

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF METROPCS COMMUNICATIONS, INC.**

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## TABLE OF CONTENTS

	<b>Page</b>
SUMMARY .....	II
I. INTRODUCTION .....	1
II. FIRST AMENDMENT ISSUES WOULD BE RAISED BY OVERLY BROAD REGULATIONS.....	9
III. RESPONSES TO SPECIFIC INQUIRIES IN THE NOI.....	11
A. Services to be Addressed by the Commission’s Inquiry .....	11
B. Identifying the Information That Consumers Need .....	12
C. Choosing a Service Plan .....	14
D. Billing Format.....	15
E. Additional Areas of Inquiry .....	15
F. Billing Disputes .....	17
G. Consumer Education.....	17
IV. STATUTORY CONSIDERATIONS .....	18
V. CONCLUSION.....	20

## SUMMARY

MetroPCS Communications, Inc. (“MetroPCS”) is commenting on the *Notice of Inquiry* which seeks comment on whether the Commission should adopt additional consumer information, disclosure, truth-in-billing and billing format requirements for communications services, including wireless services.

The Commission should refrain from adopting additional mandates on wireless service providers because competition is already providing sufficient impetus for carriers to disclose competitive information and understandable billing data to consumers. The number of billing-related disputes relating to wireless service – though no doubt higher than either the industry or the Commission would like – is not large in relation to the total wireless customer base or in relation to complaints in other industries and does not justify additional regulation.

It is particularly unnecessary to subject pay-in-advance, fixed-price, unlimited usage carriers, such as MetroPCS, to additional regulatory requirements in this area. Flat-rate, all-you-can-eat service plans that are offered with no long-term contract are easy to understand and do not result in the same kinds of customer problems as post-pay long-term contracts. In the overwhelming majority of cases, MetroPCS customers receive a simple electronic notification when payment is due and no hard copy paper bills. The Commission should not adopt regulations that would disrupt this efficient, environmentally-friendly billing process. Serious First Amendment issues also could arise if the Commission were to adopt overly broad regulations that affected flat-rate, unlimited usage carriers.

If, despite the recommendations of MetroPCS, the Commission maintains the existing requirements, or adopts new rules, they should apply not just to wireline and wireless providers, but also to other competitive substitutes, such as broadband Internet service and Voice over

Internet Protocol (“VoIP”) service. Regulatory parity is important so that all service providers offering substitutable services are competing on a level playing field.

With respect to the specific inquiries posed by the Commission concerning possible additional information consumers need to choose a service plan, understand their bills, compare service options and competing carriers, and pursue complaints, MetroPCS submits that, because wireless services are competitive at the retail level, carriers already provide a wealth of information to consumers. In addition, because wireless services have so thoroughly saturated the market, consumers are able to receive a wealth of information by discussing comparative offerings with their many friends and colleagues who are served by a variety of carriers. Ironically, mandating that all carriers provide the same information to consumers would actually work to the disadvantage of consumer-friendly carriers who are able to distinguish themselves in the marketplace by volunteering additional, useful readily-understandable and accessible consumer information.

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**COMMENTS OF METROPCS COMMUNICATIONS, INC.**

MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits its Comments in response to the *Notice of Inquiry* (the “*NOI*”) issued by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceeding.<sup>2</sup> In response, MetroPCS shows as follows:

**I. INTRODUCTION**

MetroPCS offers wireless broadband mobile services (including broadband Personal Communication Services (“PCS”) and advanced wireless services (“AWS”)) on a pay-in-advance, no-long term contract, flat rate, unlimited usage basis in selected major metropolitan areas in the United States with service plan prices starting as low as \$30 per month. MetroPCS launched its innovative wireless services in 2002, and has been among the fastest growing wireless broadband mobile service providers in the United States as measured by growth in subscribers and revenues since that time. MetroPCS currently owns or has access to wireless

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<sup>1</sup> For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed affiliates and subsidiaries.

<sup>2</sup> *Consumer Information and Disclosure; Truth in Billing and Billing Format; IP-Enabled Services, Notice of Inquiry*, CG Docket No. 09-158, CC Docket Nos. 98-170 and WC Docket No. 04-36, FCC 09-69 (rel. Aug. 28, 2009).

licenses covering a population of approximately 145 million in the United States. As of June 30, 2009, MetroPCS was the fifth largest facilities-based wireless broadband mobile service provider based on number of subscribers served and provided service in 14 of the top 25 largest metropolitan areas. As of June 30, 2009, MetroPCS provided service to approximately 6.3 million subscribers.

In addition to offering ground-breaking pay-in-advance, no long-term contract, all-you-can-eat wireless service plans, MetroPCS also offers innovative billing arrangements. Customers do not receive paper bills on a regular basis unless they specifically request them, and a very small percentage of MetroPCS customers make such requests. Detailed billing statements generally are not required or desired when customers receive unlimited flat-rated services since they are generally paying the same rate from month-to-month. Instead, customers receive an electronic message on their mobile unit indicating that the regular monthly payment is due and the amount owed. Customers have a variety of ways to pay their bill, including making payments electronically by credit card or by coming into one of the many MetroPCS store locations or payment centers. Eliminating paper bills reduces costs, and these cost savings are passed on to customers through lower prices. The MetroPCS billing process is environmentally friendly by reducing the resource utilization associated with paper bills. Further, because MetroPCS customers pay for a full month of service in advance, there are no unpleasant surprises resulting from unexpected charges that are imposed after the fact as is the case for post-pay customers. If a customer thinks the bill for service for the upcoming month is too high, they either change the service plan or terminate service without any liability.

Not surprisingly, MetroPCS approaches the questions posed by the Commission in the *NOI* with its own pioneering service in mind. MetroPCS would not want the Commission to

adopt any requirements that would require MetroPCS to abandon its efficient and eco-friendly billing arrangements or that would require MetroPCS to alter its modern electronic billing practices.

MetroPCS prides itself on continually providing relevant information to the customer both at the point of sale and throughout the customer experience. MetroPCS updates its coverage map regularly and provides an easy-to-use web tool which allows customers to assess where coverage is available. Notably, because MetroPCS customers are not tied in with long-term service contracts, they make a new purchase decision every month. This provides MetroPCS with powerful market incentives to provide customers with a satisfactory experience, which includes understandable bills, no billing surprises and responsive customer care. MetroPCS probably would benefit competitively if all carriers were obligated to provide detailed information at the point of purchase in an understandable format pertaining to cost of service, the details of the service plans, the contract term, and the penalties for discontinuing service or changing carriers. MetroPCS fares well comparatively on these criteria given its low cost, fixed-price, unlimited usage plans with no fixed contract term and no cancellation penalties. Nonetheless, MetroPCS does not favor having the Commission adopt detailed rules governing disclosures of this nature. As MetroPCS has indicated in comments recently filed in response to the *Wireless Competition NOI*<sup>3</sup> and the *Wireless Innovation NOI*,<sup>4</sup> the broadband wireless market

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<sup>3</sup> *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*, Notice of Inquiry, WT Docket No. 09-66, FCC 09-67 (rel. Aug. 27, 2009).

<sup>4</sup> *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for our Future*, Notice of Inquiry, GN Docket No. 09-157, GN Docket Nos. 09-157 and 09-51, FCC 09-66 (rel. Aug. 27, 2009).

is competitive *at the retail level*.<sup>5</sup> This being the case, MetroPCS is of the view that the Commission generally can afford to allow the nature and extent of consumer disclosures to be regulated by normal competitive forces, rather than by regulatory fiat.<sup>6</sup>

The *NOI* asks “whether there are *opportunities* to protect and empower consumers through policies addressing information disclosure.”<sup>7</sup> MetroPCS respectfully submits that this is the wrong question for the Commission to ask. There always will be “opportunities” for the Commission to adopt additional regulatory requirements pertaining to information disclosure. The proper question is whether market forces have broken down to the point where such policies are *necessary*. The Commission, to its credit, indicates that it is “cognizant of the importance of identifying disclosure policies that have a high ratio of consumer benefit to industry cost.”<sup>8</sup> This cost-benefit analysis is important, but should only be reached if the Commission crosses the threshold hurdle that regulation is necessary to address a market failure. Regulatory mandates – even if they can be met at a relatively low cost by carriers – remain objectionable if they are not necessary.

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<sup>5</sup> As MetroPCS has indicated in other proceedings, there is an increasing trend towards concentration which has had an adverse impact on the competitive access to various essential inputs for the wireless market to remain competitive including access to roaming services, innovative handsets and, potentially, innovative wireless applications. Unless steps are taken by the Commission to address these restrictions, the retail market is not likely to remain robustly competitive.

<sup>6</sup> MetroPCS believes that competitive forces are working particularly well in the pay-in-advance portion of the wireless service industry. Since customers generally are able to “vote” with their feet every 30 days without penalty, market forces create powerful incentives for carriers to maintain a positive consumer experience. Ironically, because MetroPCS’ simple, understandable plans are a competitive advantage, Commission mandates pertaining to consumer information and billing could affect the natural market advantage MetroPCS enjoys.

<sup>7</sup> *NOI* at para. 3 (emphasis added).

<sup>8</sup> *NOI* at para. 5.

Indeed, MetroPCS harbors some questions as to whether the Commission's decision in 2005 to eliminate the exemption for commercial mobile radio service ("CMRS") carriers from the truth-in-billing rules was absolutely necessary or appropriate.<sup>9</sup> The Commission was motivated to extend the truth-in-billing requirements to CMRS carriers in part because of the comments of "individual consumers and the Commission's own complaint data."<sup>10</sup> Industry data shows that the estimated total number of wireless subscribers increased from approximately 76 million in 1999 – the date of the *First Truth-in-Billing Order*<sup>11</sup> – to over 194 million subscribers in 2005 – the date of the *Second Truth-in-Billing Order*.<sup>12</sup> With a more than two-fold increase in subscribers, one would naturally expect the number of billing-related complaints to increase. What the Commission failed to indicate when it extended the truth-in-billing requirements to CMRS providers is whether the increase in complaints was statistically significant.

The latest figures released by CTIA indicate that the total estimated number of wireless subscribers in the United States at mid-year 2009 reached 276.6 million.<sup>13</sup> This represents an increase of more than 5 percent from mid-year 2008, despite the intervening economic downturn. If as few as one-tenth of one percent of these customers made billing-related complaints to the FCC, the agency would be receiving 2,760,000 complaints a year, or over 7,500 complaints a

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

<sup>10</sup> *Second Truth-in-Billing Order*, para. 10.

<sup>11</sup> See *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 114 FCC Rcd 7492 (1999).

<sup>12</sup> See CTIA Wireless Industry Indices, available at <http://www.ctia.org/store/producttyperesults.cfm?group-id=1>.

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

day. In reality, the number of complaints is far below this level. The point MetroPCS is making is that the existence of complaints, and the absolute number of complaints, must be considered in relation to the total wireless customer base. For example, the Commission expresses concern that consumer complaints related to billing and rates for wireless services “increased from 8,822 in 2006 to 10,930 in 2008.”<sup>14</sup> But when this number of complaints is compared to a wireless subscriber base at nearly 280 million, only approximately 3 out of 1,000 customers have pursued complaints. While this may be higher than either the industry or the Commission would like, it does not constitute a call to action.

Other available data also confirms that additional regulations are unnecessary because the number of complaints received by the Commission regarding wireless services is small in comparison to consumer complaints in other industries. For example, based on data maintained by the Better Business Bureau (“BBB”), banks generated over 322,376 inquiries to the BBB in 2008 which resulted in 20,935 actual complaints. This caused banks to be ranked 3rd highest among all industries tracked based on complaints received.<sup>15</sup> In contrast, mobile telephone service providers generated 4,944 inquiries which resulted in 3,189 complaints in the same period of time, causing the wireless providers to be ranked 58th in terms of number of complaints.<sup>16</sup> In addition, a significant percentage of the complaints involving banks went unresolved (3.6%) while the overwhelming majority of wireless complaints were settled (99.7%).

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<sup>14</sup> *NOI* at para. 15.

<sup>15</sup> Better Business Bureau, 2008 U.S. Statistics Sorted by Industry, *available at* [http://www.bbb.org/us/storage/16/documents/stats%20pdf/US\\_by\\_Industry\\_2008\\_inter.pdf](http://www.bbb.org/us/storage/16/documents/stats%20pdf/US_by_Industry_2008_inter.pdf). Another heavily regulated industry with mandated disclosures is mortgage brokers. In 2008, Mortgage brokers received 1,190,188 inquiries, 6,560 complaints, and ranked 21. *Id.*

<sup>16</sup> *Id.*

Three important lessons can be learned from these BBB statistics. First, government regulation of consumer information and disclosure is not a panacea. Banking is one of the most highly regulated industries in the U.S., and yet it remains near the top of the list in terms of customer dissatisfaction. Second, when the complaint data in the wireless business is stacked up against comparable data from other industries, the wireless sector fares comparatively well. Third, market forces do appear to be working to reduce the number of wireless complaints relative to other industries and to incent carriers to resolve complaints that do arise. Once again, these considerations weigh against further Commission action.

The Commission's inclination to take action is motivated in part by a recent survey by the Government Accountability Office ("GAO").<sup>17</sup> There are, however, several notable aspects of the GAO report. First, the report, by its terms and title, provides only "preliminary observations" about consumer satisfaction. A question arises as to whether the FCC should be acting at this preliminary stage. Second, the GAO's preliminary observations are based in part on a national survey which included a "randomly selected sample of adult wireless phone users aged 18 or older who had cell phone service in 2008."<sup>18</sup> The market reality is that any such "random" sample is going to be heavily weighted with data pertaining to the large national wireless carriers who have the lion's share of the wireless market. This gives rise to the question as to whether the Commission should be adopting truth-in-billing or consumer protection

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<sup>17</sup> See *Preliminary Observations About Consumer Satisfaction and Problems With Wireless Phone Service and the FCC's Efforts to Assist Consumers With Complaints*, Testimony Before the U.S. Senate, GAO-09-800T, Jun. 17, 2009, available at <http://www.gao.gov/new.items/d09800t.pdf> ("GAO Report").

<sup>18</sup> *GAO Report* at p. 3.

requirements applicable to the entire wireless industry based upon customer satisfaction data that is so heavily skewed toward the large nationwide carriers. Third, while the GAO sought to supplement its survey data through interviews with “the four major wireless carriers and two selected smaller carriers,”<sup>19</sup> MetroPCS notes that none of the interviewed companies included devoted fixed-price, all-you-can-eat service providers like MetroPCS.<sup>20</sup> Thus, even if the Commission were correct in its assessment that some action is necessary, there is no evidence that the need extends to carriers such as MetroPCS which offer understandable fixed-price unlimited service plans.

MetroPCS’ own consumer complaint data serves to confirm its view that federal regulatory action is not needed in its case. In comparing the number of billing related complaints to the FCC by MetroPCS customers to the national averages, MetroPCS estimates that its customers generate less than 50% of the average volume of complaints. This comes as no surprise since the uncomplicated fixed-price, unlimited usage plans offered by MetroPCS are easier to understand and subject to fewer unexplained variations on a month-to-month basis. The conclusion the Commission should reach is that there is no basis to conclude that MetroPCS and other similarly situated mid-tier carriers whose predominant services are pay-in-advance, no long-term contract, all-you-can-eat service plans should be subject to increased consumer information, disclosure, truth-in-billing or billing format requirements.

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<sup>19</sup> *Id.* at p. 4.

<sup>20</sup> The GAO Report indicates that the two rural carriers were nTelos and Viaero. *See GAO Report*, p. 16, n. 5. Neither company offers exclusively or predominantly fixed price unlimited services.

## II. FIRST AMENDMENT ISSUES WOULD BE RAISED BY OVERLY BROAD REGULATIONS

The *NOI* encourages parties to address any First Amendment issues that are raised by the truth-in-billing and consumer protection policies the Commission has under consideration. In particular, the Commission recognizes, as it must, that any Commission regulations in this area must meet the framework established in the *Central Hudson* Supreme Court case<sup>21</sup> governing the regulation of commercial speech. Under *Central Hudson*, the burden is on the government to establish that (1) there is a substantial governmental interest at stake; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest.<sup>22</sup>

MetroPCS agrees that “the government has a substantial interest in ensuring that consumers are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace.”<sup>23</sup> Thus, the first prong of the *Central Hudson* test is met. However, the Commission could not meet the second and third prongs of the test were it to adopt broad truth-in-billing or consumer protection regulations that extended to fixed-price, unlimited usage carriers such as MetroPCS. In order to demonstrate that a regulation meets the second prong of *Central Hudson* and directly advances the government’s substantial interest, the government must “demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.”<sup>24</sup> MetroPCS submits that there is no record evidence

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<sup>21</sup> *Central Hudson Gas and Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

<sup>22</sup> *Id.* at 566.

<sup>23</sup> *First Truth-in-Billing Order*, 14 FCC Rcd at 7531, para. 61; *NOI* at para. 21.

<sup>24</sup> *Edenfield v. Fane*, 507 U.S. 761, 771 (1993); accord *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995).

indicating that the consumer harms perceived by the Commission are indeed being experienced by customers of wireless services, much less wireless providers offering flat-rate, all-you-can-eat service plans.

The Commission has an even more serious problem meeting the third and final *Central Hudson* prong. Although the government need not employ the least restrictive means to accomplish its legitimate goals, “it must utilize a means that is ‘narrowly tailored’ to its desired objective.”<sup>25</sup> Narrow tailoring means that the government’s commercial speech restriction must “carefully calculate the costs and benefits associated with the burden on speech imposed by its prohibition.”<sup>26</sup> The need for the Commission to adopt narrowly tailored restrictions on commercial speech is particularly necessary when less burdensome alternatives are obvious and would restrict speech to a substantially lesser extent. Indeed, almost all of the restrictions disallowed under the third prong of *Central Hudson* have been deemed excessive because they disregarded “far less restrictive and more precise means.”<sup>27</sup> In this case, one obvious less burdensome alternative would be to exempt from any increased truth-in-billing requirements those carriers who have not exhibited any need for increased governmental regulations – the pay-in-advance, no long-term contract, fixed-price, all-you-can-eat carriers.<sup>28</sup> Alternatively, the Commission could elect only to apply any further restrictions to the larger nationwide carriers

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<sup>25</sup> *Board of Trustees of the State University of NY v. Fox*, 442 U.S. 469, 480 (1989); *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 632 (1995).

<sup>26</sup> *Cincinnati v. Discovery Network, Inc.*, 407 U.S. 410, 417 (1993).

<sup>27</sup> *Board of Trustees, supra*, 492 U.S. at 479 (quoting *Shapiro v. Kentucky Bar Association*, 486 U.S. 466, 476 (1988)).

<sup>28</sup> Many carriers have certain fixed-price unlimited usage plans even though offerings of this nature do not constitute a bulk of their wireless service. The exemption contemplated by MetroPCS would only apply to carriers whose predominant business model is based upon fixed-price, all-you-can-eat services. The Commission could consider, however, whether individual

who offer a more confusing array of service options and billing alternatives, and whose subscribers appear to be the ones represented in the surveys indicating an increased number of complaints.

### **III. RESPONSES TO SPECIFIC INQUIRIES IN THE *NOI***

Having laid out the light regulatory approach that MetroPCS believes the Commission should take in this proceeding, and the specific limitations that are imposed by the First Amendment, MetroPCS turns in this section to answering specific questions posed in the *NOI*.

#### **A. Services to be Addressed by the Commission's Inquiry**

The *NOI* correctly notes that the rules the Commission currently has in place governing truth-in-billing and billing formats cover only providers of wireline and wireless voice services.<sup>29</sup> Although, as discussed above, absent a market breakdown MetroPCS favors a light regulatory touch in the area of Commission-mandated consumer protection requirements, regulatory parity remains important. Competition can only be expected to act as an effective governor of carrier conduct if the competition is fair and being played out on a level playing field. Since MetroPCS believes the market is working, all carriers, including VoIP and broadband data services, should be exempt from the regulatory requirements in this area. If the Commission nonetheless opts to retain the current truth-in-billing rules as applied to wireless and wireline providers, or if it adopts new requirements, the rules should be extended to broadband Internet access service providers, subscription video services and to others that are providing competing services.<sup>30</sup>

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service offerings of this nature by other carriers should be exempted from particular truth-in-billing or billing format requirements.

<sup>29</sup> *NOI* at para. 17.

<sup>30</sup> MetroPCS notes that a controversy is brewing between Google, Inc. and AT&T as to whether the Google Voice service is improperly preventing consumers from calling certain phone numbers in violation of Federal call-blocking restrictions. *See* Letter of Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission to Richard S. Whitt,

MetroPCS also submits that, 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 complaints against common carriers.

**B. Identifying the Information That Consumers Need**

As earlier noted, MetroPCS could be benefited competitively if all carriers were obligated to provide specific, commonly-formatted information regarding their service plans, cost of service, length of contract, and termination fees. Nonetheless, MetroPCS submits that the competitive market is working and customers already are getting adequate information regarding these criteria. Based on its substantial operating experience, MetroPCS has learned that customers generally make purchase decisions based upon cost, coverage, the availability of a particularly desirable handset and word of mouth recommendations. MetroPCS is of the view that customers are capable of soliciting relevant information in these important categories without government regulations. Any requirement for a carrier such as MetroPCS to provide a laundry list of specific information to prospective customers, or to create a government-mandated web site containing required information, is particularly unnecessary. When customers are able to select simple, flat-rate plans with no minimum contract period and no termination fee, no government regulation is necessary for a consumer to become fully informed.

MetroPCS also is concerned that any point of purchase information requirements will interfere with some of its retail distribution procedures. The proliferation of broadband wireless voice services has been spurred in part by the increasing use of large retail outlets (e.g. Wal-Mart, Target, Best Buy, etc.). The use of these outlets often is accompanied by shelf space

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Washington Telecom and Media Counsel at Google, Inc., DA 09-2210 dated October 9, 2009. In effect, AT&T is claiming that it would be unfair if regulations to which it is subject as a traditional telephone service provider do not apply to competing Internet-based service providers.

limitations, and these stores usually are not staffed by MetroPCS personnel or agents. Consequently, detailed regulations regarding the kinds of information that must be made available at the point of purchase could prove incapable of being met, or could become traps for the unwary and could end up inhibiting the use of these retail outlets which have enjoyed consumer acceptance.

The Commission also seeks input about the information that might be useful to consumers to enable them to assess the service quality being offered by each provider and the different dimensions of that service quality.<sup>31</sup> The *NOI* specifically mentions factors such as geographic coverage, the number of dropped calls, signal strength within a consumer's home and workplace, and the speed of data throughput, as possible variables on which information would be useful.<sup>32</sup> However, there are no universally accepted industry-wide criteria that govern all of these factors. For example, the Commission has not even established a uniform standard for carriers to use in filing coverage maps to demonstrate the satisfaction of population or geographic-based build-out requirements, much less how to measure these other network factors.<sup>33</sup> The Commission would be putting the cart before the horse were it to require carriers to provide detailed information regarding the coverage areas for wireless voice and data services or other information when no universally accepted industry-wide standard exists. Further, for the Commission to engage in such determination would bog the Commission down in endless

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<sup>31</sup> *NOI* at para. 26.

<sup>32</sup> *Id.*

<sup>33</sup> For example, would dropped calls be measured over a fixed geographic area, outside and inside buildings, at every hour or over the entire day? Obviously there is no single correct answer. The other factors also are subject to considerable variability (and the optimal choice would not be self-evident) which make any selected criteria somewhat arbitrary.

technical proceedings which will result in a somewhat arbitrary standard that inevitability will tend to favor some carriers over others.

### **C. Choosing a Service Plan**

The *NOI* poses a series of questions as to whether the Commission should adopt regulations governing the manner in which carriers advertise their prices (*e.g.*, the extent to which advertised prices include all relevant costs and fees).<sup>34</sup> The Commission also questions whether consumers are getting adequate information regarding the restrictions and limitations associated with promotional pricing and the accuracy and completeness of point of sale disclosures.<sup>35</sup> In the view of MetroPCS, competitive disclosures of this nature are best promoted by Commission actions which maintain a robustly competitive retail wireless market rather than by detailed federal regulations that serve to micromanage the customer education process. When, as here, an industry is generally competitive at the retail level, voluntary industry codes such as the CTIA consumer code are appropriate in lieu of regulatory mandates. Further, as an additional check, carriers can be sued under existing false advertising and consumer protection laws if their advertising is false, misleading or deceptive. Indeed, there have been prior suits of this kind which have resulted in changes in behavior.<sup>36</sup> Accordingly, given the voluntary codes and the litigation backstop, the Commission need not create an additional forum for issues of this nature.

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<sup>34</sup> *NOI* at para. 29.

<sup>35</sup> *Id.* at para. 30.

<sup>36</sup> See Phone Scoop, available at <http://www.phonescoop.com/news/related.php?n=146> (reporting an AT&T settlement of a class action suit pertaining to misleading ringtone changes (June 2008); a T-Mobile settlement of an early termination fee suit (May 2009); a Verizon wireless settlement of a class action suit over early termination fees (July 2008)).

<sup>37</sup> *NOI* at paras. 36 to 42.

#### **D. Billing Format**

The Commission asks a series of questions to ascertain whether the truth-in-billing rules have had the desired effect of making bills easier to understand.<sup>37</sup> The Commission goes on to ask whether there are any additional measures, including the possibility of mandating bill format, in order to reduce customer confusion and ensure that consumers have the information they need to understand their bills. Because MetroPCS does not regularly issue hard-copy bills, it is naturally concerned by any proposed regulation that might require MetroPCS to issue a bill in a particular format or configuration. If the Commission nonetheless heads in the direction of imposing detailed requirements regarding billing format and content, MetroPCS asks that the regulation exempt carriers, such as MetroPCS, that have pay-in-advance, flat-rated plans and do not regularly generate paper bills.

#### **E. Additional Areas of Inquiry**

The *NOI* seeks information on what if any additional information or disclosures would help consumers select and utilize wireless services. The *NOI* points to various types of information and technological techniques that certain carriers have used to inform consumers, and asks how widespread and helpful these have proved to be. For example, the Commission mentions the fact that some carriers are using usage alerts to advise customers that they are incurring additional charges or that they have passed a threshold level of usage under their selected plan.<sup>38</sup> The *NOI* also notes that some carriers have tools to enable customers to compare the costs and benefits of various service plans as their usage patterns differ over time.<sup>39</sup> The Commission also mentions technological innovations designed to inform consumers about the

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<sup>38</sup> *Id.* at para. 44.

<sup>39</sup> *Id.*

on-going charges they are incurring.<sup>40</sup> Specific mention is made of various usage controls that allow subscribers to set limits for minutes, time of day restrictions or similar activities that may result in additional charges.<sup>41</sup> Throughout this discussion, the Commission seeks comment on whether any of these voluntarily implemented techniques and procedures should be required by rule or regulation.

MetroPCS submits that the emergence of these sources of supplemental information and technological tools without government mandate reflects the fact that the competitive market is working to the benefit of consumers. Ironically, the Commission would be disadvantaging those carriers who have sought to distinguish themselves in the marketplace by being consumer-friendly were it to require every carrier to provide exactly the same information. A “one-size-fits-all” approach will not spur innovation and reward innovators. Further, it is not clear how some of the requirements under consideration would work in connection with pay-in-advance or unlimited, flat-rate services. If the Commission decides to move forward on any of these proposals, it will be best for it to exempt those carriers and services as to which such supplemental information would be useless.

The *NOI* asks whether or not the Commission should adopt regulations along the lines of the Fair Credit and Credit Card Disclosure Act which amended the 1968 Truth in Lending Act and required credit card companies to list on their statements certain information pertaining to their rates, terms and conditions in prominent type and in a common format.<sup>42</sup> The problem is that the variations in the terms and conditions of wireless offerings are much greater than those in the credit card example. Comparing wireless service disclosures to credit card disclosures is

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<sup>40</sup> *Id.* at para. 48.

<sup>41</sup> *Id.* at para. 49.

<sup>42</sup> *Id.* at para. 47.

to compare apples and oranges. The common format reporting technique would not be nearly as useful. Further, as demonstrated above,<sup>43</sup> the banking industry, which is heavily regulated in this fashion, has more better business inquiries and complaints than wireless providers. Clearly, additional regulation of the wireless industry is not the answer.

#### **F. Billing Disputes**

The Commission requests comments on whether customers are able effectively and in a timely manner to dispute charges on their bills. Again, this is an area where fixed-price, unlimited usage carriers such as MetroPCS are not similarly-situated to other carriers. The simplicity of the MetroPCS billing plans, and the general absence of line item detail, serves, it seems, to reduce the volume and extent of billing-related disputes. MetroPCS urges the Commission, if it decides to impose regulatory requirements in order to facilitate customer inquiries and complaints, to exempt carriers such as MetroPCS with all-you-can-eat plans from the requirements.

#### **G. Consumer Education**

The Commission is seeking comment on the general state of consumer awareness about the purchase and use of communications services and products. In the view of MetroPCS, the proliferation of wireless services has resulted in the broad dissemination of consumer information. Given the extremely high percentage of adults who carry wireless devices, virtually every consumer is in touch with a variety of people who can act as sources of information regarding the options that are available, the comparative quality of different carriers and cost. MetroPCS finds that a significant percentage of its new customers learn of its service and service offerings by word of mouth. MetroPCS submits that the Commission need not devote significant

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<sup>43</sup> See discussion, *supra* at Section I.

time and attention to revising existing FCC consumer publications, or the information available on the FCC's web page, in order to educate consumers. Education appears to be taking place through natural market forces.

#### **IV. STATUTORY CONSIDERATIONS**

As earlier noted, MetroPCS favors regulatory parity and, thus, advocates extending any truth-in-billing and consumer protection requirements to all competing carriers including broadband Internet access service providers and other non-Title II service providers. With this possible extension in mind, the Commission seeks comment on the Commission's statutory authority to impose truth-in-billing and consumer information-related rules on services or equipment that falls outside of Title II.

The *NOI* contains a substantial discussion of the extent to which the Commission may impose regulations pursuant to its Title I "ancillary" jurisdiction.<sup>44</sup> The Commission is correct that courts on occasion in the past have recognized the Commission's ancillary jurisdiction under Title I to impose certain regulatory obligations on broadband Internet access service providers.<sup>45</sup> Nonetheless, courts have been giving increased scrutiny to cases in which the Commission rests its jurisdiction solely on its Title I "ancillary" power. For example, the Commission faced a serious challenge to its jurisdiction to impose back-up power restrictions when it relied exclusively upon its ancillary Title I jurisdiction to do so.<sup>46</sup> Ultimately, the jurisdictional issue became moot in the back-up power case when the court found that the Commission's rules were

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<sup>44</sup> *NOI* at para. 61.

<sup>45</sup> *Id.* at para. 56 citing *NCTA v. Brand X*, 525 U.S. at 996.

<sup>46</sup> See Brief of CTIA – The Wireless Association filed Jan. 25, 2008 in Case No. 07-1475 (D.C. Cir) at Section II (challenging FCC authority to adopt the back-up power rules solely based upon Title I ancillary jurisdiction).

not properly promulgated under the terms of the Paperwork Reduction Act.<sup>47</sup> But, the fact remains that courts are taking a harder and harder look at decisions which rely solely upon Title I ancillary jurisdiction.

MetroPCS also is concerned that the nature and scope of the Commission's jurisdiction has no bounds if the agency has unfettered discretion to impose regulatory obligations under a limitless interpretation of the ancillary jurisdiction of Title I. The best course is to conclude that additional regulation is not necessary. However, if the Commission nonetheless elects to proceed, the better alternative, in the view of MetroPCS, is to find other statutory bases in addition to Title I to justify its actions or not impose regulation. One possible approach, which may go beyond this particular proceeding, is for the Commission to revisit its earlier determinations that high speed broadband Internet access services are not common carrier services. Recognizing that there is an increasing crossover in the services being offered by various communications companies, and considerable convergence in the industry, it may be time for the Commission to determine that any "telecommunications service," as defined in Section 3 of the Communications Act, will be regulated as a common carrier service regardless of the technology platform upon which it is provided. This change would address the perennial problem the Commission has had in ascertaining the nature and scope of the regulatory obligations to be applied to VoIP carriers when they are competing with common carriers in the provision of telecommunications service.<sup>48</sup> Once again, this approach would help level the playing field in a marketplace filled with a variety of service providers utilizing different service platforms.

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<sup>47</sup> See *CTIA – The Wireless Association v. FCC*, Case No. 07-1475, *Order*, released July 31, 2009 (D.C. Cir) (vacating the FCC's back-up power rules).

## V. CONCLUSION

The foregoing premises having been duly considered, MetroPCS Communications, Inc. respectfully requests that the Commission refrain from adopting additional mandates on wireless service providers because competition is already providing sufficient impetus for carriers to disclose competitive information and understandable billing data to consumers.

Respectfully submitted,



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<sup>48</sup> Of course, such a determination will have significant collateral effects and should only be the result of a much broader NOI.