

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF TIME WARNER CABLE INC.**

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October 13, 2009

## **SUMMARY**

TWC supports the Commission's goal of ensuring that consumers are equipped to make informed marketplace decisions. Indeed, as described in these comments, TWC invests substantial resources to provide consumers with a wealth of information during the purchasing process and thereafter, and it continually refines its disclosure practices based on feedback from its subscribers.

This proceeding will enable the Commission to build a record cataloging how service providers communicate with customers across a range of different services. By comparing and contrasting the practices of incumbents and new entrants, in connection with regulated and unregulated services, the Commission will be well-positioned to assess the approaches that have been most successful in meeting consumers' needs. The Commission should consider collaborating with industry in developing best practices based on the information gathered in this proceeding. Such an approach would enable service providers to consider enhancements to their customer communications while retaining the flexibility needed to innovate and compete in a dynamic marketplace.

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**COMMENTS OF TIME WARNER CABLE INC.**

Time Warner Cable Inc. (“TWC”) hereby submits its comments in response to the Commission’s Notice of Inquiry in the above-captioned proceedings.<sup>1</sup> The NOI seeks comment on the information disseminated to consumers by providers of communications services.<sup>2</sup> TWC supports the Commission’s goal of ensuring that consumers are equipped to make informed marketplace decisions. Indeed, as described below, TWC invests substantial resources to provide consumers with a wealth of information during the purchasing process and thereafter, and it continually refines its disclosure practices based on feedback from its subscribers.

This proceeding will enable the Commission to build a record cataloguing how service providers communicate with customers across a range of different services. By comparing and contrasting the practices of incumbents and new entrants, in connection with regulated and unregulated services, the Commission will be well-positioned to assess the approaches that have been most successful in meeting consumers’ needs. The Commission should consider

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

<sup>2</sup> *Id.* ¶ 1.

collaborating with industry in developing best practices based on the information gathered in this proceeding. Such an approach would enable service providers to consider enhancements to their customer communications while retaining the flexibility needed to innovate and compete in a dynamic marketplace.

## **BACKGROUND**

With operations in 28 states and approximately 14.7 million customers, TWC is the second largest cable operator in the United States. TWC offers video, voice, and broadband data services, as well as “double play” and “triple play” bundles, and faces vigorous competition within each category. Such competition gives TWC powerful incentives to innovate and to differentiate its services, including by ensuring that its communications with customers are helpful at every stage of the relationship, from the selection of plans and features to customer care and billing to termination.

TWC’s top-selling service is video, which it provides to approximately 13 million customers, who can choose from a number of cable packages to fit a wide variety of budgets. TWC’s digital cable service offers more than 200 channels, On Demand features, parental controls, Enhanced TV capabilities (including TWC’s unique Start Over function), and optional digital video recorder (“DVR”) service. In contrast to most other video providers, TWC delivers a wealth of high-definition content to all digital cable subscribers at no additional cost.

TWC also is a leading provider of broadband Internet access. Road Runner High-Speed Online service offers connection speeds faster than standard DSL service, and data plans are available to fit a variety of customer needs and budgets. Regardless of the plan, TWC delivers valuable online tools to every broadband customer, such as email, computer and Internet

security, parental controls, and access to unique online content, at no additional cost. Road Runner PowerBoost<sup>®</sup>, which provides TWC's Standard and Turbo customers with extra bursts of speed for large data transfers, reflects TWC's commitment to delivering innovative services in the broadband arena.

The most recent additions to TWC's service lineup are its facilities-based VoIP services. For a fixed monthly fee, TWC's Digital Phone and Business Class Phone subscribers receive unlimited calling throughout the United States, Canada, and Puerto Rico, and have access to advanced calling features like Three-Way Calling, Caller ID, and Call Waiting, at no extra cost. Optional international plans enable subscribers to place calls to more than 100 countries. TWC's subscribers can take advantage of innovations like the Caller ID on TV feature, which conveniently displays information regarding inbound calls on the customer's television set.

Finally, TWC is investing in wireless technology to provide subscribers with the ability to access TWC services outside the home. Most notably, in November 2008, TWC made a significant investment in Clearwire Corporation, a company focused on the deployment of a 4G wireless network to enable mobile broadband. This venture will allow TWC to offer mobility to its customers in the future, including mobile broadband Internet access service using Clearwire's WiMax network.

## **DISCUSSION**

### **I. TWC INVESTS SUBSTANTIAL RESOURCES TO PROVIDE CONSUMERS WITH THE INFORMATION NECESSARY TO MAKE INFORMED DECISIONS AT EACH STAGE OF THE SERVICE RELATIONSHIP**

The dramatic rise in competition for video, voice, and data services has magnified the need for superior customer care and product differentiation. While customers seek the latest

technology and highest-quality services, they also demand responsive customer service. To meet this marketplace demand, TWC arms customers with comprehensive and reliable information at the point of purchase and beyond, and it has developed policies that give customers an unsurpassed degree of choice, convenience, and flexibility. TWC devotes considerable resources to customer communications and is committed to making continual improvements to its marketing, customer care, and billing practices.

#### **A. Choosing a Provider**

TWC disseminates information to consumers through a variety of media to inform consumers about its products. One key aspect of this effort is product advertising, to which TWC devoted \$569 million in 2008 alone,<sup>3</sup> even apart from significant expenditures on customer care, billing, and related functions. That substantial resource commitment underscores the level of competition that TWC faces in providing each of its services. Indeed, as competition grows ever-stronger, TWC's ability to convey relevant information in an easily understandable manner will be vital to its long-term survival.

Another principal channel for disseminating information is TWC's website, which is a valuable resource for consumers to learn about TWC's services and make comparisons among competing providers.<sup>4</sup> The website features a diversity of facts pertaining to each of TWC's

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<sup>3</sup> Time Warner Cable Inc., Annual Report (Form 10-K), at 61 (Feb. 20, 2009).

<sup>4</sup> TWC's website directs customers to information corresponding to their local areas, as TWC's business practices and customer communications often vary by region. For example, some TWC divisions have published online guides intended to help consumers compare TWC's services with those of satellite and telephone companies. *See, e.g.*, Cablecopia | Time Warner Cable | Carolinas, *at* <http://www.timewarnercable.com/Carolinas/campaigns/competitive/competitive.html>; Cable vs. DSL | Time Warner Cable | Carolinas, *at* <http://www.timewarnercable.com/Carolinas/learn/hso/cablevsdsl.html>.

core services. For example, TWC’s video-related materials describe not only basic and digital service, but also the enhanced features available to video subscribers, such as DVRs, high-definition (“HD”) programming, video-on-demand services, and parental controls. Consumers interested in TWC’s programming can consult an extensive online guide listing channel lineups and other content distributed on TWC’s systems.<sup>5</sup> Additional materials describe the function, operation, benefits, and limitations of cable-related equipment—including DVRs, HD-DVRs, tuning adapters that allow customers with one-way navigation devices to access switched digital programming, and CableCARDS<sup>6</sup>—while quick links offer tips on how to use parental controls, access music, and record programming.

Consumers interested in voice service can view a list of available calling plans and their associated monthly charges, as well as user instructions for enhanced voice features, such as Three-Way Calling, Caller ID, Call Waiting, Speed Dialing, Call Forwarding, and Voice Mail. Quick links offer tips on common phone-related concerns, such as how to avoid telemarketers, determine international calling rates, or choose the most cost-effective calling plan.

Similar resources are available for TWC’s high-speed data services, including the features that accompany a Road Runner subscription, such as email, personal web pages, remote access, and technical support. Consumers interested in broadband speeds can consult TWC’s website for a chart explaining not only the technical performance capabilities of each service tier (as measured in megabits per second), but the practical implications of that information,

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<sup>5</sup> Consumers seeking more specific information on TWC’s On Demand offerings may visit [www.twondemand.com](http://www.twondemand.com) to search, filter, and sort program listings.

<sup>6</sup> *See, e.g.,* CableCARD | Time Warner Cable | CentralTX, *at* <http://www.timewarnercable.com/centraltx/support/policies/cablecard.html>. TWC also hosts a website designed to help consumers determine whether they need to purchase an HD television. *See* HD Clear & Simple, *at* <http://www.hdclearandsimple.com>.

including the types of applications that each tier is best suited to support. Additionally, consumers can view network equipment-related information or choose quick links for tips on how to find family-friendly online content, maximize performance, and employ security tools. Likewise, consumers may view a wireless home networking guide online, which illustrates how multiple computers in a single home can access TWC's network.<sup>7</sup>

In addition to its web content and advertisements, TWC offers additional information through four convenient channels: (1) in-person assistance at one of TWC's local offices; (2) local and toll-free phone lines; (3) online chat, through which the consumer may interact directly with a customer service agent; and (4) email, via a secure form on the company's website. This diversity of options reflects TWC's commitment to providing information in whatever form its customers find most convenient.

## **B. Selecting a Service Plan**

The resources described above assist consumers not only in choosing among service providers, but in selecting particular service plans offered by TWC. In addition to its general service descriptions, TWC has compiled an online repository of questions that customers typically have prior to receiving service—called “Before You Buy FAQs”—which are designed to help consumers choose the right service plan.<sup>8</sup>

TWC also gives customers a choice of different pricing models and helps them identify which one will best suit their needs. Unlike many service providers, TWC does not require long-

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<sup>7</sup> See, e.g., <http://www.timewarnercable.com/Carolinas/learn/hso/homenetworking/default.html>.

<sup>8</sup> See, e.g., Digital Cable | Time Warner Cable | Carolinas, at <http://www.timewarnercable.com/carolinas/support/digitalcable.html>.

term service contracts for any of its residential services. Rather, customers are free to enter into a month-to-month agreement that affords them the ultimate control in choosing when and how to receive service. Such customers are free to switch service plans or providers at any time without incurring any early termination fees.

Customers who prefer more stability may opt into TWC's Price Lock Guarantee to receive discounted pricing for a fixed term. By bundling at least two services, a customer may lock in guaranteed savings for up to two years, which may be extended at the customer's option. To ensure that customers who make such a commitment are fully informed, TWC offers a dedicated website that prominently features the important terms and conditions of the Price Lock Guarantee.<sup>9</sup> Moreover, prior to initiating service, TWC subjects each Price Lock Guarantee customer to a third-party verification process, and sends each subscriber a letter of confirmation that describes the terms of service under the Price Lock Guarantee.

TWC's unique online ordering process facilitates the consumer's final product selection. The streamlined process begins with a form that enables customers to choose from a menu of available services.<sup>10</sup> Following the electronic submission of this form, a TWC representative contacts the customer to discuss and confirm the services sought. Moreover, before initiating service, TWC sends each customer a letter of confirmation by mail that clearly describes the terms and conditions of service, including the applicable monthly fees, cancellation policy, and other material terms. This ordering process enables the customer to control product selection,

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<sup>9</sup> See, e.g., Price Lock Guarantee | Time Warner Cable | Carolinas, at <http://www.timewarnercable.com/Carolinas/learn/bundles/plg.html>.

<sup>10</sup> See, e.g., Products Form, Time Warner Cable, at <http://www.twcnationaldivision.com/wv-va-ky/forms/products.html>.

while preserving TWC's ability to address any concerns or questions that arise prior to any commitment.

In short, TWC takes extraordinary measures to help customers choose the best service plan for their needs. Indeed, TWC's competitive survival rests on its ability to inform consumers of the available service options designed to accommodate the wide array of needs and budgets in the marketplace.

### **C. Managing Use of the Service Plan**

TWC's commitment to disseminating abundant information does not end after a customer makes a purchase. To the contrary, TWC invests heavily in measures designed to help customers manage their service experience. For example, TWC offers an On-Time Guarantee, which promises timely arrival of TWC personnel to a customer's home for installations and service appointments. TWC's Money Back Guarantee ensures that customers who are dissatisfied with TWC's service, for any reason, may receive a refund within 30 days of installation. Moreover, in some areas, a customer may freeze his or her account for a period of time to avoid the costs and time commitments associated with cancelling and later restarting service.

As the NOI recognizes, billing is a key means of disseminating information, and TWC's dedication of resources reflects that reality. In particular, through online and conventional billing systems, TWC customers receive not only detailed usage information, but also personalized directions on how to make plan changes, dispute charges, terminate service, or resolve any other service-related issues. Regardless of how the customer receives such billing information, each bill prominently features the customer's account number, prior balance and

payments, new monthly service charges, applicable taxes and fees, partial and prorated charges, due date, payment options, and instructions on how to obtain additional services to which the customer may not subscribe. Moreover, each bill includes itemized service charges that provide descriptions of the quantity and price of equipment, any bundled packages, special VOD orders, and premium channel subscriptions, if any. Similarly, itemized fees and taxes include separate listings for federal regulatory fees, Universal Service Fund fees, state and municipal fees, utility taxes, and 911 surcharges, where applicable. In some markets, the bill features state and regulatory contact information to report unresolved problems and apprises customers of their right to object to service tier and rate changes.

TWC also offers online support to empower consumers with plan management tools. Customers who wish to pay their bills online, view and electronically store their monthly billing statements, or opt into paperless billing may register for the “MyServices” feature online. In addition to offering online support with customer care personnel (via real-time chat or email), as noted above, TWC has compiled a comprehensive set of frequently asked questions to which customers can refer online for guidance on plan features. The FAQ categories, clearly organized and searchable by keyword, include Accounts and Billing, Cable, High Speed Online, Digital Phone Service, Equipment and Instruction Manuals, and Tutorials.

Customer care represents another critical focus throughout the service relationship. The company’s commitment to customer service is framed by four objectives. First, TWC strives to enhance *network performance* through technical and operational improvements, including the deployment of redundant fiber networks, high-capacity optical transport, next generation DOCSIS, and support for two-way customer premises equipment. Second, TWC promotes *ease of access* by allowing customers to seek help online, by email, through local and toll-free phone

support, and in-person at local service centers. Third, TWC promotes *first-call resolution* by empowering front line employees to address and resolve customer inquiries quickly and on the initial call. Finally, TWC invests in *expanded capacity* to provide additional support for customer inquiries, order placement, troubleshooting, and plan management, when necessary.

#### **D. Deciding Whether and When to Switch an Existing Provider or Plan**

In marked contrast to many service providers, and in line with its commitment to providing marketplace flexibility, TWC makes it easy for a customer to determine whether and how to change service plans or providers. Indeed, customers receiving service on a month-to-month basis are free to cancel or change service at any time without incurring any cancellation fees. Likewise, customers who choose TWC's Price Lock Guarantee receive clear and conspicuous notice of the applicable cancellation policy throughout their subscription term, including at the point of sale and through the letter of confirmation.

Further, TWC conveys clear and accurate usage information on all electronic and paper bills to help customers evaluate their subscriptions, and it offers information on alternative service plans through the company's website and customer care. Technology plays a fundamental role in this regard. For example, TWC's website affords customers the ability to see how their monthly bill may change if they switch to a bundled package, with direct price comparisons to stand-alone offerings. Moreover, as noted above, TWC has published several web-based guides that allow customers to compare products offered by DBS providers and telecommunications carriers.

## II. THE COMMISSION SHOULD BUILD ON THIS PROCEEDING BY COLLABORATING WITH INDUSTRY IN DEVELOPING BEST PRACTICES

As the foregoing overview of TWC’s customer communications practices reflects, service providers facing competitive pressures have strong incentives to provide useful information to consumers. But the right incentives do not invariably translate into effective information dissemination. For its part, TWC constantly evaluates its procedures and solicits feedback from customers so it can make refinements.<sup>11</sup> By the same token, the communications industry as a whole would benefit from the sharing of information about disclosure practices that have been successful and those that have been less so. While some such information of course is competitively sensitive, providers can describe their general procedures, as TWC has done in the foregoing section, without revealing trade secrets.

The record developed in this proceeding will put the Commission in a position to facilitate such information sharing through a collaborative process aimed at developing best practices. The NOI appropriately recognizes the value of focusing on “cost-effective best practices in information disclosure from within the communications sector.”<sup>12</sup> By working with industry to develop best practices and promoting their voluntary adoption, the Commission can

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<sup>11</sup> See, e.g., Customer Survey | Time Warner Cable | New England, at <http://www.timewarnercable.com/NewEngland/support/policies/ets.html> (describing TWC’s Customer Satisfaction Survey program soliciting customer feedback following cable technician home visits). Likewise, TWC offers customer satisfaction surveys to a selection of online users to obtain feedback on the features provided on the company’s website and to evaluate possible enhancements.

<sup>12</sup> NOI ¶ 4; see also *id.* ¶ 46 (seeking comment on “best practices for displaying and formatting . . . relevant information”). The value of best practices is further reflected in the Commission’s recent solicitation of comment on whether it should create a “broadband clearinghouse” to serve as a repository of broadband-related best practices. See Public Notice, *Comment Sought on Broadband Clearinghouse* (NBP Public Notice #10), GN Docket Nos. 09-47, 09-51, 09-137 (rel. Oct. 2, 2009) (“Broadband Clearinghouse Public Notice”).

address any concerns it may have about asymmetries in marketplace information while preserving flexibility for service providers to choose business practices tailored to their particular customer base. Such an approach also has the benefit of avoiding the thorny legal questions that would arise if the Commission were to pursue the adoption of new regulatory mandates for providers of video and broadband Internet access services.

**A. Developing Best Practices Will Preserve the Flexibility Necessary for Service Providers To Determine the Most Effective Way of Supplying Relevant Information to Consumers.**

In promulgating Truth-in-Billing rules for telecommunications carriers, the Commission recognized that service providers require flexibility in determining the content and format of the billing information given to consumers. Accordingly, the Commission adopted broad principles to promote Truth-in-Billing “rather than mandate detailed rules that would rigidly govern the details or format of carrier billing practices.”<sup>13</sup> The Commission’s decision to preserve flexibility was informed by an understanding that “there are typically many ways to convey important information to consumers in a clear and accurate manner,” and that “rigid rules” could *harm* consumers by “prevent[ing] competing carriers from differentiating themselves on the basis of the clarity of their bills.”<sup>14</sup>

The need for flexibility in disclosure processes has become even stronger with the passage of time. As the NOI notes, the extraordinary growth in technology since the *First Truth-in-Billing Order* has been marked by “the introduction of new categories of service . . . [and]

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<sup>13</sup> *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 ¶ 9 (rel. May 11, 1999) (“*First Truth-In-Billing Order*”).

<sup>14</sup> *Id.* ¶ 10.

pricing plans.”<sup>15</sup> As a result, service providers now possess significantly more information that may be of value to customers, and there is by no means any uniform understanding of what is most relevant to consumers for a particular service.

By promoting industry best practices, the Commission can accommodate the divergent views on the types and levels of disclosures that are most effective in helping consumers make informed purchase decisions. The lack of consensus on this matter is evidenced by a recent petition before the Commission, in which a leading consumer organization sought to prevent carriers from separately listing line item charges on customer bills, arguing that such information confuses consumers and enables carriers to disguise rate increases.<sup>16</sup> In denying the petition, the Commission endorsed an opposing view, concluding that consumers are served best by itemized bills detailing the various fees and taxes imposed on customers.<sup>17</sup> The difference of opinion framing that proceeding—a discrete question relating only to billing line items—foreshadows the wide diversity of viewpoints that is certain to accompany this proceeding, which implicates far more than the billing practices of Title II carriers. This need for flexibility would be undercut if the Commission were to impose rigid regulatory mandates. The Commission therefore should promote flexible standards to inform how providers deliver service-related information to consumers.

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<sup>15</sup> NOI ¶ 3.

<sup>16</sup> See *Truth-in-Billing and Billing Format*, National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling, CG Docket No. 04-208 (Mar. 30, 2004).

<sup>17</sup> *Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 ¶ 23 (concluding that the inclusion of line item details on a customer bill “may be useful . . . to the consumer in better understanding the charges associated with their service and making informed cost comparisons between carriers”).

This approach also would enable the Commission to collaborate with service providers and consumer groups to develop disclosure standards that account for the unique attributes of each product or service. The Commission could use this proceeding as an opportunity to solicit models of disclosure, seek guidance on the extent to which the disclosures are appropriate, and encourage their voluntary adoption. Ample precedent exists for collaboration. In 1998, the Commission and industry participants jointly devised a voluntary code of best practices designed to address the problem of cramming.<sup>18</sup> Similarly, the Commission has lauded the development of the CTIA Consumer Code,<sup>19</sup> to which wireless carriers voluntarily adhere to facilitate the provision of information to their customers.<sup>20</sup>

**B. Reliance on Best Practices Would Help Avoid Complex and Legalistic Disclosures.**

Pursuing voluntary best practices would comport with the Commission’s understanding that consumers can make better decisions when provided with clear disclosures that are not engulfed by legal complexity.<sup>21</sup> Mandated disclosures have a long history of producing unhelpful boilerplate. In the wireline telephony arena, tariffs were the traditional form of disclosing service terms to consumers, but they were so cumbersome and inscrutable that the

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<sup>18</sup> See *FCC and Industry Announce Best Practices Guide to Protect Consumers from Cramming*, 1998 FCC LEXIS 3627 (July 22, 1998).

<sup>19</sup> See, e.g., *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, 24 FCC Rcd 3381 ¶ 38 n.98 (rel. Mar. 5, 2009) (finding a forbearance request to be in the public interest in part because of the petitioner’s voluntary commitment to comply with the CTIA Consumer Code). Likewise, the Commission is now seeking public comment on the establishment of a broadband clearinghouse to provide interested parties with “easy access to broadband best practices.” See *Broadband Clearinghouse Public Notice*.

<sup>20</sup> See NOI ¶ 11.

<sup>21</sup> See, e.g., NOI ¶ 6 (noting “that information buried deep in the ‘fine print’ is far less useful to consumers than information displayed clearly and prominently”).

Commission ultimately sought to force their elimination. In particular, the Commission chose to detariff non-dominant local exchange carriers after concluding that “tariffs may not be the best vehicle for disclosure of rate and service information . . . to residential and small business customers, because such end users rarely, if ever, consult these tariff filings, and few of them are able to understand tariff filings even if they do examine them.”<sup>22</sup> Further, the Commission found customer bills alone sufficient to convey the necessary rate and service information precisely because they contained *less* information than filed tariffs.<sup>23</sup> The risk of overwhelming consumers with information is heightened in view of recent studies demonstrating that most consumers are unable to “analyze everything,” even when provided with perfect information about all material factors.<sup>24</sup>

Attempts to compel formal and detailed information disclosures also would risk harming competition. The Commission’s experience with tariffs again is instructive. The Commission found that tariff filings were contrary to public policy because they removed the incentives for competitive discounting, frustrated the ability of carriers to respond to changes in demand and cost, penalized carriers that sought to offer new products, and prevented consumers from seeking

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<sup>22</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Report and Order, 11 FCC Rcd 20730 ¶ 25 (rel. Oct. 31, 1996) (“*Detariffing Report & Order*”).

<sup>23</sup> *Id.* ¶¶ 39, 84. The Commission also declined to impose additional complexities, such as requiring carriers to provide rate and service information in a particular format or at a specific location, deemed to be “unduly burdensome.” *See id.* ¶ 86.

<sup>24</sup> *See, e.g.*, Richard H. Thaler and Cass R. Sunstein, *Nudge* 22-39, Yale University Press 2008 (describing the heuristics that consumers use to make decisions when provided with too much information, and the biases that result therefrom leading to suboptimal decisions); *cf.* Russell Korobkin, *Bounded Rationality, Standard Form Contracts, and Unconscionability*, 70 U. Chi. L. Rev. 1203, 1217-18 (2003) (explaining how bounded rationality may prevent consumers from fully incorporating all relevant information into their decision making process, even when the material terms are expressly known).

out or obtaining services appropriately tailored to their needs.<sup>25</sup> In affirming the *Detariffing Report & Order*, the D.C. Circuit validated the Commission’s long-standing concern that “the necessity of filing tariffs hinders competitive responsiveness.”<sup>26</sup> The Commission can avoid the possibility that similar harms to competition will emerge going forward by advocating best practices that promote simple and clear information disclosures.

**C. Relying on Best Practices Will Avert Difficult Questions That Would Arise if the Commission Adopted Rules Pursuant to Title I.**

Finally, promoting effective best practices will allow the Commission to avoid serious legal questions that would attend the imposition of new regulatory mandates. The NOI appropriately concedes that regulating disclosure practices would implicate the First Amendment and that the *Central Hudson* test may limit the Commission’s ability to impose any new rules governing customer communications.<sup>27</sup> Indeed, the NOI addresses not only truth-in-billing but many other forms of speech that go to the core of service providers’ ability to communicate with their subscribers and prospective customers. As a result, any restrictions might well be subject to strict scrutiny. Even apart from this constitutional concern, the NOI acknowledges possible

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<sup>25</sup> See *Detariffing Report & Order* ¶¶ 23, 53; see also *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Notice of Proposed Rulemaking, 11 FCC Rcd 7141 ¶¶ 21, 30 (rel. Mar. 25, 1996) (“*Detariffing NPRM*”) (tentatively concluding that “tariff filing requirements . . . could harm consumers by slowing the introduction of new services [and] dampening competitive responses . . . through the forced publication of charges”); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Sixth Report & Order, 99 FCC 2d 1020 ¶¶ 11, 13 (rel. Jan. 4, 1985) (“*Sixth Report & Order*”) (establishing mandatory detariffing policy for non-dominant carriers, finding that tariff filings were not essential to ensure fair rates), *rev’d MCI Telecom. Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (finding that the Commission lacked statutory authority to prohibit carriers from filing tariffs prior to the passage of the Telecommunications Act of 1996).

<sup>26</sup> *MCI Worldcom, Inc. v. FCC*, 209 F.3d 760, 764 (D.C. Cir. 2000).

<sup>27</sup> See NOI ¶ 22.

jurisdictional concerns by seeking comment on whether the Commission possesses statutory authority to regulate the practices and entities at issue.<sup>28</sup> The absence of any direct statutory authority might well preclude the imposition of rules outside the telecommunications context.<sup>29</sup> By supporting the voluntary adoption of industry standards, the Commission can prevent the marketplace uncertainty that would follow from inevitable legal challenges to a new regulatory regime.

### CONCLUSION

TWC invests substantial resources to provide consumers with the information necessary to make informed purchasing decisions. TWC looks forward to working with the Commission to develop best practices that will assist service providers in developing improved disclosure practices.

Respectfully submitted,

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<sup>28</sup> NOI ¶¶ 61-64.

<sup>29</sup> Notably, the various disclosure regimes held out as possible models in the NOI were all established by Congress, not independent agencies acting pursuant to ancillary authority. See NOI ¶ 47 & nn.67-73.