephone services are subject to our truth-in-billing rules, but video and Internet services are not. We seek comment on whether billing practices related to the bundling of services have caused confusion for consumers.[58] If so, are additional requirements needed to make such bills clearer? We ask consumers in particular whether bills for such bundled services are sufficiently clear about such things as what charges apply to which service, and whom to contact in the event of a problem with one or more of the component services. We also request information on whether consumers receive full disclosure in advance that terminating one of the services in a bundle of services will result in price increases for the remaining services, or in a penalty, such as an early termination fee.[59]

40. The truth-in-billing rules were adopted in large part to deter unscrupulous practices, such as "cramming"–placing unauthorized or deceptive charges on consumers' local telephone bills. These charges may be for any services the consumer did not request, such as ringtones, music, horoscopes or email accounts. Consumers often do not notice or understand these charges when they appear on their telephone bills, and they may simply pay them without realizing that they are for services that the consumer did not request or authorize.

41. In 1998, the Commission undertook an initiative to address this problem of cramming.[60] The industry responded to subsequent Commission requests to implement practices that would prevent cramming with a voluntary code of best practices designed to address cramming.[61] Nevertheless, consumers continue to file complaints about cramming.[62] To better understand the nature and magnitude

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[56] *See supra* para. 15.

[57] The Commission has developed a fact sheet to assist consumers in understanding these charges. *See* http://www.fcc.gov/cgb/consumerfacts/understanding.html.

[58] *See* http://www.consumerreports.org/cro/electronics-computers/tvs-services/bundled-services/overview/bundling-ov.htm (citing a January 2009 survey by the Consumer Reports National Research Center, which reveals that while subscribers were very satisfied with Internet, phone, and TV from the best telecommmunications providers, there were some problems with bundled services, including a high incidence of complaints about billing, support, and fees with some providers' triple-play packages).

[59] *See supra* Section III.B.2.

[60] *See* http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html.

[61] *See FCC and Industry Announce Best Practices Guide to Protect Consumers from Cramming*, 1998 W.L. 409126 (1998).

[62] *See FCC Quarterly Reports On Informal Consumer Inquiries and Complaints* (2006-2008) at http://www.fcc.gov/cgb/quarter/welcome.html. Consumer complaints related to cramming increased from 1,522 in 2006 to 2,327 in 2008.

of the problem, we seek comment on the extent to which cramming remains a problem for consumers, and why. We seek specific empiric and quantifiable information about the kinds of unauthorized charges that appear on consumers' telephone bills, and how such charges are presented on the bill. Are the charges easily detected? Is there any data on whether bills adequately inform consumers how to resolve questionable or unauthorized charges or how difficult it is for consumers to get such charges removed from their bills? We are particularly interested in data from the industry about the complaints they receive from subscribers and what steps they have taken to address such unauthorized charges. Are there additional measures industry can or should take to reduce incidences of cramming, including a review of the anti-cramming best practices developed in 1998? We also seek information on the billing activities of CMRS carriers, including whether, and if so how, they include charges for services rendered by third parties.[63] Based on the data, what role can the government play to reduce the incidence of cramming?

42. What lessons can the Commission learn from past experiences from other government agencies to deal with cramming? For instance, does the Federal Trade Commission (FTC) have experience in dealing with fraud that may provide us with useful information on how we might combat cramming by making it easier for consumers to detect? We also note that the practice of cramming has recently received the attention of state authorities[64] and seek information from these entities on their experiences.

43. *Additional Areas of Information.* We seek information on what, if any, additional disclosures consumers need to predict how their usage of particular service plans will affect the charges they incur. This may be information necessary to avoid unpleasant surprises when the bill arrives. In addition to consumers needing information to enable them to detect unauthorized charges, consumers need additional information to help them manage their service plans. What types of usage information do service providers or should service providers include in their billing statements to help consumers evaluate whether their service plan continues to fit their usage patterns? Does this information enable customers to easily discern whether their current service plans best meet their needs? If not, what information could consumers receive that would help them evaluate their service plans? How does metered billing, if applicable, affect the variability of charges under broadband Internet access service and wireless data plans? Are consumers receiving adequate disclosure of rates and terms of service before they subscribe to communications services?

44. Can consumers be provided with more useful information about their service usage once they are using a plan to prevent them from incurring unexpected charges, or to adjust their plan as their usage patterns change? We are interested in receiving information about how widespread the practice of usage alerts is and, when it is used, the extent to which the warning is sent prior to incurring charges, or only after some threshold level of charges or minutes is incurred, and the level of cost detail included in such warning messages.[65] In general, would it be helpful for consumers to be provided with notice, such as the text alert just described, from their service provider when they are exceeding their allotted minutes

[63] *See First Truth-in-Billing Order*, 14 FCC Rcd at 7537, para. 71 (noting that the CMRS industry asserted it did not include charges for services rendered by third party entities on their bills).

[64] *See, e.g.*, McCollum Reaches Multi-Million Dollar Settlement with Verizon Wireless over "Free" Ringtones, June 24, 2009 News Release, http://www.myfloridalegal.com/newsrel.nsf/newsreleases/63E2ABD359B986CF852575DF004D31CC (stating that a large number of complaints related to the mobile content industry led to an investigation which revealed that thousands of Florida consumers had received charges on their cell phone bills for mobile content downloads that they neither knowingly authorized nor desired).

[65] *See infra* para. 49 (discussing usage controls and online comparison tools).

or otherwise engaging in practices that may result in additional fees or costs beyond their basic rates? How should consumers be informed when changes in their usage patterns result in a change in their monthly fee (*e.g.*, overage charges or penalties)? Are customers able to compare the costs and benefits of changing service providers as their usage patterns adjust over time? More generally, how can the Commission and industry work together to educate consumers about the information available to them?

4. Deciding Whether and When to Switch an Existing Provider or Plan

45. We seek input from commenters on the extent to which existing information available to consumers provides them with sufficient and timely information for comparing the price and quality of their existing service plans against other alternatives in the marketplace. How do consumers estimate and evaluate the practical and financial costs of switching providers, as compared to potential gains from adopting a different plan or provider? How might we employ technological tools to help consumers monitor the suitability of alternative plans, including ones that would automatically notify a consumer when a more suitable plan becomes available?

C. Formatting and Display of Consumer Information

46. In addition to the specific types of consumer information discussed above, we also seek comment on how providers currently present this information and on best practices for the display and formatting of consumer information. Both academic research and the Commission's experience with consumer issues have demonstrated that the manner in which providers display billing and other information to consumers can have as much impact on consumer decisions as the information itself.[66] We therefore seek comment on best practices for displaying and formatting other relevant information, both at the time of the initial purchasing decision, and at later stages, such as billing. Further, we seek comment on whether the effect of the display and formatting on consumer understanding can be quantifiably measured, and on research or other evidence that can identify best practices for disclosure of consumer information. If so, what is the best way to measure these effects? We seek comment on what role the government should play to ensure, based on the available data, that the best practices are adopted by service providers.

47. What lessons can the Commission learn from independent consumer research or from information disclosure requirements that govern other industries, such as the "Schumer Box" regulations that apply to credit cards; the FTC's energy guide program;[67] nutrition information on food products;[68]

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[66] *See generally* Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O'Donoghue & Matthew Rabin, *Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism,"* 151 U. PENN. L. REV. 1211 (2003) (surveying regulatory strategies to address problems arising from systematic errors in consumer decision-making); Richard H. Thaler and Cass R. Sunstein, NUDGE, Yale University Press 2008. *See also* James M. Lacko and Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* (FTC Bureau of Economics Report, June 2007), available at http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf (quantitative consumer testing shows that the form of mortgage cost disclosure affects consumer understanding of mortgage costs); Sumit Agarwal, John C. Driscoll, Xavier Gabaix & David Laibson, Learning in the Credit Card Market (Working Paper Feb. 8 ,2008) *available at* http://www.economics.harvard.edu/faculty/laibson/unpublishedwork (consumer knowledge about credit card fee plans, including how to avoid late fees, depreciates rapidly over time); and also Eugenio J. Miravete, *Choosing the Wrong Calling Plan? Ignorance and Learning*, 93 AM. ECON. REV. 297 (2003) (consumers select rationally among telephone calling plans).

[67] The FTC operates the mandatory Energy Guide labeling program, which requires standard labels on certain appliances that disclose estimated yearly operating cost and energy use. *See* 16 C.F.R. Part 305.

requirements for fuel economy labeling on cars;[69] Department of Transportation requirements for labeling of safety ratings on cars;[70] mortgage information disclosures,[71] and FDA rules for the content and format of the "package insert" for prescription drugs designed to make it easier for consumers and health care professionals to access, read and use the prescribing information.[72] For example, pursuant to the 1988 Fair Credit and Credit Card Disclosure Act amending the 1968 Truth-in-Lending Act, credit card companies must list, on all solicitations, long-term interest rates in at least 18-point type and all other rates, terms and conditions in at least 12-point type.[73] All credit card companies use the same format, making it easier for consumers to compare rates offered by various companies. Is there any data indicating how the Schumer Box has influenced consumer understanding? Would a similar disclosure box for communications services assist consumers in better understanding their bills? If so, what information should be included in the box? If a similar box is not the best approach for communications services, what alternative approaches would make information more understandable for consumers?

D. Technological Tools

48. As advances in technology and the proliferation of new services may bring increased confusion, technological advances may also make it easier to get needed information into the hands of consumers. We seek comment on what technological tools are available to consumers or will be in the future, to help them compare service options available to them.

49. We also seek comment on technological innovations designed to inform consumers about the ongoing charges they are incurring. For example, some service providers offer various usage controls that allow subscribers to set limits for minutes, time of day restrictions or similar activities that may

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(continued from previous page)...

[68] The Federal Food, Drug, and Cosmetic Act (FD&C Act, 21 U.S.C. § 301-399) and the Fair Packaging and Labeling Act (15 U.S.C. §§ 1451-1461) are the Federal laws governing food products under FDA's jurisdiction. The FD&C Act was amended by the Nutrition Labeling and Education Act of 1990 (P.L. No. 101-535, 104 U.S.C. § 2353, 1990) which requires most foods to bear nutrition labeling and requires food labels that bear nutrient content claims and certain health messages to comply with specific requirements.

[69] *See* 49 U.S.C. § 32908, which requires that auto manufacturers attach a label to each car with information on the car's fuel economy, estimated annual fuel cost of operating the car, and the range of fuel economy of comparable cars from other manufacturers.

[70] *See* Automobile Information Disclosure Act, 15 U.S.C. § 1232. As amended in 2005, the Automobile Information Disclosure Act requires automobile manufacturers to disclose on a label affixed to the car safety ratings information, including "information describing the nature and meaning of the crash test data presented" as well as a "graphic depiction" of the safety rating. The information must be presented in a "legible, visible, and prominent fashion" constituting at least 8 percent of the total area of the label, or other specified dimensions. 15 U.S.C. § 1232(g); *see* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1941-42.

[71] *See, e.g.,* 12 U.S.C. § 4903(a) (imposing specific disclosure requirements for new mortgages at the time of the transaction, such as a written initial amortization schedule).

[72] *See* Food and Drug Administration, Requirements on the Content and Format of Labeling for Human Prescription Drug and Biological Products, 21 C.F.R. Parts 201, 314, and 601, January 24, 2006 at http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/LawsActsandRules/ucm084189.htm.

[73] *See* Fair Credit and Credit Card Disclosure Act, Pub. L. 100-583, 102 Stat. 2960, amending the 1968 Truth-in-Lending Act, 15 U.S.C. § 1601-1677(f). Congress also recently amended the Truth-in-Lending Act to require enhanced consumer disclosures on credit card billing statements. *See* Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub.L. 111-24, 123 Stat. 1743-47.

result in additional charges.[74] Other entities provide cost and service comparisons among various service providers.[75] We seek comment on the availability of such tools, how those tools can help consumers to better understand and manage their bills, how consumers can get information about and access to those tools, as well as data showing the level of consumer satisfaction with such tools. Are there additional tools on the Internet or offered through other media that are available to consumers? Are these tools free, or are they provided at a cost? We also request information on whether it is clear to the consumer that a particular comparison tool is provided by an independent entity, or is associated with a service provider. We would like information on whether states or consumer groups provide any services along these lines for their consumers, and on whether commenters believe that the Commission could provide tools to assist consumers in understanding and managing their service plans.[76] We also seek comment on whether service providers are currently providing or should be required to provide to consumers their usage data in a digital format that allows them to compare different service offerings.

E. Resolving Disputes

50. We request comment on whether customers are able effectively and in a timely manner to dispute charges on their bills with their service provider when they call the toll free number provided on the bill.[77] What hours are call centers open to respond to customer inquiries and complaints? What is the process for consumers who are trying to cancel service, dispute a bill or change their service? How do service providers monitor the effectiveness of their dispute resolution process with customers? We ask service providers to tell us how they track how many complaints, and what types of complaints, they receive from consumers. We also ask that they report to us what trends they see in their complaint data, to help identify what areas appear to be of most concern to consumers. As discussed above, commenters are also invited to provide suggestions on what, if any, outreach and education activities the Commission might undertake to help consumers in this area.

51. A recent GAO survey suggests that many consumers do not know they can submit complaints to the Commission or how they can do so.[78] We seek comment on whether there are measures that the Commission might take to ensure that consumers are aware of the complaint process at the FCC. We also seek comment on whether there are changes to the Commission's truth-in-billing rules that might make it easier for consumers to contact their service provider directly to file a complaint. For example, section 64.2401(d) of the Commission's rules currently requires telephone bills to display a

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[74] Many of these usage controls are directed toward parents seeking to control their children's use of cell phones. For example, Verizon Wireless charges $4.99 per month to allow subscribers to impose usage limits for minutes, time of day restrictions, and blocked numbers. *See, e.g.*, Verizon Usage Controls at: https://wbillpay.verizonwireless.com/vzw/nos/uc/uc_home.jsp. AT&T and T-Mobile offer similar services.

[75] *See, e.g.*, BillShrink at http://www.billshrink.com/; Communication Value at http://www.communicationvalue.com/.

[76] We note that some international regulators support interactive websites to help consumers in comparing the cost of phone and broadband Internet access price plans in their countries. *See, e.g.*, http://www.callcosts.ie/home/default.asp.

[77] *See* J.D. Powers and Associates study at http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2009015 (finding that wireless customers experiencing billing errors—specifically, incorrect charges—report significantly lower satisfaction ratings with regard to the length of time it takes to resolve the problem compared with other reasons for contacting customer care).

[78] *See supra GAO Report*, n. 37.

toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill.[79] We request comment on whether we should also require service providers to include on their bills information about how to contact the provider via the Internet, or how to contact the Commission to file a complaint.

F. Disabilities Issues

52. With respect to all the issues discussed above, we seek comment on any ways in which the experience of consumers with disabilities might be unique, or require particular attention in this proceeding. We invite commenters to provide any data analysis or research that addresses consumer information and disclosure issues that may be particularly relevant to consumers with disabilities. We seek comment on whether consumers with disabilities are being well served by the information about communications services that is currently available to them, and in the manner it is being provided to them. Are the types of disclosure, billing and other information discussed above being provided to consumers with disabilities in accessible formats? Is there data available that addresses the experience of consumers with disabilities when contacting their service providers with questions or complaints?

53. Are consumers with hearing loss receiving adequate information to help them choose handsets that will work best with their particular hearing aids?[80] Are consumers who are blind or have low vision receiving adequate information at all stages of the purchasing process? Is the information provided to persons who are blind or have low vision in accessible formats? And do they have the tools necessary to help them select and manage their telecommunications services? Is there anything further that the FCC or industry should be doing with respect to consumer education in this regard?

54. Are there accessibility issues related to the information that service providers currently provide? For instance, do service providers offer clear ways for consumers with hearing, visual, cognitive and other disabilities to request information, or to dispute their bills? If not, what more should the Commission or industry do to improve this situation?[81]

55. Are there other suggestions of practices the industry should be taking or rules the Commission should consider to ensure that consumers with disabilities receive the information necessary to allow them to make informed choices about their communications services and providers? Are there ways in which technology can be utilized in this regard? Are there studies that exist that may help inform this analysis? If so, commenters are encouraged to reference these studies.

G. Consumer Education

56. As discussed above, we are seeking comment on the general state of consumer awareness about the purchase of communications services and opportunities to improve consumer welfare. In that vein, we also seek comment on whether there are additional consumer education initiatives that the FCC could undertake to assist consumers in gaining access to the information necessary at all stages of the

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[79] 47 C.F.R. § 64.2401(d). A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf.

[80] *See* 47 C.F.R. §§ 20.19, 68.4, 68.316.

[81] We note that section 6.11 of the Commission's rules requires telecommunications equipment manufacturers and service providers to ensure access by consumers with disabilities to the information and documentation, including bills, that they provide to all their customers. 47 C.F.R. § 6.11(a); *see also, e.g.*, 47 U.S.C. § 255(c) ("A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.").

purchasing process, and whether there are ways the FCC can utilize existing technological tools to better inform and empower consumers.

57. For example, are existing FCC consumer publications helpful to consumers in terms of factors to consider and questions to ask when choosing providers and choosing service plans, managing use of the service plan, and deciding whether and when to switch an existing provider or plan? We invite comment on what additional information would be helpful for consumers and any recommended format for such information. We also welcome suggestions for additional consumer billing and disclosure information that should be covered in the FCC's consumer publications. What is the most useful way for such information to be included on the Commission's website? Would a central, online location be useful for providing extensive consumer information such as, for example, coverage maps?

58. In addition to making this information available via the FCC's webpage and to consumers who call the FCC's toll free number, are there suggestions for additional ways that the Commission should consider in terms of reaching consumers with this information? Should the Commission consider hosting a workshop with academics, other federal agencies, consumer advocacy groups and industry members to better determine the current state of consumer awareness about the issues discussed in this Inquiry as well as finding ways to better inform consumers about issues critical to them throughout the purchasing process? Are there things the FCC should be doing in terms of outreach with other federal agencies, as well as state, local, and tribal governmental entities to help identify ways to educate consumers and better address consumer confusion about the issues discussed in this Inquiry? Are there education and outreach efforts used during the transition to DTV by the government, industry, and/or consumer groups that we should consider employing in this context?

59. How might the FCC utilize existing technological tools to better inform and empower consumers about the issues discussed in this Inquiry? Are there suggestions about possible refinements to or additions to the FCC's web page that would benefit consumers? What other technological tools might be used by the FCC to help get useful and timely information into the hands of consumers who need it?

60. Finally, as GAO points out, there are still some consumers who are not aware of the FCC's informal complaints process, and the consumer's ability to file complaints with the FCC regarding their service providers.[82] We therefore seek comment on what the FCC can do to educate consumers about the FCC's informal complaints process.

H. Statutory Considerations

61. To the extent that any of the services or equipment mentioned above fall outside Title II or other specific grants of authority under the Act, we seek comment on the Commission's authority to impose truth-in-billing and consumer information-related rules, and on the source of such authority. We note that our jurisdiction to regulate certain consumer equipment and non-Title II services delivered via various media is well established. For instance, as we explained in the *Wireline Broadband Internet Access Services Order*, while Title II obligations have never generally applied to information services, when we have determined that regulatory requirements are necessary for performing our duties under the Communications Act, we may impose such regulations pursuant to our Title I ancillary jurisdiction.[83]

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[82] *See supra* para. 51; *see also* 47 C.F.R. § 1.716-1.719 (informal complaint rules).

[83] *See Broadband Internet Access Services Order*, 20 FCC Rcd at 14913-15, paras. 108-11. For example, the Commission has exercised its ancillary jurisdiction under Title I to extend accessibility obligations that mirror those under section 255 to certain information services, *i.e.*, voicemail and interactive menu service. *See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of*

(continued....)

Indeed, the Supreme Court has recognized the Commission's ancillary jurisdiction under Title I to impose regulatory obligations on broadband Internet access service providers.[84]

62. More specifically, the Commission may exercise its ancillary jurisdiction when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."[85] As we similarly concluded in the wireline context, we anticipate that both of the predicates for ancillary jurisdiction are likely to be satisfied for consumer protection obligations that we may subsequently decide to impose on non-Title II services, such as broadband Internet access and subscription video services.[86]

63. First, we have subject matter jurisdiction over the providers of these services. These services clearly constitute either "wire communication" as defined in Section 3(52),[87] when they take the form of signals transmitted by wire or cable, or "radio communication" as defined in Section 3(33),[88] and when they take the form of signals transmitted by radio. Section 2(a) of the Act gives the Commission subject matter jurisdiction over "all interstate and foreign communications by wire or radio . . . and . . . all persons engaged within the United States in such communication."[89] Second, consumer protection regulation of at least some of these services would be similar to the regulation that we found, in the *Wireline Broadband Internet Access Services Order*, to be "reasonably ancillary" to the Commission's

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1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6455, para. 93 (1999) (*Section 255 Order*). *See also, e.g., Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934*, Report and Order, 22 FCC Rcd 11275, 11288, para. 23 (2007) (finding that the Commission has jurisdiction over customer premises equipment used to provide interconnected VoIP service); *CCIA v. FCC*, 693 F.2d 198, 207-14 (D.C. Cir. 1982) (affirming Commission jurisdiction to regulate the offering of customer premises equipment used to provide enhanced services).

[84] *See NCTA v. Brand X*, 525 U.S. at 996 (stating that after designating cable modem service an information service, "the Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction").

[85] *Southwestern Cable*, 392 U.S. at 178; *see also VoIP 911 Order*, 20 FCC Rcd at 10261-66, paras. 26-35.

[86] *See Broadband Internet Access Services Order*, 20 FCC Rcd at 14914, para. 109 (recognizing that "both of the predicates for ancillary jurisdiction are likely satisfied for any consumer protection, network reliability, or national security obligation that we may subsequently decide to impose on wireline broadband Internet access service providers").

[87] Section 3(52) of the Act defines the term "wire communication" or "communication by wire" to mean "the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." 47 U.S.C. § 153(52). As the Commission recently found with respect to VoIP services, irrespective of whether such services are telecommunications services or information services, based on sections 1 and 2(a) of the Act, 47 U.S.C. §§ 151, 152(a), they are covered by the Commission's general jurisdictional grant. *See VoIP 911 Order*, 20 FCC Rcd at 10261-66, paras. 26-35.

[88] 47 U.S.C. § 153(33) (defining "radio communication" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission").

[89] 47 U.S.C. § 152(a).

responsibility to implement Sections 222 (customer privacy), 255 (disability access), and 258 (slamming and truth-in-billing), among other provisions of the Act.[90]

64. We ask commenters to address this analysis and whether the type of consumer protection regulation under discussion here (*e.g.*, billing and disclosure requirements) is reasonably ancillary to the fulfillment of the goals of these Title II provisions, other provisions within Title II (*e.g.*, Section 201(b)), or other provisions of the Communications Act. We seek comment generally on issues related to the Commission's jurisdiction in this area. To the extent that parties believe that our jurisdiction over particular services should be analyzed differently than suggested above, we encourage parties to provide specific factual, legal, and/or policy reasons for such different treatment.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

65. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 47 U.S.C. § 3506(c)(4).

B. Ex Parte Presentations

66. The inquiry this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[91] 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 generally is required.[92] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[93]

C. Filing of Comments and Reply Comments

67. 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 and reply comments regarding the Notice on or before the dates indicated on the first page of this document. When filing comments, please reference **CG Docket No. 158, CC Docket No. 98-170 and WC Docket 04-36**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

[90] *See Broadband Internet Access Services Order*, 20 FCC Rcd at 14914, para. 110.

[91] 47 C.F.R. §§ 1.200 *et seq.*

[92] *See* 47 C.F.R. § 1.1206(b)(2).

[93] 47 C.F.R. § 1.1206(b).

- ECFS filers must transmit one electronic copy of the comments for all dockets referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

- Documents in CG Docket No. 09-158, CC Docket No. 98-170, and WC Docket No. 04-36 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, or via email fcc@bcpiweb.com.

D. Accessible Formats

68. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail at: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

V. ORDERING CLAUSE

69. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-2, 4, 201, 258, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-152, 154, 201, 258, and 403, this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36

Protecting and empowering American consumers is one of the Commission's most essential responsibilities. I thank the Consumer and Governmental Affairs Bureau for their hard work on today's item, which is an important step forward in the Commission's efforts to ensure that consumers have access to the information they need.

I want to emphasize, however, that the task of protecting and empowering consumers is not the responsibility of any single Bureau or Office at the Commission. Every decision this Commission makes—big and small—affects the day-to-day lives of American consumers. And each of us who has the privilege of working at this institution—regardless of Bureau or Office—is responsible for ensuring that our agency's decisions are always in the interest of consumers of communications services.

Today's Notice addresses the protection and empowerment of American consumers. Specifically, we seek to provide them the information, disclosure, and new technologies they need to make the market work. Making sure that consumers have adequate information at each step of this process is essential to enabling smart, informed decisions when it comes to communications services, which increasingly touch every part of our lives.

I can't think of a more important moment to be considering these issues. Despite signs of stabilization in the economy, times are still tough. Many Americans are learning to do more with less. A surprise charge on a monthly bill or a new service that does not perform as advertised can be a major budget-buster, especially as household spending on communications grows ever larger. Today's notice will help the Commission build a record on ways to ensure that consumers understand what they are signing up for.

And let's face it, the communications marketplace is a pretty confusing place today, as a variety of sources cited in today's item demonstrate. Technology has brought us a lot of new choices, but that also can lead to confusion about what to choose and how to evaluate new options coming on the market. The good news is that technology can also help and in very significant ways. It can give consumers access to new information and present old information in newer and better ways. This inquiry provides the agency with an important opportunity to understand how to make sure that technology is part of the solution and not part of the problem when it comes to finding ways to protect and empower consumers.

I look forward to seeing the results of this NOI and identifying specific strategies the FCC can adopt to improve the lives of American consumers.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Fostering Innovation and Investment in the Wireless Communications Market,* GN Docket No. 09-157; *A National Broadband Plan For Our Future,* GN Docket No. 09-51

Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66

Consumer Information and Disclosure, CG Docket No. 09-158; *Truth-in-Billing and Billing Format,* CC Docket No. 98-170; *IP-Enabled Services,* WC Docket No. 04-36

Today we launch three important Notices of Inquiry—each going to the heart of the Commission's core function: protecting and empowering American consumers. This is a most propitious beginning for the first meeting of our fully reconstituted FCC. These items are welcome news. I want to thank Chairman Genachowski for his vision and leadership in bringing these items forward at the outset of his tenure. It shows a commitment that bodes well for the months and years ahead.

The Notices that we are adopting today lay the groundwork for sound public policy-making. They seek to protect consumers in three ways—by searching out new ways for the Commission to facilitate wireless innovation and investment; by improving our ability to promote wireless competition; and by ensuring that consumers of wireless and other services have the information they need to make intelligent choices.

We begin with innovation. More even than the dramatic technology advances of the Twentieth century, the Twenty-first will be about stunning and transformative innovations in technology. Wireless innovations have already empowered consumers in ways unimagined just a few short years ago. Those first seemingly magical devices that carried our voices hither and yon—when everything was working well—are now evolving into robust mobile computers. The wireless industry deserves recognition and credit for how much it has accomplished. But mark me down as one who believes we have only glimpsed the beginning. Much more is coming. How much more depends in significant measure on our country's success in encouraging wireless innovation. There should be no doubt that facilitating further innovations in wireless technologies and services is absolutely crucial to our nation's prosperity and well-being in the Digital Age. We look to industry for much of that. But visionary public policy should always be the handmaiden of private enterprise. That's how we grew this country. Now, once again, we must learn to harness all our national resources for innovation and growth.

One of the great and costly shortfalls of the last decade was a declining national commitment to basic technology research and development. The tsunami of industry consolidation America endured in recent years short-changed research and development because R&D supposedly didn't nourish the quarterly bottom-line in ways sufficiently appealing to speculators-on-the-make. At the same time, government was for the most part exiting its role as an incubator of research and development. These simultaneous private and public cut-backs constituted a double whammy that cost us—consumers, citizens and country—dearly. The National Research Council reported, a couple of years ago, that without enhanced focus on technology research and development the U.S. role as a global leader in technology innovation can only continue to decline. The report showed how industry and government-

funded research have decreased considerably over the past several decades. We need to understand these things. We need to act upon them.

With today's Notice on fostering innovation in the wireless communications market, we begin to act. We launch an inquiry to understand how the Commission can better promote innovation and investment in new technologies and services. We ask wide-ranging questions. We seek to better understand where and how key innovations are occurring across the extensive "value chain" of the wireless market. What has gone wrong? Where are the shortfalls? What are other countries doing to promote innovation? We also inquire about ways to improve spectrum management practices to make more spectrum available for innovative services. For example, do technology innovations create new opportunities for accessing or sharing spectrum? What are they? How can we revise our rules to enable greater access for those with new products and services that Americans want? How can we do a better job as an agency addressing interference protection concerns and the conflicting claims of contending parties so that rulemakings do not continue to languish? What rule changes do we need to make as wireless network infrastructure and technologies bring us a flood of new possibilities and new applications? Improving the Commission's analysis and understanding of these matters will substantially enhance our ability to take the actions needed to promote wireless innovation and investment.

I am also pleased that a number of questions in this Notice focus on innovations in wireless devices and applications. The increasing sophistication and complexity of new devices and applications have opened new worlds to millions of consumers. How exactly does the "openness" of wireless networks and devices affect the pace of innovation? Aren't open platforms and open access the kinds of models that best promote innovation? What can we learn from the Internet model, where openness has provided consumers a fantastic world of choice in applications and services? The freedom to choose devices and applications is, I believe, good for consumers and good for entrepreneurs, too.

Wireless technologies and services are not just ends in themselves. These are things that will be called on to help solve many of the critical challenges facing our country—improvements in health care through telemedicine and patient monitoring devices; energy conservation through "smart grids;" education by bringing classrooms to eager learners wherever they may be; and public safety by enhancing the capabilities of our first responders, just to name a few. As we enable wireless technologies and services, we enable America to meet and master these many challenges. I would also say how pleased I am that we will have the opportunity to consider the comments we receive in this Notice as we develop our Congressionally-mandated National Broadband Plan, wherein promoting innovation will be critical to the achievement of our goals. Of course we already have records on some of these issues so that action does not have to wait until next year.

Today we also pave the way for improving the agency's annual *CMRS Competition Report* to Congress by expanding the scope of the report. For years I have advocated the benefits of a more granular, data-driven understanding of the current mobile wireless marketplace. While we have made some limited progress in this regard in recent years, we have a long way to go. In particular, I have remained concerned that the Commission has not yet developed a clearer, more analytically sound standard for evaluating the state of competition that these annual reports are supposed to address.

This is a crucial time to fully understand the state of competition in wireless. It's no secret to most folks in this room that I have been more than a tad critical of the extensive consolidation that has occurred in wireless. While I again applaud the technology and service strides the wireless industry has made, I remain unconvinced that the road we traveled was ideal. The Commission has a statutory duty to prevent undue concentration in the wireless marketplace. We opened the floodgates to consolidation

with the repeal of spectrum caps and, more recently, the Commission has been playing unhelpful games with altering spectrum aggregation screens without first completing the necessary analysis on how the use of different frequency bands may affect competition. The time is now, with a new Commission and with a National Broadband Plan in the making, to decide what path to take in order to ensure a more competitive wireless marketplace.

Today's Notice signals that the Commission is, at last, moving beyond too heavy a focus on what it has classified as "commercial mobile radio service" so that, going forward, we can cover more completely the broader mobile wireless marketplace. The nature of mobile wireless services has evolved significantly in recent years, transitioning from a reliance chiefly on mobile voice services to the increasing use and reliance on mobile broadband services in a variety of forms that connect Americans in myriad new ways. We need to better understand the various segments that comprise the mobile wireless ecosystem. So in this inquiry we seek to identify the retail service and consumer market segments that we should examine – which could include analysis of the market by type of service (such as mobile voice, text, or data), type of device (such as handsets or modem cards), type of subscription (such as prepaid or postpaid), or type of subscriber using the service (such as individual consumers, small businesses, or enterprises). We seek additional data about "upstream" markets (such as spectrum, towers, and backhaul) and "downstream" or "edge" markets (such as applications and content) that may affect mobile wireless competition. And we seek more data regarding the range of choices that consumers have that affect their purchasing decisions. These are the right questions.

Finally, we will consider today a Notice addressing consumer information and disclosure. It inquires how the Commission can better protect consumers by ensuring that they have the information they need when purchasing their communications services. We have not done much of a job on this important element of consumer protection in recent years. Consumers cannot be expected to make informed choices without information that truly informs. I have spoken in the past about, for example, better cell phone mapping being available to consumers when they go in to sign up with a carrier. The situation is arguably better now than it was, but it could have been better sooner and there is still room for improvement. Wireless bills remain a monthly agony for consumers. Ask my wife who pays our bills about how much she looks forward to ***that*** envelope arriving in the mail each month!

Consumer protection must always be front-and-center as we discharge our public interest obligations, and in a market that I think is less than maximally competitive, that's not just good public policy—it is essential public policy. If information is power, consumers too often lack power. So as the Digital Revolution transforms our lives, let's make sure that consumers have the information they need to select and maintain the products and services that serve them best.

I am also very pleased that this Notice asks whether the Commission's truth-in-billing rules—which currently apply only to wireline and wireless voice services and then, as I've remarked, not always adequately—should be extended to broadband Internet access service and subscription video services. The Digital Age is a time of communications convergence wherein voice, video and broadband services are more and more intertwined. Double, triple and quadruple play services are now offered by single or partnered service providers. I am pleased that, finally, with this item, the Commission begins to examine what information should be readily available to consumers who seek to protect and empower themselves when selecting, maintaining or switching these new services.

In sum, these Notices are good news. By issuing them, we endeavor to become the more pro-consumer agency that we were originally conceived to be—and must yet become. But let there be no doubt that these Notices represent only the beginning of the process. NOIs begin proceedings; NPRMs

breathe direction into them; Commission Orders bring the change. I hope, and I believe, that this Commission will act with a sense of urgency in getting from NOIs to final Orders. That's fundamental to doing our job for the American people.

Again, I appreciate the leadership of the Chairman and the input of all my colleagues, two of whom didn't have exactly an abundance of time to consider these items. And I thank the staff from all the different bureaus and offices that has collaborated in the preparation of these proceedings. A job well done!

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Consumer Information and Disclosure,* CG Docket No. 09-158; *Truth-in-Billing and Billing Format,* CC Docket No. 98-170; *IP-Enabled Services,* WC Docket No. 04-36

Thank you, Cathy, and the entire CGB team for your work in writing today's inquiry, which I am voting to approve. As you note, it has been four years since the Commission last examined consumer information and disclosure matters. In the intervening years, there has been significant growth and change in the communications marketplace, including the introduction of new categories of service, as well as new pricing models. Certainly these advances have benefited consumers in many ways – creative innovation, more choice and lower prices immediately come to mind. At the same time, there is some evidence that this change has created new sources of uncertainty. Given the circumstances, I appreciate the desire to take another look.

As we move forward, however, it is critical that we keep in mind the Commission's limitations. For this reason, I thank Chairman Genachowski and my colleagues for supporting my suggestion that we include in this inquiry robust discussions of the Commission's statutory authority, the applicability of the First Amendment, as well as the longstanding precedent in this area. I believe that we strengthened the document with a more sound legal footing, and therefore have provided a more meaningful opportunity for comment.

Thanks again to the staff and my colleagues. I look forward to hearing more about these issues in the coming months.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36

Today's Notice reflects a fundamental tenet of an effective marketplace: where consumers have meaningful access to information when making choices among providers and varied service plans, they are far more likely to make the best, most efficient choice. When consumers are making informed choices, providers are driven to be innovative and to offer the most desirable services. Consumers purchase those services. Everybody wins.

However, where consumers are locked into long-term plans they never anticipated, experience unforeseen failures in service coverage, or routinely and unknowingly pay for services they never envisioned using, the marketplace has gone askew. And when that occurs, the public interest requires that we identify the problem, fully comprehend its sources and its scope, and then address it head-on.

So today we ask: "Do consumers of communications services and devices currently have meaningful access to essential information throughout and beyond the purchasing process, and if not, what are the most effective means to correct any systemic breakdowns?"

To answer this and related questions, we not only need information directly from consumers and groups that represent their interests, but from industry as well. Some of the best data in this area is in the hands of communications service providers. Many of them have developed impressive customer service operations that collect and track the kinds of information that could assist the Commission with its quest to get a handle on the state of the marketplace. Without it, we run the risk of developing solutions that are suboptimal for both consumers and industry.

Moreover, industry can provide the Commission with potential solutions to consumer confusion by sharing its own best practices. It would be helpful to understand how various companies and organizations have addressed any known information deficits, and what each approach has yielded. I am particularly eager to learn more about the experience of groups like CTIA, which has promulgated a "Consumer Code" geared towards ensuring that its members provide accurate information to consumers. Is self-regulation truly effective in this context? How do we know? Would such self-regulation be superior to guidance from or rules promulgated by the federal government developed in concert with industry and consumers alike? With robust industry participation, this proceeding can truly yield positive and long-lasting results.

We also seek guidance from academics who are experts in the fields of informational and behavioral economics. Each of us here on the dais may have our own perceptions about how consumers process information and what prescriptions we would offer to remedy any perceived deficits. But for us to make enlightened judgments about what information consumers require to make sound decisions and in what form that information should appear, it is paramount that we have input from experts who have studied these matters with rigor.

Finally, I applaud Chairman Genachowski and the Consumer and Governmental Affairs Bureau for actively seeking input on what the Commission itself can do to better educate consumers. The Commission must not only play an active and ongoing role in this process, but be a leader in the business

of protecting and empowering consumers.

Thank you again to the Chairman and the Bureau for this timely Notice which has my full support.

STATEMENT OF COMMISSIONER MEREDITH A. BAKER

Re: *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36

Promoting consumer interests is one of the most important priorities that Congress has given us as a Commission. I take this responsibility very seriously and I am pleased to support this item. I particularly want to congratulate the staff of the Bureau for their fine work on this *Notice*.

With this *Notice*, we launch a broad inquiry to gather evidence to determine whether consumers of communications services have the information they need, and whether providers disclose the information they should in today's marketplace. Although the Commission has addressed truth-in-billing issues in the past, the proceeding we launch today will, rightfully, take a fresh look at consumer information and disclosure issues in a comprehensive approach. Information empowers consumers to make informed choices about products and services at all stages of their consumer experience, from choosing a provider to deciding whether and when to switch to a new provider or service plan.

I am particularly encouraged that the item recognizes industry's voluntary efforts to address consumer demands for more and better information about products and services. I am also pleased that it includes questions about whether our existing rules continue to make sense in the current marketplace. I hope for broad and substantive participation in this proceeding, so that we will have a solid record on which to build a complete and accurate understanding of the market.

It is important that we avoid regulating where the marketplace is actively responding to consumers' concerns. All regulation—no matter how well intentioned—imposes costs. Especially at a time when our nation faces significant economic challenges, we have a responsibility to weigh the benefits of any proposed regulation against the costs, as well as to carefully consider potential unintended consequences of our actions. This is especially important when considering consumer protection regulations. At our confirmation hearing, Senator Johanns said that when we impose regulations "somebody pays for that, and you know, it's not the big corporation. It really is the consumer. And if you don't strike that right balance, you hammer the little guy." I agree.

As regulators, if we don't strike the right balance, we risk imposing costs and other regulatory burdens on providers that can in turn raise prices, reduce quality of service, and harm innovation. These results—although unintended—may harm consumer welfare as much as the consumer-unfriendly practices our decisions are intended to prevent. Government should proceed with caution so as to ensure the best outcome for consumers.

Having said that, I recognize that this *Notice* only initiates an inquiry that will not lead directly to new regulatory obligations. Although I will be particularly mindful of the balance of benefits and costs as we move forward with the Commission's agenda, I fully support this effort to gather fact-based evidence on which we can evaluate the current state of the marketplace. I see this inquiry as fundamental to our role as the expert agency and in our responsibility to promote consumer welfare. Consumers are counting on us.

So with those thoughts in mind, I look forward to working in a renewed spirit of cooperation with Congress, the Chairman, my fellow commissioners, Commission staff, consumers, and industry in the days and months ahead.