

**Before the
Federal Communications Commission
Washington, D.C. 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
CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION,
FREE PRESS, MEDIA ACCESS PROJECT, NEW AMERICA FOUNDATION,
AND PUBLIC KNOWLEDGE**

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October 13, 2009

SUMMARY

In the present *Notice of Inquiry*, the Commission seeks comment on the clarity, accuracy and thoroughness of information available to consumers when they choose a communications service provider; choose a service plan; manage the use of their service plan; and decide to switch providers or plans. The *Notice of Inquiry* properly expands on past investigations, raising questions about not just billing practices but also sales practices more broadly, including point-of-sale disclosures that drive consumer purchase decisions.

Commenters believe that existing rules to protect truth in sales for communications services are insufficient. Consumers of all communications services – including wireline, wireless, and Internet access services – are routinely subject to a barrage of confusing and misleading information, from the initial phases of service provider selection through billing and ongoing service management. Consumers are left out of the loop on a wide range of service aspects, including typical service prices, usage limits and fees, actual performance and active imposed limitations, and other contract terms. Furthermore, voluntary guidelines are not proving nearly sufficient as a substitute for rules, as service providers routinely fail to disclose meaningful information and hide the information they do disclose in fine print below misleading “base rates” and “advertised speeds.” Consequently, consumers experience confusion and frustration when choosing a service provider and plan, when using limited or low quality services, and when receiving higher-than-expected bills. Substantial changes to the Commission’s existing rules are necessary to remedy these problems.

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The Consumer Federation of America, Consumers Union, Free Press, Media Access Project, the New America Foundation, and Public Knowledge (together, “Commenters”) respectfully submit these comments in response to the Commission’s *Notice of Inquiry* in the above-captioned docket.¹ In the *Notice*, the Commission seeks comment on the clarity, accuracy and thoroughness of information available to consumers when they choose a service provider; choose a service plan; manage the use of their service plan; and decide to switch providers or plans.² The Commission seeks comment on a broad range of services, including

¹ *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry, FCC 09-68 (rel. Aug. 28, 2009) (“*Notice*”).

² *Id.* at para. 4; see also *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (*First Truth-in-Billing Order*); *Truth-in-Billing and 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

telecommunications services, Internet access services, Voice over IP services, and bundled voice, video, and data services. The Commission also seeks comment on what information disclosure policies can empower consumers to make informed and meaningful marketplace decisions based on sufficient access to relevant service provider information.³

Commenters believe that existing rules to protect truth in sales for communications services, from wireline voice through wireless Internet access services, are insufficient. Service providers are not required to supply fundamental information needed by customers to make informed decisions, and in practice, service providers routinely fail to disclose limitations to services and hidden fees. Consequently, consumers experience substantial confusion and frustration when choosing a service provider and plan, when using unexpectedly limited or low quality services, and when receiving higher-than-expected bills. Substantial changes to the Commission's existing rules are necessary to remedy these problems. Finally, the Commission has clear authority and statutory obligations to strengthen current information disclosure policies, and must do so.

I. Introduction

Commenters support the Commission's intent to take a more comprehensive view of information disclosure in the era of digital convergence. As more opportunities become available for consumers to access communications services through cable and fiber triple-play packages, as well as wireless voice and data plans, it is essential that consumers have accurate

Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005) (*Second Truth-in-Billing Order*).

³ *Notice* at paras. 3-5.

and comparable information upon which they can make comparisons and smart marketplace decisions.⁴ When consumers have the facts, they make informed choices.

Unfortunately, too often consumers do not have the facts. Consumers are bombarded with inconsistent and incomplete information when shopping for service providers or service plans, and they are subjected to misleading, confusing, and even anticompetitive billing practices once they choose a provider and a plan.

The explosion of new communications services has resulted in increased advertisements extolling the quality, speed, cost, and coverage area of wireline and wireless voice and data service. However, when trying to find clear information from providers about actual rather than advertised speeds; about the true cost of service over time; about the added fees and surcharges they might face each month; or about the costs and barriers to switching providers, most consumers can't get a clear signal through all the advertising noise. The Commenters submit that providers go to great lengths to create introductory rates, hidden monthly fees and surcharges, and other deliberate devices that bear no relation to the cost they claim to recover, but instead shield the true monthly cost and service quality that consumers need to know to make apples-to-apples comparisons.

In its original *Truth-in-Billing Order*, the Commission noted that the “review of the complaints received by this Commission plainly demonstrates that the difficulty consumers experience in trying to understand their bills for telecommunications services has been a significant, contributing factor in the growth of [] fraudulent activities.”⁵ Little progress has

⁴ Furthermore, as the Commission notes, consumers spend more and more on these services, lending additional importance to informed choices. *Id.* at para. 3, n. 5.

⁵ *First Truth-in-Billing Order*, 14 FCC Rcd at 7495, para. 3.

been made in the intervening decade – in fact, in addition to confusing bills, the confusion is now present from the moment a consumer starts to research services.

We urge the Commission to adopt protective and enforceable advertising and point-of-sale disclosure standards and truth-in-billing rules, for all communications services including wireless services, Internet access services, and service bundles. These should include requirements that providers *clearly* disclose base service prices including mandatory line-item charges and other required one-time and recurring fees; usage limits and overage charges; actual minimum network speeds; meaningful information about terms of service restrictions and actual actions that monitor and interfere with subscriber use of services; and obstacles to ending or transferring service including early termination fees and device locking mechanisms.

II. CARRIERS' CONFUSING AND MISLEADING PRACTICES MERIT COMMISSION ACTION.

The Commission has requested comment on “the information available to consumers at all stages of the purchasing process.”⁶ The Commission has broken the stages of the purchasing process into four areas: choosing a provider; choosing a service plan; managing use of the service plan; and deciding whether and when to switch an existing provider or plan.⁷

In the current market, consumers are forced to choose and manage providers and services with minimal information. These problems begin with the initial research into service prices and features, as advertisements and point-of-sale information often fail to disclose hidden fees and limitations to the service. They continue with service usage and management, as information of importance to consumers is buried in the fine print and short on detail, particularly through the use of vague and overbroad terms of service. As the Commission noted, “It is widely understood

⁶ *Notice* at para. 4.

⁷ *Id.*

that information buried deep in the ‘fine print’ is far less useful to consumers than information displayed clearly and prominently.”⁸ And consumers are complaining as a result; as the Commission observes, both GAO surveys and consumer complaints filed with the FCC show a substantial and increasing volume of consumer complaints over billing practices.⁹

Below, Commenters provide detail on a subset of these problems, an illustrative but not exhaustive indication of the volume and severity of transparency problems demonstrated in communications markets.¹⁰ These include problems with advertising of service performance and price; billing, including numerous line-item charges not included in base rates; and labeling, specifically vague and overbroad terms of service. Finally, Commenters explain how current voluntary codes of conduct are insufficient to address these problems.

A. Consumers Face Ongoing and Substantial Problems with Service Advertising.

- 1. Many services and service bundles are falsely advertised with “base rates” that fail to demonstrate the true cost of service.*

Service advertisements, whether in marketing materials or in the ordering process, do not give consumers a good indication of the true cost of service. Service providers deliberately obscure the true monthly cost of services through numerous strategies, including fees and surcharges, mandatory bundles, and promotional periods. By obscuring true cost, consumers cannot make meaningful comparisons when shopping for service, and instead will make decisions on the basis of misleading promotional prices. As some stratagems are not even

⁸ *Id.* at para. 6.

⁹ *Id.* at para. 15.

¹⁰ Although these comments focus in large part on the markets for Internet access and wireless services, a similar situation exists within the MVPD market. For example, as with Internet access service, consumers shopping for MVPD service must rely on misleading promotions that fail to adequately alert consumers that a service bundle is required to get the promotional price. Other “promotional deals” such as a premium content package for three months for free often turn into expensive services with little or no warning.

known to the consumer until long after taking service, consumers may be surprised later to learn of lengthy contracts (with substantial associated early termination fees), bundling requirements, one-time charges, recurring fees, and much higher non-promotional prices.

Advertising literature to “inform” consumers of Internet access services demonstrates a wealth of such obfuscations. Some examples of misleading mailings received by consumers are analyzed in Appendix B to these comments; a few are highlighted here for emphasis. One Verizon mailing trumpets a price of \$19.99 for DSL service.¹¹ However, a close read of the text reveals many problems with this “price”: the price does not include “taxes and fees” or a one-time charge of “up to \$55”; to get the promotional price, the customer must also purchase Verizon telephone service; the price will increase 60 percent following the first six months of service, and also requires a one-year contract, thus locking the customer into six months of paying for service at the higher rate; and finally, the consumer will be assessed a \$79 early termination fee if they leave before the one-year contract is up. Also, as highlighted in Appendix A to these comments, Verizon reserves the right to force a consumer to pay a higher fee if they drop their telephone service.¹² Thus, what was advertised as DSL service for \$19.99 is in reality something *far* different.

Similarly, an AT&T print advertisement for a netbook and wireless service demonstrates several disclosure problems.¹³ The ad touts the netbook, with a \$199.99 price tag, although the service being advertised is first and foremost a mobile Internet access subscription that includes a subsidized netbook. More substantially, the touted \$200 device comes with many unclear or unstated limitations: first, as marginally noted in the ad, the up-front cost is \$300 with a \$100

¹¹ Appendix B at Exhibit 4.

¹² Appendix A at 3.

¹³ Appendix B at Exhibit 5.

mail-in rebate, which must be used in 120 days; second, purchase of the device requires a two-year contract for a service that costs \$40 or \$60 per month¹⁴ backed by a pro-rated \$175 early termination fee;¹⁵ third, the fine print notes a \$36 activation fee for service, a 60 day wait period for reimbursement, and at the very end AT&T states that usage of the wireless service plan “is not unlimited & substantial charges may be incurred if included allowance is exceeded.”¹⁶

Consumers expecting a great deal on a new computer are instead purchasing fees and risks.

This final fine print statement in AT&T’s ad hints at the particularly blatant problems of unexpected data usage overcharges in the wireless market. For example, one Chicago wireless subscriber reports being billed \$6,000 for one month’s overuse of his data connection.¹⁷ Another was charged \$5,000 for routine use of a netbook with a \$60 per month data plan.¹⁸ After crossing a small 5 gigabyte initial limit using mobile broadband service from AT&T, each additional gigabyte of data transfer costs up to \$490 – an extra \$2450 per month on a \$60 data plan if the customer merely doubles the base usage limit.¹⁹ These hidden and severe charges greatly minimize the ability of consumers to make meaningful service purchase decisions, reducing the effectiveness of competition in the wireless market.²⁰

¹⁴ See <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/data-connect-plans.jsp> (accessed Oct. 12, 2009).

¹⁵ It is worth noting that the only reason this ETF is now pro-rated is due to government pressure. See e.g. Office of Senator Amy Klobuchar, “Klobuchar Demands Action from Cell Phone Companies on Fair Consumer Fees,” Press Release, March 12, 2008.

¹⁶ Appendix B at Exhibit 5.

¹⁷ Weir, Bob. “Bears fan was billed \$28K to watch game.” *USA Today*, February 23, 2009. <http://www.usatoday.com/topics/post/People/Athletes/Golf/Tiger+Woods/63261805.blog/1>.

¹⁸ Martin Perez, “AT&T, Radio Shack Sued For \$5,000 Netbook Bill,” *Information Week*, March 2, 2009, <http://www.informationweek.com/news/telecom/business/showArticle.jhtml?articleID=215600328>.

¹⁹ See <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/data-connect-plans.jsp> (accessed Oct. 12, 2009).

²⁰ Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation and Public Knowledge, *In the Matter of Implementation of*

These problems are also present in the process of online ordering of services. Two examples of such processes are presented in Appendix B. For example, Comcast's online ordering process offers consumers a special price of \$19.99.²¹ Yet, the ordering process fails to mention the \$99 installation fee, the \$5 per month cable modem lease fee (or the \$139 fee to purchase one), and the requirement to bundle the service with voice or cable service to receive that price.²² Such tactics create great confusion for consumers throughout the process of choosing a service provider and a service plan.

2. *Internet Access Services are falsely labeled with theoretical maximum rather than actual speeds and other performance characteristics.*

In addition to hiding the true cost of service, advertisements for Internet access services mislead consumers on the actual performance of the services. As the Commission notes, “[m]aximum advertised speed is often cited, but actual is more useful.”²³ Actual speeds are more useful for consumers because, as the Commission has recognized, advertised speeds do not indicate the true performance of the service – at a recent Commission presentation, officials noted that during busy hours “[a]ctual median speeds lag advertised by ~50%”.²⁴ Other studies have found similar results.²⁵

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, pp. 47-48 (Sept. 30, 2009).

²¹ Appendix B at Exhibit 6.

²² *Id.*

²³ Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan, Sept. 29, 2009, Slide 26.

²⁴ *Id.*

²⁵ See e.g. Sam Crawford, “Performance Monitoring Report,” SamKnows, Feb. 8, 2008, p. 29-32; Ofcom, “UK broadband speeds 2009: Research Report,” July 28, 2009, p. 8; Organization of Economic Co-operation and Development, “OECD Communications Outlook 2009,” August 2009, pp. 108-113.

Service providers routinely fail to disclose to potential subscribers that advertised speeds are not actual speeds – and where there is any form of disclosure, it takes the form of a vague “up to” disclaimer,²⁶ or the phrase “actual speeds may vary.”²⁷ Although the informational weaknesses are most blatant in wireline Internet access services, wireless services that provide a range of data transfer speeds²⁸ still miss the mark of realism, according to many studies.²⁹ These problems are exacerbated as consumers continue their migration to higher speed and higher cost tiers.³⁰ Artificial advertised speeds and a complete lack of disclosure of actual speeds leave consumers in the dark.

Recently a new wrinkle of additional deception as to true service speeds has appeared through increasing use and advertisement of “PowerBoost” speeds. The “PowerBoost” capacity offers customers “bursts of download and upload speeds for the first 10 MB and 5 MB of a file, respectively,” as explained deep in fine print.³¹ This capacity is now being offered by Comcast, Time Warner Cable, and Cox, among others.³² While this feature is useful for consumers

²⁶ Even this vague term is not universal, as many ads assert that the speed *is* the advertised maximum, not even “up to” the maximum. See Appendix B at Exhibit 1.

²⁷ See e.g. Appendix B at Exhibit 3.

²⁸ See e.g. <http://www.wireless.att.com/businesscenter/usbconnect881/> (accessed Oct. 12, 2009).

²⁹ See e.g. Brian Nadel, “Review: Which 3G network is the best?” *Computerworld*, May 13, 2008; Wilson Rothman, “The Definitive Coast-to-Coast 3G Data Test,” *Gizmodo*, Dec. 17, 2008; Mark Sullivan, “A Day in the Life of 3G,” *PC World*, June 28, 2009; Brian X. Chen, “Verizon Lead, AT&T Runs Last in Wired.com’s 3G Speed Test,” *Wired*, July 10, 2009.

³⁰ See e.g. Comments of Free Press, In the Matter of *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future*, WC Docket Nos. 09-137, 09-51, pp. 48-51; John Horrigan, “Home Broadband Adoption 2009,” Pew Internet & American Life Project, June 2009, p. 23.

³¹ See e.g. <http://www.comcast.com/corporate/Learn/HighSpeedInternet/highspeedinternet.html> (accessed Oct. 12, 2009).

³² See e.g. “Bright House Latest To Deploy PowerBoost – On heels of Comcast, Cox, Time Warner Cable and Shaw...” *DSL Reports*, Nov. 11, 2008.

streaming short videos, cable providers advertise the PowerBoost burst speed prominently, many times without even an “up to” qualifier, much less an explanation of the limitations of PowerBoost.³³

As with service prices, misleading assertions of service speed continue during the purchasing process. Consumers traveling to their provider’s page will often see only the “up to” speed; no information on actual speeds provided by services. For example, Time Warner Cable characterizes the PowerBoost speed as the service speed.³⁴ In fact, the company fails to highlight the non-Powerboost speed anywhere in the online ordering process. Thus, a Time Warner Cable customer who recently ordered the “turbo” package (up to 22 Mbps) and expects to download a 6 GB HD movie would quickly find that speed capped at 15 Mbps.³⁵ And, under the approximate 50% formula for actual speeds asserted by the Commission, if this customer is attempting to watch the movie during primetime hours, the speed could easily drop to 7.5 Mbps, or *34 percent* of what the consumer ostensibly purchased.³⁶

Internet access services are marketed and sold at one level of performance, and received at another, lesser level. As service speed is a crucial component of the consumer purchasing decision, failure to disclose true speeds frustrates the effective functioning of competition (such as it is) in the market for Internet access services.

³³ See e.g. Appendix B at Exhibit 1.

³⁴ Appendix B at Exhibit 7.

³⁵ See e.g. Appendix B at Exhibit 1. Comcast pegs an HD movie at 6 GB. See e.g. <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=876> (accessed Oct. 13, 2009).

³⁶ Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan, Sept. 29, 2009, Slide 26.

B. Consumers Face Ongoing and Substantial Problems with Service Billing.

Consumers face obstacles not only when trying to get clear up-front information while searching for a provider, but also when seeking to understand the confusing billing practices they face after they've signed up for service. In its latest survey of consumer experience in the telecommunications market, *Consumer Reports* found that forty three percent of wireline triple-play subscribers complained that the taxes and fees associated with their service made their monthly bills much more expensive than they were led to believe.³⁷ Substantial fees are attached by all service providers, both wireline³⁸ and wireless.³⁹ Some of these fees are

³⁷ See Appendix D.

³⁸ AT&T charges its customers a .88% Administrative Expense Fee, a 2.34% Federal Regulatory Fee, and an unspecified Federal Access Recovery Fee and Property Tax Allotment.

http://www.corp.att.com/access_reform/faqs.html

Sprint charges its customers a monthly \$.99 Carrier Cost Recovery Charge, a \$1.99 In-State Access Charge, a Frequent Flyer Excise Charge for customers who participate in a Sprint-partnered frequent flyer program, and "other surcharges to recover amounts Sprint is required pay to [sic] in support of statutory or regulatory programs . . . as well as excise, sales, use, gross receipts or other similar taxes levied by a governing body on Sprint."

<http://www.sprint.com/ratesandconditions/residential/documents/feesandsurcharges.pdf>

Cavalier Telephone assesses various unspecified fees, including a Wholesale Cost Recovery fee that is charged "due to increased wholesale costs and the administrative costs to collect and remit taxes, charges and regulatory fees," a Regulatory Compliance Fee that "recovers the costs associated with regulatory advocacy and compliance, including administrative management costs," and a Network Compensation Charge "for costs associated with building and maintaining a local network, connecting customers to the network, and updating related company systems."

<http://support.cavtel.com/billing/42-documents/45-taxes-and-fees>

³⁹ AT&T Wireless charges "either a Regulatory Cost Recovery Charge of up to \$1.25 or a Regulatory Programs Charge of \$1.75 to help defray costs incurred to comply with State and Federal telecommunications regulations, such as E911 deployment, State and Federal Universal Service, and other government mandates on AT&T Mobility. These charges are not taxes or government required assessments on end-user customers. *AT&T Mobility has chosen to pass through these charges to its customers.*" (emphasis added)

<http://www.wireless.att.com/learn/articles-resources/wireless-terms.jsp>

Cricket Wireless, a subsidiary of Leap Wireless, charges customers a Regulatory Recovery and Administrative Fee of \$1.40 per month.

<http://www.mycricket.com/cricketsupport/faqs/details?id=845>

MetroPCS assesses customers a \$1.40 per month WNP/Regulatory Fee.

http://www.metropcs.com/customer_support/faq.aspx

Qwest Wireless charges customers a Cost Recovery Charge of \$1.75 per month.

ostensibly required by FCC policies or state or federal taxes, but regardless of their merits, all such fees produce consumer bills that far exceed the advertised rate and the amount consumers reasonably expected to pay when they signed up for service.

C. Consumers Face Ongoing and Substantial Problems with Service Labeling.

One of the most severe problems with disclosure in communications services lies in hidden terms of service. Nowhere is this more felt than in Internet access services. Most American consumers do not take the time to read through the terms of service for their Internet connection because of the legal verbiage, small text size, and hidden or non-prominent placement; nor should the Commission expect consumers to read and understand these obtuse documents as they are currently structured, either now or in the future. And yet, as with every legal document, the fine text can be extremely important. For example, a consumer interested in buying a carrier-subsidized netbook would need to scour marketing materials and fine print in

<http://www.qwest.com/residential/products/wireless/termsandconditions/index.html>

Sprint Nextel levies a variety of fees on customers, including a monthly Federal Programs Cost Recovery Fee of \$2.83 and a \$1.15 Service Fee for former Nextel customers, and a \$.99 Administrative Charge and \$.20 Regulatory Charge for Sprint Wireless customers.

http://www.nextel.com/en/support/billing/taxes_fees.shtml;

http://support.sprint.com/support/article/Know_about_Sprint_surcharges_taxes_fees_and_other_charges/case-ib376964-20090810-135914

T-Mobile charges a monthly \$1.21 Regulatory Programs Fee to offset compliance with various federal, state, and local regulations.

<http://support.t-mobile.com/doc/tm22025.xml>

T-Mobile notes that “We may impose the fee whether or not the benefits of any or all of these mandates and programs are available to you in your location.”

<http://support.t-mobile.com/tm30205.pdf>

US Cellular charges its customers an unspecified Regulatory Cost Recovery Fee.

http://www.uscc.com/uscellular/SilverStream/Pages/h_faq_details.html?Type=5#Q28

Verizon Wireless assesses customers \$.99 monthly for Regulatory and Administrative Charges. *See also* Jennifer Johnson, “Wireless Carriers Ban Together For Higher Fees,” *Hot Hardware*, July 19, 2009.

order to find out the service will have a 5 GB monthly cap with large overages.⁴⁰ Other oft-hidden terms include mandating binding arbitration, a process that takes away many legal rights of a subscriber and stacks the deck in favor of providers.⁴¹ Service providers also often include a universal declaration that a customer's Internet usage can be monitored and interfered with.⁴² Providers reserve the right to terminate Internet access at will, with "any or no reason."⁴³ Other service limitations hidden in terms of service include data caps, overage charges, restrictions on the type of applications that can be run, and off-network usage, among many others.

In the attached appendix, Commenters analyze in greater detail the terms of service, subscriber agreements, and acceptable use policies for the Internet access offerings of AT&T, Verizon, Qwest, Comcast, Time Warner Cable, AT&T Wireless and Verizon Wireless.⁴⁴ These companies squeeze an abundant number of restrictions into the fine print, placing the burden on consumers to discover such revelations. These comments offer a comprehensive but certainly not complete rundown of the typically language found buried with these "agreements." The unchecked power these companies retain paints a troubling picture – a concern exacerbated by the hiding of this power within incomprehensible fine print legalese. Without being aware of and understanding these terms, consumers cannot make effective choices, further limiting the effectiveness of competition in an already uncompetitive market.

⁴⁰ See e.g. Appendix B at Exhibit 5.

⁴¹ See e.g. Joshua M. Frank, "Stacked Deck: A Statistical Analysis of Forced Arbitration," *Center for Responsible Lending*, May 2009.

⁴² See Appendix A.

⁴³ Appendix A at 6.

⁴⁴ See Appendix A.

D. Voluntary Codes of Conduct are Insufficient Substitutes for Disclosure Rules.

As established, current industry behavior is demonstrably inadequate at providing consumers with information necessary to create an informed marketplace. Within the context of wireless services specifically, this is likely in part because the “consumer code for wireless service” established by the wireless trade association CTIA presents many weaknesses.⁴⁵ As a preliminary matter, voluntary commitments to the FCC without accountability (regardless of service provider or context) have historically presented a poor track record for their ability to protect consumers, particularly when those commitments are intended to avoid regulation.⁴⁶ Also, although some aspects of the CTIA Code show promise, not all providers follow its provisions. Furthermore, the language of the CTIA Code is sufficiently vague that even ostensible compliance by providers does not always meaningfully inform consumers.

Carriers are provided wide latitude to interpret the principles and the threshold for compliance. For example, the first principle states carriers “will make available to consumer in collateral or other disclosures at point of sale and on their web sites, at least the following information....”⁴⁷ Because this principle merely requires providers to “make available” the

⁴⁵ The code was created in 2003 to much industry fanfare. *See e.g.* “Cingular Endorses Consumer Code for Wireless Service,” Cingular Press Release, Sept. 9, 2003. The Code is available online at http://files.ctia.org/pdf/The_Code.pdf (“CTIA Code”).

⁴⁶ *See e.g.* Comments of Free Press, In the Matter of *Applications of Verizon Northwest Inc., Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority*, WC Docket No. 09-95, pp. 16-18 (2009).

⁴⁷ The specific information listed in the CTIA Code is “(a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies

information, carriers can comply while highlighting or hiding any aspects of the specific information they see fit – the CTIA Code offers no model to standardize disclosure, or ensure prominence of essential information. Providers can and do “disclose” substantial information in legalese buried within the terms of service, presenting a substantial burden for consumer comprehension.

A similar lack of specificity is evident throughout other provisions, where providers can decide what constitutes “material” or “reasonable advance notice.”⁴⁸ The former of these is perhaps the most informative, and is located within the principle concerning “specific disclosures in advertising.”⁴⁹ Carriers agree to “disclose material charges and conditions related to the advertised prices.”⁵⁰ The purpose of this principle appears to be to ensure that consumers are aware of fees that may accrue in excess of the advertised base rate; but, in practice, the concepts of “meaningful” and “related to” support loose interpretations, as does the additional limitation “to the extent the advertising medium reasonably allows.”⁵¹ Carriers typically comply with this principle by disclosing relevant pricing terms in small print (or not at all, where they can allege the medium doesn’t “reasonably allow” it). For example, in AT&T’s netbook advertisement, attached in Appendix B, a customer must squint to learn they may be charged an activation fee and up to a \$175 cancellation fee.⁵² Worse, AT&T’s advertisement contains no disclosure of

and the trial period during which no early termination fee will apply.” *CTIA Code* at 1. Although this is a comprehensive list of fee-related information, it also appears likely to deluge the customer with information in a non-standardized format that renders useful processing nearly impossible. Full compliance with this principle can be achieved while making it substantially difficult to comprehend the typical cost of usage of the plan, and to make meaningful comparisons among providers. *CTIA Code* at 1.

⁴⁸ See e.g. *CTIA Code* at 2, 3.

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Appendix B at Exhibit 5.

substantial overage charges for data usage in excess of the service limit, even though these charges can accelerate rapidly.⁵³

Another illustrative example is principle seven, which states:

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.⁵⁴

This may sound nice on first read, but a deeper examination reveals its flaws. First, any unilateral change to the terms of an agreed-upon contract should be treated skeptically; allowing 14 days to get out of a mutual contract is hardly generous, as the wireless carrier is legally bound by the terms of the contract just like the customer, although they routinely “reserve the right” to engage in unilateral modifications. Second, there are loopholes in the trigger mechanism for the CTIA Code’s (minor) form of notice and consent – carriers are given complete freedom to decide what is “materially adverse” to subscribers, how to provide “advance notice” and in what way they allow subscribers “to cancel their contracts.” In practice, wireless carriers may have considerable incentive to be underinclusive in what they determine to be “materially adverse” to customers, given the customary nature of lengthy contracts and substantial early termination fees present in the wireless market. Additionally, sales and service staff who serve as the point of contact for consumers are provided with incentives to retain customers, and may engage in misleading behavior to avoid having to cancel a contract without penalty. For example, if an increase in overage rates occurs for voice, text, or data services, phone representatives may tell

⁵³ *Id.*

⁵⁴ *CTIA Code* at 3.

consumers that the change doesn't affect them because they have not paid overage fees recently, and will resist canceling the service contract, even if the consumer has the right to do so.⁵⁵

Finally, as terms of service (core to the contract) universally contain vague and extremely one-sided language,⁵⁶ carriers can “clarify” the broad protective language already in the contract without making “material” changes. For example, when AT&T determined that “redirecting television signals” was specifically prohibited for its wireless service, it treated the resulting language change as a “clarification” (although AT&T also states that they can revise the terms “at any time without notice by updating” the posted terms of service⁵⁷). This seemingly major and material change – the explicit prohibition of a specific set of desirable consumer activities – was only detectable by continuously reading and rereading the terms of service posted online. After substantial consumer pressure (triggered by vigilant activists who discovered the changes and spread the word), AT&T stated the language had been removed, only to quietly add it back in a few weeks later.⁵⁸

The language of the CTIA code bears substantial flexibility both in interpretation and in practice, and therefore in no way adequately protects or informs consumers. The CTIA Code is meant to provide a façade of transparency, while simultaneously providing companies with unlimited opportunities to leave consumers in the dark. Industry-driven voluntary commitments are no replacement for detailed and enforceable rules to ensure that consumers are provided with all relevant information, and the rights that they deserve.

⁵⁵ See e.g. Ben Popken, “Tmobile Raising Overage Rates 9/01 – Cancel Without Fee,” *Consumerist*, Aug. 31, 2009.

⁵⁶ See e.g. Appendix A; see also *supra* Section II.C.

⁵⁷ Appendix A at 34.

⁵⁸ See e.g. Karl Bode, “AT&T Slingbox 3G Fine Print Returns...,” *DSL Reports*, April 29, 2009.

III. IN LIGHT OF ONGOING CONFUSING AND MISLEADING PRACTICES, THE COMMISSION SHOULD ESTABLISH CLEAR DISCLOSURE RULES.

Clear disclosure rules are needed to remedy the ongoing consumer harms caused by vague and misleading sales practices. Specifically, the Commission should require concrete, complete, and comprehensible disclosure of the following:

- True service costs, including disclosure of mandatory line-item charges, non-promotional rates, and one-time and recurring fees;
- Limits on usage of voice, text, and data services, as well as standardized and meaningful representations of overage fees;
- Actual expected speeds of Internet access services in times of peak and non-peak usage, not theoretical maximums;
- Meaningful information about restrictions and provider rights asserted in the terms of service;
- Meaningful information about actual actions conducted by providers that monitor or interfere with subscriber use of services; and
- Obstacles to ending or changing service, and their purpose for being imposed, including in particular early termination fees and device locking mechanisms.

As explained in these comments, the Commission has the authority to adopt consumer protections applicable to a wide range of communications service providers, including those offering video and Internet access services, without regard to the technological platform used to provide such services.⁵⁹ Furthermore, the Commission encourages commenters to address how

⁵⁹ *See infra* Section IV.

proposed regulations would meet the requirements of *Central Hudson*.⁶⁰ Briefly, all of the requested regulations would require the disclosure of information central to consumer purchase decisions, such as service speed, price, and usage limitations, and activities conducted by the provider that impact service usage. This “factual and uncontroversial” information should be evaluated under a lenient standard,⁶¹ and should not in any way impinge on First Amendment rights of service providers.

A. To Prevent Misleading Charges and Fees that Disguise the Cost of Service, the Commission Should Establish Clear Pricing Format Rules That are Consistent Across the Industry.

1. The Commission should re-establish rules to prevent the advertising and billing of “base rates” that exclude mandatory miscellaneous charges.

In the original *Truth-in-Billing Order*, the Commission adopted several common sense approaches and implemented enforceable guidelines to help ensure consumers had reasonable access to the information they need to make informed choices with regard to billing practices.⁶² These guidelines, though incomplete even at the time of their passage, have since been eroded substantially, leaving few meaningful safeguards behind. In particular, many of the original guidelines promoting clear disclosure of service prices were circumvented or eliminated when the Commission adopted the *USF Contribution Order* in 2002.⁶³ Although the Commission tried to take steps to curb the over-recovery of regulatory fees through mark-ups,⁶⁴ they created a large

⁶⁰ *Notice* at paras. 21-22.

⁶¹ *Id.* at para. 21.

⁶² *First Truth-in-Billing Order*, 14 FCC Rcd at 7498-99, paras. 9-10.

⁶³ In the Matter of *Federal State Joint Board on Universal Service*, Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) (“*Contribution Order*”).

⁶⁴ *Id.* at paras. 48, 50.

loophole for carriers to “recover any administrative or other costs they currently recover ... through another line item.”⁶⁵

Under current Commission rules, line item charges and related fees need not be disclosed in the base monthly rate, the most heavily advertised price for service and the most comprehensible line in a confusing service bill, even when these charges are mandatory (in the sense that the consumer cannot opt out of paying them) and related to the basic cost of providing service. Excessive use of line item charges and fees creates a race to the bottom in perceived “base” prices, making it very difficult for consumers to make informed choices based on the true cost of service. It provides incentives for carriers to deceive consumers into selecting a service on advertised, but not actual, price, and then recover arbitrary and super-competitive profits through hidden fees and other line items once a subscriber is locked into a contract. This skews both competition, by disguising the comparable costs of service from different providers, and the consumer’s valuation of whether or not to choose to take service at all. Many, many consumer complaints regarding communications services of all varieties center around precisely this problem – unexpectedly high bills based on misleading “base” service prices.

We urge the Commission to prevent the exclusion of mandatory line-item charges, one-time fees, and recurring fees from the “base” rates, for all service providers, regardless of service or technology. Mandatory line-item charges and related fees should be prominently included in consumers’ bills as part of the base service rate. We particularly urge the Commission to extend these rules to advertisements, to make sure consumers are giving honest information about true costs up-front, before signing up for service.

⁶⁵ *Id.* at para. 40.

2. *The Commission should require prominent and concrete disclosure of usage limits and overage charges for wireless services in billing and advertising.*

As with all services, wireless voice, text, and data service bundles are heavily advertised on the “base” service price, even though each of these services comes with a usage limit and a steep overage fee for use above that limit. Without clear and upfront disclosure of these limits at the point-of-sale, customers can rapidly exceed the limits and face unexpectedly high bills. Although voice service minutes and overage fees are often disclosed, wireless consumers frequently report high overage charges for exceeding text message and data usage limits.⁶⁶

Clear disclosure of usage limits and potential charges at point-of-sale, and dynamic notification when consumers approach their monthly limits, could help consumers avoid steep and unexpected bills. We ask the Commission to require wireless carriers to disclose at point-of-sale and in advertisements more detailed and clear information on service usage limits, particularly for data services. At a minimum, carriers should clearly and prominently disclose usage limits in gigabytes transferred per month, along with the cost per gigabyte of data transferred in excess of that usage limit; carriers should not be permitted to disguise overage costs by listing misleading amounts such as the cost per kilobyte transferred, and in particular should not be permitted to deviate from standard disclosure formats to avoid ready consumer comparison. Carriers should also be required to provide notifications directly to a subscriber when approaching monthly usage limits, for voice, text, and data services; where possible, this notification should take the form of a free text message, the method already used by many providers to supply other information such as when new services become available. Such requirements would parallel similar truth-in-billing laws that require banks to notify card holders at the point-of-sale when they are in danger of being charged over the limit fees.

⁶⁶ *See supra* Section II.A.

B. The Commission Should Require Clear Disclosure Of Service Quality and Limitations and Service Contract Terms.

Internet access service subscribers are confronted with confusing and often inaccurate information regarding service quality when making choices between providers. The (few) customers who have access to more than one broadband provider are often unaware of the true speed they can expect to experience on an average basis during peak Internet usage hours, because actual speed differs greatly from advertised speed.⁶⁷ Consumers are also often unaware at the point-of-sale – and even while using an Internet access service – whether their particular provider will block or prioritize particular kinds of Internet applications of software that compete with their business model, or whether the provider engages in any other network management practices that may interfere with their Internet experience.⁶⁸ And finally, particularly but not exclusively for wireless services, consumers commit to lengthy contract terms for service without any understanding of the full ramifications of that decision. Consumers should be able to choose providers based on truthful information detailing speed, cost, quality, and limitations of their service, as well as any obstacles they may face should they later change their minds.

1. The Commission should require prominent disclosure of actual – not just theoretically maximum – service speeds for all Internet access services.

As described above, service providers currently fail to disclose real-world speeds that consumers can expect to receive for their Internet access services.⁶⁹ To provide meaningful information to consumers making choices among services providers, and to provide consumers with a reasonable expectation of the capacity of their services, the FCC should require broadband

⁶⁷ The Commission has recognized this explicitly. *Notice* at para. 26, n. 49.

⁶⁸ Free Press has called on the Commission to remedy this problem before. *See Ex Parte of Free Press, In the Matter of Broadband Industry Practices*, WC Docket No. 07-52 (Oct. 24, 2008).

⁶⁹ *See supra* Section II.A.

access providers to disclose clearly the actual levels of bandwidth and latency typically provided by the service, at both peak and non-peak hours. One mechanism to achieve this can be through the development of a simple “Schumer Box” – a consumer-friendly format to provide specific and easily comprehensible information, standardized across service providers to enable easy comparison. Some parties have already proposed such a device; we attach one example as an appendix to these comments.⁷⁰ As this information is fundamental to consumer choice, the FCC should bring enforcement actions against those broadband providers who do not disclose this information, or who misrepresent the features or quality of their service.

2. *The Commission should require prominent and concrete disclosure from all service providers clarifying vague and overbroad terms of service, and the activities they conduct in practice that impact service usage.*

Consumers should be able to access and read information on terms of service in a convenient, easy-to-read and easy to understand format. Consumers routinely agree to contracts for services without having read the legal document outlining the terms of those services, within which service providers hide numerous substantial restrictions. As a matter of good consumer protection policy, describing binding terms and conditions of the service in 8 point font legalese on the back of a brochure is not sufficient to alert potential customers to the restrictions adherent to the service.

The Commission should require service providers to disclose, in simple and non-technical but comprehensive terms, any limitations on the assumed freedom of consumers to access the services and content of their choice available on the Internet asserted in their terms of

⁷⁰ See Appendix C. This proposal offers consumers a variety of relevant information in a standardized easy-to-consume format with links to more detailed information on any restrictions and other policies.

service. The Commission should also specifically require service providers to disclose any and all actions that actively monitor or interfere with subscriber use of the Internet access service.⁷¹

3. The Commission should require prominent disclosure from wireless service providers of obstacles to ending or changing service.

Wireless customers face substantial obstacles should they choose to terminate or change service providers, and they are not made fully aware of these obstacles when taking service. Specifically, early termination fees and limitations on keeping and reusing wireless devices are not clearly disclosed to consumers.

One of the biggest costs in switching providers is the ubiquitous early termination fee (ETFs). Early termination fees – penalties – by wireless carriers create artificial barriers to open competition in the wireless market and present difficult choices for consumers. These penalties do not save consumers money by protecting the feasibility of device subsidies as carriers claim,⁷² but instead are intended primarily to make it more difficult for consumers to switch carriers, preventing the consumer and societal benefits that an open and competitive market would otherwise bring. At the same time, service providers describe these fees as recovery for the costs of subsidies – perhaps to avoid problems with contract law. Generally, liquidated damages clauses *can* be used to recover actual damages, but they *cannot* be used as arbitrary penalties designed to prevent consumers from switching companies. In practice, early termination penalties the wireless industry is charging consumers are so far and above the value of subsidies

⁷¹ See Ex Parte of Free Press, In the Matter of *Broadband Industry Practices*, WC Docket No. 07-52 (Oct. 24, 2008).

⁷² Evidence was presented at a trial in California (*Ayyad v. Sprint*, in CA Superior Court, Alameda County) that one carrier's early termination fee program actually cost them more money to implement than they recovered from it. Further, according to internal memos, the company performed exactly one calculation in determining the amount of the ETF: the effect on subscriber churn. That is, they did not examine whether they fully recovered the device "subsidies" they offered consumers; they simply calculated an amount that would make it harder for consumers to switch. Clearly, this is about penalizing consumers for voting with their feet and pocketbooks, not about saving them money.

provided that the fee appears to serve as more of a penalty than recoupment of costs.⁷³ Although consumers would prefer that service providers voluntarily reduce their penalties substantially (not merely “pro-rate” by \$5 per month), at a minimum the Commission should prevent these fees from being described to consumers as a recoup of subsidy costs. The Commission should also require clear and complete description of the amount of penalty the consumer must pay for each individual month for the duration of the service contract.

In addition to paying substantial penalties, consumers are often forced to abandon their equipment investments to switch service providers, because the phone they purchased with their initial plan may be chained to a particular provider through an exclusivity contract or software that locks the phone to the network (or both). In fact, wireless service providers continue to argue before the U.S. Copyright Office against the use of various means of device unlocking.⁷⁴ Again, although Commenters would prefer direct resolution of this problem, at a minimum the Commission should require wireless providers to clearly disclose any necessary steps that a consumer must take, or any limitations or restrictions that a consumer must be aware of, if the consumer seeks to take their wireless device with them to another provider.

⁷³ \$14.33 is the average phone subsidy provided to the consumer. In data submitted by the wireless carriers to the International Trade Commission, the average value of wireless handsets in 2006 was \$115. The wireless industry’s trade association (CTIA) says that the average price paid for phones in 2006 was \$65.67, and the carriers also charge a \$35 activation fee that they treated as handset revenues on their books, for a total of \$100.67 paid by the average consumer for their handset. That leaves \$14.33 in average upfront savings. Consumers may “pay that off” through service profits in their first month of service, or in a few months. Certainly, recouping \$14.33 does not take two full years. If the carriers were to reduce their ETFs to \$14.33, or even triple that amount, disclosure problems would be substantially reduced to the point of being trivial. But these penalties (often starting at \$175) are more than 12 times the average subsidy, and seem intended as hidden penalties for any consumer seeking to change providers.

⁷⁴ See Library of Congress, U.S. Copyright Office, In the Matter of *Exemption to the Prohibition of Circumvention of Copyright Protection Systems For Access Control Technologies*, Docket No. RM 2008-08.

C. The Commission Should Establish Meaningful Processes for Consumers to Receive Relief Through Complaints over Misleading or Dishonest Behavior.

The Commission notes in the NOI that consumer complaints at the FCC relating to billing with regard to both wireline and wireless services have increased 10 percent and 24 percent, respectively, since 2006.⁷⁵ The FCC's ability to clearly and consistently handle consumer complaints has become an important method for consumers to seek redress, despite an ongoing lack of widespread awareness of the process – the GAO found a striking 34% of wireless consumers do not know where to complain should they encounter problems with their service provider.⁷⁶ Moreover, as Commenters illustrate, consumers are encountering greater problems as telecommunications services are bundled and as more features are made available, making ease of use and general knowledge of FCC complaint processes ever more important.

Substantial ambiguities in current FCC procedures to address consumer complaints frustrate and confuse a subscriber's ability to seek redress.⁷⁷ First, although pre-empted in several instances, states retain authority to regulate the terms and conditions of wireless phone service providers as common carriers.⁷⁸ However, there are no clear guidelines on how the Commission may coordinate with appropriate state agencies to address consumer complaints.

Second and more significantly, the Commission's process often leaves consumers with no real resolution. Although the Commission's stated goal for its processes is "facilitating informed choice in the marketplace," in practice little redress is made for consumer harms, and

⁷⁵ *Notice* at para. 15.

⁷⁶ GAO, Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC's Efforts to Assist Consumers with Complaints (June 17th, 2009).

⁷⁷ The FCC's rules establish the process by which the Commission receives and addresses consumer complaints. 47 C.F.R. § § 1.711-1.736.

⁷⁸ See 47 U.S.C. § 332(c)(3)(A). The House Committee Report on the Omnibus Budget Reconciliation Act of 1993, in reference to section 332(c)(3)(A), explained that "other terms and conditions" of wireless service, which are regulated by the states, "include such matters as customer billing information and practices and billing disputes and other consumer protection matters."

many complaints are dismissed by the FCC without granting satisfaction to the consumer. As the GAO reports, “Once FCC receives a response from the carrier, the agency reviews the response, and if FCC determines the response has addressed the consumer’s complaint, marks the complaint as closed.”⁷⁹ The heavy emphasis in this process is on assuming that the carrier can and will address the consumer’s complaint without FCC action, even if the complaint relates to a fundamental deception in advertising or billing practices.

The Commission should engage more closely in consumer complaints, and should declare the process to be over when the consumer is satisfied or when no more action is appropriate, not when a service provider offers a generic explanation for its behavior. And, to the extent such complaints reveal widespread problems with disclosure in advertising or billing practices, the Commission should engage in broader remedies, as appropriate.

IV. THE COMMISSION HAS BOTH THE AUTHORITY AND THE STATUTORY OBLIGATION TO PROTECT CONSUMERS FROM CONFUSING AND MISLEADING PRACTICES.

Competition in communications markets is most effective when consumers have access to accurate and meaningful information. To that end, several provisions of the 1934 Act and the 1996 Act provide the Commission with the tools necessary to ensure that wireline and wireless providers (even in the context of their video and broadband Internet access service offerings) engage in practices that are honest, consistent, and easy to understand. One of the principal goals of the Communications Act (hereinafter, “the Act”) always has been to ensure the charges carriers impose on consumers for telecommunications services are “just” and “reasonable.”⁸⁰

⁷⁹ GAO, Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC’s Efforts to Assist Consumers with Complaints, at 10 (June 17th, 2009).

⁸⁰ 47 U.S.C. § 201(b).

More generally, the statutory language that establishes the broad authority of the Commission directs it to ensure that all consumers have available to them “adequate” communications services at “reasonable charges.”⁸¹

In order to empower consumers, and to ensure competition in both the wireless and wireline telecommunications service markets as well as other communications services markets regulated by the Commission, the Commission can and should establish clear rules with regard to transparent disclosure at point-of-sale and enforceable billing guidelines. Consumers today can purchase an array of formerly separate voice, video, and data services from a single provider offering them on either a wireless or wireline platform – often paying for all such services on a single bill. The Commission therefore should apply uniform standards for each type of service and technological platform, protecting consumers equally without respect to arbitrary distinctions based on historically disparate regulatory treatment of former service “silos.” As the Commission found more than a decade ago, “[i]n a world of bundled packages and multiple service providers, clear and truthful bills are paramount.”⁸² Multiple provisions of the Communication Act grant the Commission the authority and the obligation to establish protective rules and practices for each such delivery platform and service that the Commission regulates.

A. Congress Established Clear Authority and the Obligation for the Commission to Set Disclosure Rules.

The Commission has previously – and correctly – determined that it has the necessary jurisdiction to protect and promote consumer awareness regarding billing practices for both

⁸¹ *Id.* § 151; *see, e.g., In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCCRcd 20235, ¶ 47 (2007) (citing Section 151 as a basis for adopting rules that promote competition in communications services marketplaces).

⁸² *See First Truth-in-Billing Order* at para. 14.

wireline and wireless services.⁸³ Pursuant to the Communications Act, the Commission is required to ensure that carriers' practices and charges are "just" and "reasonable."⁸⁴ The Act also requires the Commission to establish verification procedures so that consumers do not unwittingly or unknowingly change their carrier of choice.⁸⁵ The Act further authorizes the Commission to, on its own initiative, "determine and prescribe what will be the just and reasonable charge...and what classification, regulation, or *practice* is or will be just, fair, and reasonable...."⁸⁶ Thus, the Commission clearly has the authority and obligation to ensure that consumers have the necessary and relevant information regarding telecommunications services offered by wireline and wireless carriers.

The Commission's authority also extends to subscription video services and broadband Internet access service, and any rules adopted in this inquiry also must apply to those services as offered by wireline and wireless providers. As noted by the Commission in the *Notice*, it has previously adopted rules regarding cable billing practices.⁸⁷ Pursuant to its continuing Section 632 authority, which authorizes the Commission to "establish standards by which cable operators may fulfill their customer service requirements," the Commission should extend any new requirements adopted in this proceeding, where appropriate, to all services provided by cable operators, including video.⁸⁸ Similarly, the Commission should extend any new rules to satellite

⁸³ See *Second Truth-in-Billing Order* at para. 5.

⁸⁴ See 47 U.S.C. §§ 201(b), 332(c)(1)(A).

⁸⁵ See 47 U.S.C. §§ 258, 332(c).

⁸⁶ See 47 U.S.C. §§ 205(a) (emphasis added).

⁸⁷ *Notice* at para. 14.

⁸⁸ See 47 U.S.C. § 552(b)(3) (granting the Commission the authority to establish requirements governing "communications between the cable operator and the subscriber (including standards governing bills and refunds)").

video services, pursuant to its ample authority under Section 335 to adopt for satellite service providers “public interest or other requirements for providing video programming.”⁸⁹

Finally, the Commission has Title I authority to extend its rules to all such providers of broadband Internet access service. Pursuant to the *Computer I* inquiries, the D.C. Circuit has affirmed the Commission’s Title I authority to regulate “enhanced services” and sale of customer premise equipment (CPE) previously regulated under Title II and later reclassified under Title I:

Several parties attack the validity of this assertion of ancillary jurisdiction by the Commission. In *United States v. Southwestern Cable Co.*, 392 U.S. 157, 88 S.Ct. 1994, 20 L.Ed.2d 1001 (1968), it was settled beyond peradventure that the Commission may assert jurisdiction under section 152(a) of the Act over activities that are not within the reach of Title II.... In designing the Communications Act, Congress sought “to endow the Commission with sufficiently elastic powers such that it could readily accommodate dynamic new developments in the field of communications.” Congress thus hoped “to avoid the necessity of repetitive legislation.” In *Computer II* the Commission took full advantage of its broad powers to serve the public interest by accommodating a new development in the communications industry, the confluence of communications and data processing. Because the Commission’s judgment on “how the public interest is best served is entitled to substantial judicial deference,” the Commission’s choice of regulatory tools in *Computer II* must be upheld unless arbitrary or capricious. Our review of the Commission’s decision convinces us that the Commission acted reasonably in defining its jurisdiction over enhanced services and CPE.⁹⁰

Generally, the Commission can use its ancillary jurisdiction in circumstances where:

(1) the Commission’s general jurisdictional grant under Title I covers the subject of the regulations and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.⁹¹ Title I clearly grants the Commission jurisdiction to adopt rules that govern the practices of broadband Internet access providers. The

⁸⁹ *Id.* § 335(a); *see also id.* § 309(a) (granting the Commission authority to determine whether the granting of any license serves the public interest).

⁹⁰ *Computer and Communications Industry Association v. FCC*, 693 F.2d 198, 213 & n.80 (D.C. Cir. 1982) (Affirming use of ancillary authority, noting that “[o]ne of those responsibilities is to assure a nationwide system of wire communications services at reasonable prices”).

⁹¹ *See Am. Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

Commission explicitly stated in its Internet Policy Statement that although broadband Internet access was no longer considered a Title II service, the Commission would assert jurisdiction over broadband services pursuant to Title I, and would not hesitate to impose obligations “necessary to ensure that providers of telecommunications for Internet access or Internet Protocol-enabled (IP-enabled) services” operate in a manner that delivers services made “affordable, and accessible to all consumers.”⁹² The Supreme Court also noted that the Commission “remains free to impose regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction.”⁹³

Adopting consumer protections is reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities. As the Commission has noted even in the context of classifying various broadband services as information services, “consumer protection remains a priority” for these services, and the foundation for such protections is “the Commission’s Title I ancillary jurisdiction to ensure that consumer protection needs are met by all providers of broadband Internet access services regardless of the underlying technology, including providers of [wireline and] wireless broadband Internet access services.”⁹⁴ Thus, the Commission has “recognize[d] that both of the predicates for ancillary jurisdiction are likely satisfied for any consumer protection...obligation that we may subsequently decide to impose on wireline broadband Internet access service providers.”⁹⁵

The Commission has the authority to require all communications service providers issuing bills to subscribers to adopt just, fair, and reasonable practices for such customer communications. The Commission should exercise that authority to eliminate the customer

⁹² Internet Policy Statement, 20 FCC Rcd 14986 at para. 4 (2005) (“Internet Policy Statement”).

⁹³ *National Cable & Telecom. Ass’n v. Brand X Internet Svcs.*, 545 U.S. 967 (2005).

⁹⁴ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, at para. 70 (2007).

⁹⁵ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, at para. 109 (2005).

confusion readily apparent from the data presented in these comments, adopting rules to ensure that carriers and other entities provide consumers with the information necessary to make informed decisions when purchasing and using the wireless, wireline, video, and broadband Internet access services of their choice.

B. The Commission Must Set Clear Disclosure Rules to Promote Competition.

As the Commission found when it last adopted significant new consumer protections in its *Second Truth-in-Billing Order*, rules that “allow consumers to better understand their telephone bills [and] compare service offerings” work directly to “promote a more efficient competitive marketplace.”⁹⁶ In fact, as the Commission correctly concluded, “the proper functioning of competitive markets is predicated on consumers having access to accurate, meaningful information in a format that they can understand.”⁹⁷ In the context of broadband Internet service, the Commission has concluded that “consumers are entitled to competition among network providers, application and service providers, and content providers.”⁹⁸ The only way for the Commission to ensure that consumers benefit from the effective competition to which they are entitled is requiring competitors to provide accurate and meaningful information about the communications services they offer.

At base, the Telecommunications Act of 1996 directed the Commission to promote competition generally, and further instructed the Commission to facilitate overall broadband deployment by using “measures that promote competition.”⁹⁹ As the Commission has noted in its past Truth-in-Billing orders, efficient competition depends on the availability of sufficient

⁹⁶ *Second Truth-in-Billing Order* at para. 3.

⁹⁷ *Id.*

⁹⁸ Internet Policy Statement at para. 4.

⁹⁹ See Telecommunications Act of 1996, Section 706(a), *codified at* 47 U.S.C. § 1302(a).

information about competitive offerings.¹⁰⁰ Even if markets might otherwise be deemed competitive based on measures such as market structure and provider conduct, “disclosure rules are needed to protect consumers.”¹⁰¹ The Commission long ago rejected the notion that competition removes the need for consumer information disclosure requirements, recognizing the fact that the free flow of information to potential customers is the bedrock for such competition. Therefore, the Commission likewise “reject[ed] the threshold arguments that certain classes of carriers should be wholly exempted from” consumer protection guidelines “solely because competition exists in the markets in which they operate,” explaining that “one of the fundamental goals of our truth-in-billing principles is to provide consumers with clear, well-organized, and non-misleading information so that they may be able to reap the advantages of competitive markets.”¹⁰²

V. CONCLUSION

Consumers of communications services are routinely subject to a barrage of confusing and misleading information, from the initial phases of service provider selection through service billing and ongoing service management. Clearly, existing rules and voluntary guidelines are not proving nearly sufficient, as service providers routinely fail to disclose meaningful information, and hide the information they do disclose in fine print below misleading “base rates” and “advertised speeds.” Consequently, consumers experience substantial confusion and frustration and find themselves using limited or low quality services, and receiving higher-than-expected

¹⁰⁰ See *First Truth-in-Billing Order* at para. 2 (“Unless consumers are adequately informed about the service choices available to them and are able to differentiate among those choices, they are unlikely to be able fully to take advantage of the benefits of competitive forces.”).

¹⁰¹ *Id.* at para. 7.

¹⁰² *Id.* at para. 14.

bills. Commenters urge the Commission to make substantial changes to existing rules, changes well within the Commission's authority, to remedy these problems.

Respectfully submitted,

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October 13, 2009