Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF VERIZON AND VERIZON WIRELESS

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COMMENTS OF VERIZON AND VERIZON WIRELESS[1]

I. INTRODUCTION AND SUMMARY

Verizon and Verizon Wireless are strong proponents of informed consumer choice, and of providing consumers with the information they need to make those choices. Providers that offer high quality products and services at competitive prices, as Verizon and Verizon Wireless do, have every reason to give consumers information about those products, services, and prices, thus empowering consumers to make the right purchasing decisions. And, once those consumers become customers, providers continue to have strong business reasons in the competitive marketplace to provide them with the information they need in order to retain those individuals as satisfied customers.

As part of their commitment to provide consumers with the information they want, Verizon and Verizon Wireless conduct focus groups with consumers. What the companies have learned from these focus groups is that consumers do not necessarily

[1] In addition to Verizon Wireless, the Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

want *more* information but, rather, the *right* information conveyed in a way that is readily processed and understood—that is, information that is simple, clear and to the point. For instance, in response to customer feedback, both Verizon and Verizon Wireless have revised their bills to display more prominently the total amount due on a simplified first page, while clearly setting out the particular charges by line on the subsequent pages. In addition, Verizon has made changes to its bills to make the pricing of bundled packages more understandable, while preserving the white space on the first page of bills that customers have told the company they like.

Due to these efforts (as well as efforts by other carriers) to provide consumers with information and to directly and promptly address consumer concerns, the number of billing and rate complaints referenced in the Notice of Inquiry ("NOI")[2] is very low in absolute terms. Less than one one-thousandth of a percent each of wireless or wireline subscribers raised complaints with the Commission about billing and rates per month in 2008. In fact, the bulk of consumer complaints regarding wireless and wireline telephony relate not to carrier conduct but to that of third party telemarketers, as the Government Accountability Office report on consumer satisfaction cited in the NOI recently found.[3]

Moreover, independent third parties are reporting increasing customer satisfaction with service providers. For example, in January 2009 Consumers Reports concluded that

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[2] *In re Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP-Enabled Services*, Notice of Inquiry, -- FCC Rcd --, 2009 WL 2751095 (August 28, 2009) ("NOI").

[3] *See Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC's Efforts to Assist Consumers with Complaints*, Testimony before the U.S. Senate, GAO-09-800T, at 5 n.12 (June 17, 2009), *available at* http://www.gao.gov/new.items/d09800t.pdf ("*GAO Report*").

there has been a "surge in satisfaction" among wireless subscribers[4] and that wireline telephone customers were "fairly well satisfied" to "very satisfied" with their service, with similarly strong reviews from video subscribers.[5] The May 2009 American Customer Satisfaction Index showed that "[c]ustomer satisfaction with wireless telephone service reache[d] a new all-time high for the third consecutive year."[6] Broadband Internet access[7] and interconnected VoIP[8] customers also have high satisfaction levels.

In order to continue to improve consumer communications, providers must have the flexibility necessary to tailor their communications with consumers in response to changing customer needs. Thus, the appropriate model for meeting consumers' needs in today's competitive communications marketplace is to rely upon providers' strong incentives to satisfy consumers, supplemented by voluntary industry guidelines to promote the use of "best practices," rather than prescriptive or heavy-handed regulations that would limit the flexibility of providers to respond to consumers' evolving needs.

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4 Consumer Reports, *Best cell phone service* (Jan. 2009), *available at* http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/phones/cell-phone-service-providers/cell-phone-service/overview/cell-phone-service-ov.htm.

5 Consumer Reports, *TV & Services, Phone Service Ratings* (Jan. 2009), *available at* http://www.consumerreports.org/cro/electronics-computers/tvs-services/bundled-services/ratings/bundled-services-phone.htm ("*Consumer Reports Phone Service Ratings*").

6 Press Release, *ACSI: Customer Satisfaction Rises Again, Now Joined by Other Economic Indicators* (May 19, 2009), *available at* http://www.theacsi.org/images/stories/images/news/0901q_Press_Release.pdf.

7 *See* Nielsen Mobile, *Critical Mass: The Worldwide State of the Mobile Web* (July 2008), *available at* http://www.nielsenmobile.com/documents/CriticalMass.pdf ("[N]etwork satisfaction is the largest driver of overall satisfaction with the mobile Internet."); *id.* ("[F]aster data transfer speeds closely relate to consumer satisfaction and will help to drive overall interest and adoption of the platform.").

8 *Consumer Reports Phone Service Ratings* (overall customers were fairly well satisfied to very satisfied with their VoIP service); Consumer Reports, *TV & Services, Internet Service Ratings*, *available at* http://www.consumerreports.org/cro/electronics-computers/tvs-services/bundled-services/ratings/bundled-services-internet.htm (for all but three rated providers, overall customers were fairly well satisfied to very satisfied with their service).

The wireless industry is a prime example of the benefits of this approach, where providers' own incentive to satisfy consumers supplemented with the use of industry guidelines and principles has proven successful. Verizon Wireless helped develop and abides by the CTIA's Consumer Code for Wireless Service, which sets forth certain industry best practices for information disclosed to consumers in advertising, at the point of sale, and in bills. In addition, in a cooperative effort with 33 state attorneys general, Verizon Wireless and other carriers entered into an "Assurance of Voluntary Compliance" ("AVC") that, as a practical matter, established national uniform consumer protection standards relating to advertising and the provision of information to consumers at the point of sale, including information regarding the minutes in the plan, any early termination fee, and the fact that certain taxes or monthly discretionary charges may be added. Since the adoption of the AVC in 2004, only one complaint has been brought under its provisions. These programs have afforded carriers the agility they need in order to give consumers what they want in terms of information, while simultaneously ensuring adequate consumer disclosures.

This same basic approach can be equally effective for other services, such as traditional wireline services and broadband services. In those cases as well, providers' own incentives to satisfy consumers in the competitive marketplace supplemented by industry principles or standards would promote consumer welfare, while ensuring that providers have the continued flexibility necessary to share information with consumers about, for example, terms of service or the speed of connections for broadband And this model of industry principles or guidelines should apply not only to network providers, but also to application and service providers. Specifically, in order to facilitate a clearer understanding of the demands placed on broadband networks and services by new and evolving applications – and also to help ensure informed choices as consumers consider which applications to use – the Commission should encourage application developers fully and clearly to disclose to consumers the foreseeable effects of their applications on a subscriber's broadband service, on the consumers' devices or other applications, on the broadband network, and on other broadband subscribers.

As a supplement to such industry guidelines and principles, there are also existing consumer protection laws such as deceptive trade practices acts, administered by the state Attorneys General and the Federal Trade Commission within their respective areas of authority, to remedy any actual wrongs committed with respect to information disclosure, as well as existing FCC truth-in-billing and disclosure rules.

For these reasons, we respectfully submit that the Commission should avoid prescriptive, burdensome regulations to govern the communications between providers and consumers. As the Commission acknowledged in adopting the existing truth-in-billing rules, there are costs in going farther than the flexible approach taken by those rules. Thus, the Commission should promote effective disclosures to consumers and preserve the give and take of the provider-subscriber relationship by encouraging the use of industry-developed principles or guidelines to promote the use of "best practices." Simply put, providers and customers, working together, are best positioned to determine the optimal amount of information to provide to consumers for particular services. Verizon and Verizon Wireless stand ready to work with the Commission to examine and address the most effective way to encourage the adoption of best practices.

II. THE AVAILABLE EVIDENCE DEMONSTRATES THAT CONSUMER INTERESTS ARE WELL SERVED.

The current competitive environment, in which providers are motivated to give consumers the information they need to make well-informed decisions, is working to serve consumer interests. As demonstrated below, the available evidence, including the evidence in the NOI itself, bears this out.

A. The Data Cited in the NOI Show No Meaningful Evidence of Consumer Confusion.

The primary source of data cited in the NOI relating to consumer satisfaction is the FCC's quarterly reports on consumer complaints.[9] Properly viewed in the context of the total number of wireless and wireline subscribers in the U.S. market, however, those data do not evidence any material customer confusion. Notably, the Commission cites no data at all regarding consumer confusion or complaints with regard to billing for video, broadband Internet access, or interconnected VoIP service. The NOI notes that complaints to the FCC relating to billing and rates totaled 10,930 for wireless services and 13,486 for wireline services in 2008.[10] Averaging those numbers over twelve months[11] and comparing them against the Commission's data on the total number of

9 *See FCC Quarterly Reports On Informal Consumer Inquiries and Complaints* (2006-2008), *available at* http://www.fcc.gov/cgb/quarter/welcome.html ("*FCC Quarterly Reports*"). In the event the Commission were to rely on complaints filed with the agency to support any action, it obviously would have to first make those complaints available for review and comment so that it has all the facts relating to those complaints.

10 NOI, ¶ 15. These figures are aggregated from the *FCC Quarterly Reports*, which compiles monthly complaint data since 2002. *See generally FCC Quarterly Reports*.

11 Per month in 2008, the FCC received an average of approximately 1,124 complaints relating to wireline billing and rates and an average of approximately 911 complaints relating to wireless billing and rates.

wireless subscribers[12] and wireline subscribers[13] reveals that *only three of every million wireless subscribers* and *only seven of every million wireline subscribers* complained to the Commission about billing and rates per month in 2008.[14] Put another way, *less than one one-thousandth of a percent* each of wireless or wireline subscribers raised complaints with the Commission about billing and rates per month in 2008; this number is statistically insignificant. In fact, these figures actually overstate consumer confusion regarding billing because they represent complaints regarding billing *and rates*.

Likewise, the increases in the number of complaints highlighted in the NOI were actually miniscule when considered against the number of subscribers. For example, taking the wireless billing and rate complaint increases in 2006 and 2008 (as identified in the NOI), the number of subscribers, on average, who complained to the FCC about wireless billing and rate issues each month went from 0.00032% of the subscriber base in 2006 to 0.00034% of the subscriber base in 2008. In effect, for every 10 million wireless

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[12] There were 270,333,881 wireless subscribers in December 2008. The Commission records national wireless subscriber data as complied by CTIA. *See* Table A-1 of the Commission's *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185 (Jan. 16, 2009) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf. CTIA reports that there were 270,333,881 total wireless subscribers at year end 2008. *See* CTIA Semi-Annual Wireless Industry Survey, *available at* http://files.ctia.org/pdf/CTIA_Survey_Year-End_2008_Graphics.pdf.

[13] There were 154,654,847 wireline subscribers in June 2008. The wireline subscriber data is taken from Table 1 of the Wireline Competition Bureau's report, *Local Telephone Competition: Status as of June 30, 2008* (July 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf.

[14] Per month in 2008, the rate of *all* complaints from Verizon Wireless' customers to the FCC, state PUCs or state Attorneys General *combined* was approximately 8 complaints per million customers. *See Cell Phone Text Messaging Rates Increases and the State of the Competition in the Wireless Market*, Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the Senate Comm. on the Judiciary, 111th Cong., 1st Sess., at 8 (June 16, 2009) (testimony of Randal S. Milch, Vice President and General Counsel, Verizon Communications).

subscribers, there were two additional complaints per month in 2008 relative to 2006.[15] For every 1 million wireline subscribers, there were 3 additional complaints per month for the same time frame. Such changes in the number of complaints are not meaningful. From month to month, this level of change could easily be caused by an isolated incident relating to one carrier in one geographic location that generates tens or hundreds of complaints.

Moreover, the vast majority of consumer complaints regarding wireless and wireline telephony are Telephone Consumer Protection Act ("TCPA") complaints related to the federal do-not-call list and junk faxes.[16] As the *GAO Report* found, these complaints relate not to carrier conduct but to that of third party telemarketers.[17]

In addition to its own complaint data, the NOI also relies on the *GAO Report* on consumer satisfaction and two sources of state data.[18] These data sources are also insufficient to support the NOI's suggestion of consumer confusion. *First*, the statistics the Commission cites from the *GAO Report* actually evidence high levels of consumer

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15 Notably, the number of wireless industry billing and rate complaints, when compared against the number of wireless subscribers, has decreased significantly since the Commission began keeping these statistics in 2002. The number of annual complaints has risen by less than 26% from 2002 to 2008 while the number of wireless subscribers has increased by over 92% during the same time frame. *Compare FCC Quarterly Reports with* Table A-1 of the Commission's *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185 (Jan. 16, 2009) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf, and *Local Telephone Competition: Status as of June 30, 2008* (July 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf. This means that the number of annual billing and rate complaints against wireless carriers has dropped by over 50% relative to the number of wireless subscribers during this time.

16 *See generally FCC Quarterly Reports*.

17 *See GAO Report* at 5 n.12.

18 *See* NOI, ¶ 15 n. 39 (citing *Testimony of the New York State Consumer Protection Board–Consumer Protections for Wireless Telephone Customers in New York State*, March 13, 2006; *Florida Public Service Commission's Consumer Activity Reports*, http://www.psc.state.fl.us/publications/reports.aspx).

satisfaction. Indeed, the GAO concludes not only that "84 percent of [wireless] users are very or somewhat satisfied with their wireless phone service,"[19] but that 76 percent of wireless users are "[s]atisfied (very or somewhat)" with the billing aspect of their service.[20] *Second*, the state sources of data are unreliable. The testimony from the New York Consumer Protection Board testimony is over three-and-a-half years old, and the Florida Public Service Commission's report does not allow for any sort of meaningful statistical analysis because it has only two categories of complaints—"service" and "billing."

For all these reasons, the NOI is thus incorrect to assert that "[r]ecent consumer complaint data suggests that consumers continue to experience confusion and uncertainty surrounding the communications services to which they subscribe."[21] Available data do not support this assertion.

B. Third-Party Surveys and Internal Studies by Verizon and Verizon Wireless Demonstrate That Consumers Are Satisfied with Their Service and with the Information Carriers Provide Them.

Recent surveys confirm that consumers are increasingly satisfied with wireline and wireless telephony, subscription video, broadband Internet access, and interconnected VoIP service. For example, Consumer Reports recently found that there has been a "surge" in wireless customer satisfaction and that "[o]verall, cell-phone service has become significantly better. . . . Sixty percent of readers were completely or very

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19 *GAO Report* at 4.

20 *Id.* at 7 (Table 2).

21 NOI, ¶ 15.

satisfied with their service."[22] Similarly, the *GAO Report* found that "84 percent of adult wireless phone users are very or somewhat satisfied with their wireless phone service," while only "10 percent are very or somewhat dissatisfied with their service."[23] In August 2009, J.D. Power and Associates released its most recent Wireless Call Quality Performance Study.[24] Based on responses from 25,512 wireless customers, J.D. Power concluded, "As carriers continue to upgrade existing network infrastructure and create more robust coverage footprints, wireless customers are recognizing an improvement in performance. . . . Customers rely heavily on their mobile devices to stay connected, so carriers must provide their customers with a problem-free experience to keep them satisfied -- particularly in such a highly competitive environment."[25] A separate J.D. Power study reported that customers have particularly high levels of satisfaction when they upgrade to plans offering unlimited text messaging or in-network calling.[26] The May 2009 American Customer Satisfaction Index reported, "Customer satisfaction with wireless telephone service reache[d] a new all-time high for the third consecutive year."[27] Consumer Reports also found that customers of wireline telephone

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22 Consumer Reports, *Best cell phone service* (Jan. 2009), *available at* http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/phones/cell-phone-service-providers/cell-phone-service/overview/cell-phone-service-ov.htm.

23 *GAO Report*, at 4.

24 Press Release, *J.D. Power and Associates Reports: Overall, Wireless Carriers Reduce Dropped Class, Failed Connections And Static, Driving an Improvement in Call Quality Performance* (August 27, 2009), *available at* http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2009155.

25 *Id*.

26 *See* Press Release, *J.D. Power and Associates Reports: Despite Higher Costs for Additional Services, Wireless Customers Report Particularly High Levels of Satisfaction with Wireless Plan Upgrades* (Apr. 24, 2008), *available at* http://www.jdpower.com/corporate/news/releases/pdf/2008044.pdf.

27 Press Release, *ACSI: Customer Satisfaction Rises Again, Now Joined by Other Economic Indicators* (May 19, 2009), *available at* http://www.theacsi.org/images/stories/

service from local telephone providers were "fairly well satisfied" to "very satisfied" with their service.[28] With regard to subscription video, Consumer Reports found that subscribers were "fairly well satisfied" to "very satisfied" with their service from fourteen out of sixteen rated providers.[29] Finally, Nielsen Mobile also reports that customers with broadband Internet access service[30] and interconnected VoIP service[31] have high satisfaction levels.

Verizon and Verizon Wireless have made concerted efforts to address and resolve quickly any customer complaints that do occur. To measure whether they are successful in resolving service calls to their customer service centers, Verizon and Verizon Wireless

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images/news/0901q_Press_Release.pdf; *see also* The American Customer Satisfaction Index, ACSI Scores & Commentary, Scores By Industry, Wireless Telephone Service (2009), *available at* http://www.theacsi.org/index.php?option=com_content&task=view&id=147&Itemid=155&i=Wireless+Telephone+Service (reflecting overall increase in consumer satisfaction with wireless service). As indicated above, the *GAO Report* highlights consumer satisfaction with regard to wireless service and billing for wireless service. *See supra* p.9.

28 *Consumer Reports Phone Service Ratings*, *available at* http://www.consumerreports.org/cro/electronics-computers/tvs-services/bundled-services/ratings/bundled-services-phone.htm ("*Consumer Reports Phone Service Ratings*"). Additionally, J.D. Power and Associates reported that customers receiving both local and long distance telephone service were very satisfied using providers' websites for service inquiries. Press Release, *J.D. Power and Associates Reports: Customers Respond Positively as Cable and Voice Providers Leverage Web Sites to More Effectively Address Customer Service Issues* (Sept. 10, 2008), *available at* http://www.jdpower.com/corporate/news/releases/pdf/2008180.pdf.

29 *Id*. In addition, Verizon FiOS and AT&T U-verse are among top-rated video providers in terms of customer satisfaction. Press Release, *J.D. Power and Associates Reports: AT&T U-verse and Verizon FiOS Lead Regional Customer Satisfaction Rankings Among Cable, Satellite and Internet Television Service Providers* (Oct. 1, 2008), *available at* http://www.jdpower.com/corporate/news/releases/pdf/2008204.pdf.

30 *See* Nielsen Mobile, *Critical Mass: The Worldwide State of the Mobile Web* (July 2008), *available at* http://www.nielsenmobile.com/documents/CriticalMass.pdf ("[N]etwork satisfaction is the largest driver of overall satisfaction with the mobile Internet."); *id.* ("[F]aster data transfer speeds closely relate to consumer satisfaction and will help to drive overall interest and adoption of the platform.").

31 *Consumer Reports Phone Service Ratings* (overall customers were fairly well satisfied to very satisfied with their VoIP service); Consumer Reports, *TV & Services, Internet Service Ratings*, *available at* http://www.consumerreports.org/cro/electronics-computers/tvs-services/bundled-services/ratings/bundled-services-internet.htm (for all but three rated providers, overall customers were fairly well satisfied to very satisfied with their service).

collect First Call Resolution data. These data reflect all calls made to customer service, regardless of whether the customer called to complain, inquire about services, or order new services, and whether the same customer called back within 30 days of the initial call for any reason.

Verizon Wireless reviews First Call Resolution statistics on a monthly basis for its wireline services. A recent study showed that Verizon Wireless' First Call Resolution exceeded 75%, which was highest in the industry and 10% above the industry average.[32]

Verizon also reviews First Call Resolution statistics on a monthly basis. At the monthly meetings to review the data, Verizon management sets a target percentage that increases each month for each region. One initiative from recent meetings is to speed up the bill credit and adjustment process so that customers do not call back to question when their bills will reflect the promised credit or adjustment. Verizon's recent data show that over 70% of calls to customer service are resolved without a follow-up call by the customer.

All customer inquiries and complaints negatively impact customers' satisfaction, and Verizon and Verizon Wireless have strong incentives to reduce them. Verizon's Customer Advocacy group receives and tracks complaints directly from customers (usually if the initial call to customer service is not resolved), state attorneys general, and, with respect to regulated services like wireline voice, state public service commissions and the Commission. Verizon reviews the data gathered by its Customer Advocacy group on a monthly basis for its FiOS, HSI and wireline voice services and on a weekly basis for FiOS billing issues.

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[32] *See* J.D. Power and Associates, 2009 Wireless Customer Care Performance Study[SM] Vol. I, Management Report at 43 (Feb. 4, 2009).

Verizon Wireless' Executive Relations group similarly tracks complaints that are escalated to Verizon Wireless' executives or initiated with government agencies, rather than general customer service. This group oversees Verizon Wireless' efforts to contact the customer directly and to resolve the problem. In addition, the Executive Relations group works to identify root causes and process improvements that can eliminate these problems.

Other metrics also demonstrate customer satisfaction with Verizon and Verizon Wireless' service. For instance, the Net Promoter® Score (NPS) is a widely-recognized statistic used by all types of businesses to measure their performance in the eyes of their customers. To calculate the NPS, customers are surveyed and asked to rank whether they would recommend Verizon or Verizon Wireless on a scale from 0 to 10. The vast majority of the customers surveyed are those who have recently called customer service for any reason. The NPS is then calculated by taking the percentage of customers who would recommend Verizon or Verizon Wireless as ranked by 9-10 and subtracting the percentage of customers that would not, as ranked 0-6. The survey also includes customers of other major carriers for purposes of comparison.

Verizon Wireless' NPS has been increasing over the past two years and surpasses the scores of its wireless competitors. The data gathered for Verizon Wireless' NPS provide another source of valuable customer feedback to Verizon Wireless. Upon hearing customer concern about its practice of extending the term of a customer's contract whenever a customer changed plans, Verizon Wireless now allows customers to make changes without extending their contract end dates. Verizon Wireless also closely monitors whether its customers are expressing dissatisfaction by leaving for a competing wireless service. Verizon Wireless' churn rate has been the lowest in the industry for the past 19 quarters.[33]

These customer satisfaction efforts have proven to be effective. The number of complaints filed at the FCC relating to billing and rates against Verizon Wireless has decreased on an absolute level and on a per-customer level. In absolute numbers, Verizon Wireless received 667 billing and rates complaints in 2002 and 616 in 2008. Yet, the total number of customers Verizon Wireless served during these periods doubled from 32.5 million to 72.1 million customers. On a per customer basis, there was over a 58% drop in those complaints. And since 2004, billing and rate complaints against Verizon Wireless have decreased on a per-customer basis year over year. Moreover, the number of Verizon Wireless complaints fell in 2007 and 2008 despite the small increase in billing and rates complaints industry-wide from 2006 to 2008. At the same time, there was a substantial increase in Verizon Wireless subscribers—over 20%—from 2006 to 2008.

III. VERIZON AND VERIZON WIRELESS CONSTANTLY STRIVE TO PROVIDE CUSTOMERS WITH INFORMATION TO ENABLE THEM TO MAKE INFORMED DECISIONS.

The market for wireless and wireline telephony, subscription video, broadband Internet access, and interconnected VoIP services is highly competitive. In this environment, service providers like Verizon and Verizon Wireless provide extensive information to consumers about the services they offer, and work to provide clear and

33 Press Release, *For 19th Consecutive Quarter*, *Verizon Wireless Leads Wireless Industry In Customer Loyalty* (Aug. 6, 2009), *available at* http://news.vzw.com/news/2009/08/pr2009-08-06.html. Verizon also reviews its NPS on a regular basis to observe trends and areas for improvement. The trend in Verizon's NPS has been upward, and Verizon's FiOS video score "stood out" in the cable TV category. *See* Net Promoter, *How Does Your Score Compare?*, *available at* http://www.netpromoter.com/np/compare.jsp.

understandable billing information, because it makes good business sense to do so.[34] By informing consumers of the attributes of their services and the value they offer, Verizon and Verizon Wireless are better able to attract new customers and retain existing customers. Providing accurate information about their services and then delivering services that live up to that information is important for Verizon and Verizon Wireless to attract and retain satisfied customers for the long term.

As described below, Verizon and Verizon Wireless are closely attuned to consumers' increasing demands for accurate and clear information, both at the pre-sale stage and afterwards. The companies continually evaluate their advertising, ordering, and billing processes and take concrete steps in response to customer feedback to improve those processes. They also test and monitor their services to ensure that they live up to the information provided to consumers.

In the wireless context, there are comprehensive existing guidelines and standards relating to consumer disclosures. In particular, in 2004, Verizon Wireless, Cingular Wireless (now AT&T Mobility), and Sprint entered into an Assurance of Voluntary Compliance ("AVC") with 32 state attorneys general (with the 33rd state attorney general joining later) that, as a practical matter, established national, uniform consumer protection standards relating to the provision of information to consumers of wireless service.[35] The AVC's standards apply to communications made to consumers through

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[34] As the Commission has concluded, "competition is the most effective means of ensuring that the charges, practices, classifications, and regulations . . . are just and reasonable." *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition for US West Communications, Inc. for Forbearance*, CC Docket No. 97-172; *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, 14 FCC Rcd 16252, 16270 (¶ 31) (1999).

[35] *In re Cellco P'ship d/b/a Verizon Wireless*, Assurance of Voluntary Compliance (June 29, 2004) ("AVC"). Notably, in the more than five years since the AVC has been in force, only

advertising, at the point of sale, and via bills. In addition, the wireless industry, through its principal industry association (CTIA), voluntarily adopted a Consumer Code for Wireless Service (the "CTIA Consumer Code").[36] The CTIA Consumer Code is intended "[t]o provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs."[37] In order to better serve the consumer, Verizon Wireless constantly strives to provide the optimal level of information in order to facilitate educated purchasing decisions.[38] Accordingly, Verizon Wireless' efforts with regard to consumer disclosures go above and beyond the industry standards set out in the AVC and the CTIA Consumer Code.[39]

A. Verizon and Verizon Wireless Provide Consumers with Extensive Information to Help Potential Customers Make Informed Purchase Decisions.

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one state attorney general to our knowledge has brought a complaint under the provisions of the AVC, and that complaint was against a single carrier. *See Texas v. Sprint Spectrum, L.P.*, No. GV4-02057 (Tex. Dist. Ct. filed Feb. 5, 2007) (petition to enforce AVC).

36 *See* CTIA, Consumer Code for Wireless Service, *available at* http://files.ctia.org/pdf/The_Code.pdf (the "CTIA Consumer Code").

37 *Id.* at 1.

38 Of Verizon Wireless' more than 85,000 employees, over 59,000 of them (nearly 70%) are customer-facing employees. Over 26,000 (over 30%) are devoted entirely to customer care, meaning that their job is to serve customers who contact Verizon Wireless with questions.

39 In the mobile content area, Verizon Wireless and AT&T Mobility have entered into an AVC with the Florida Attorney General (the "Florida AVC") establishing consumer-friendly marketing, advertising, and business practices intended to provide a significant amount of specific information as to mobile content. *In re Verizon Wireless Servs. LLC & Alltel Communications, LLC*, Assurance of Voluntary Compliance, Case Nos. 08-3-1034, -1035 (June 16, 2009) ("Florida AVC"). Similarly, the industry's Mobile Marketing Association adopted Consumer Best Practices Guidelines that, among other things, provide guidance as to the advertising and promotion of mobile content, including requirements that advertising be clear and conspicuous as to terms and conditions associated with offers. *See* Mobile Marketing Association, *U.S. Consumer Best Practices Guidelines for Cross-Carrier Mobile Content Programs* (July 1, 2009) at 15.

Verizon and Verizon Wireless customers receive substantial information about the pricing, key features, and material terms of service of their products and services from the companies' advertising, direct mail communications, over the phone contacts with its customer service representatives, online sites and retail store face-to-face interactions. Nationally, communications companies spent over $4.2 billion million on advertising in the first half of 2009, ranking extremely high compared to other industries.[40] In particular, Verizon and Verizon Wireless spent nearly $1.2 billion in the first half of this year on advertising to ensure that customers are informed about the high quality of their services and their competitive price points.[41]

Verizon and Verizon Wireless advertise in all major media, such as print, television, radio, online, and billboard. As described in more detail below, this advertising generally provides product and service descriptions and related pricing information and terms of service. Regardless of the type of advertising used, Verizon and Verizon Wireless' ordering processes ensure that customers receive sufficient information to facilitate an informed purchase decision.

In addition, numerous third-party organizations, such as Consumer Reports and J.D. Power and Associates,[42] and websites, such as Broadbandreports.com and Cnet.com, provide consumers with extensive information about various communications products and services, including features and specifications, as well as pricing data, and these organizations and websites often synthesize the information they compile and review the competing products in order to make it easy for consumers to compare products and

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40 TNS Media Intelligence Reports, News Release (Sept. 16, 2009).

41 *Id*.

42 *See supra* p.10-12.

services. For example, Cnet.com recently announced its partnership with Root Wireless to provide consumers with new and better information—"detailed, real-world coverage"—about the "quality of service" provided by wireless carriers.[43]

1. Wireless Services

As indicated above, the AVC sets out standards for consumer disclosures through advertising. In particular, the AVC requires that wireless providers "disclose clearly and conspicuously all material terms and conditions associated with the stated price."[44] The AVC requires additional disclosures with respect to promotional prices and free offers, including "any minimum term of service required to obtain that promotional price or free offer and the price after the promotional price or free offer expires within the minimum term."[45] Verizon Wireless not only fulfills its obligations under the AVC but also provides additional disclosures to consumers through its advertising in order to ensure that consumers can make informed purchasing decisions.

Because wireless consumers are interested in where coverage is available, Verizon Wireless routinely promotes through its advertising that it offers the nation's largest coverage area.[46] Verizon Wireless' online coverage locator tool, found at www.verizonwireless.com/coveragelocator, allows consumers to view detailed maps

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[43] *CNET to add phone service data to handset reviews* (Oct. 6, 2009), *available at* http://news.cnet.com/8301-30677_3-10368459-244.html?tag=nl.e703. Specifically, Cnet.com will be providing consumers with information about "[a]verage signal strength and the number of signal bars for the selected carrier in a specified area" and "[d]ata connectivity and throughput," as well as "[n]etwork issues such as drop calls or failed data connections," in addition to the "unparalleled reviews of mobile handsets" that Cnet provides to consumers already. *Id.*

[44] AVC, ¶ 33.

[45] AVC, ¶ 34.

[46] (Ex. 1.)

showing Verizon Wireless' coverage at the street address level.[47] This street level coverage tool far exceeds the terms of the AVC, which require only national or regional maps. Improvements in mapping technology and the competitive demands of the market have come together to enhance disclosures in a way that inflexible regulation never could. This tool was accessed over 850,000 times in August 2009 alone, demonstrating that customers are aware of this tool and use it. Verizon Wireless also provides consumers with more general coverage maps in its service brochures available at its retail stores.

Wireless consumers also care about the reliability of a provider's service. Verizon Wireless regularly promotes that it has the "most reliable wireless network."[48] On its website, Verizon Wireless explains its internal network testing, which is the most comprehensive in the industry, and the results of that testing. Verizon Wireless' testing involves more than 3 million voice calls and 16 million data tests annually on Verizon Wireless' and other national wireless carriers' networks while traveling almost 1 million miles of the most frequently traveled roadways nationwide in specially equipped, company-owned quality test vehicles. The voice network reliability test results have consistently shown that the rate of ineffective attempts for the Verizon Wireless national network, in major metropolitan centers and some remote areas, is lower than any other national carrier.[49]

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[47] Verizon Wireless's provision of coverage maps is consistent with the CTIA Consumer Code which requires carriers to "[m]ake available maps showing where service is generally available." *See* CTIA Consumer Code at 1, *available at* http://files.ctia.org/pdf/The_Code.pdf.

[48] (Ex. 1.)

[49] Third party surveys confirm these results. J.D. Power's most recent wireless call quality survey ranked Verizon Wireless highest based on metrics that it used to measure overall call quality: dropped calls, static/interference, failed call connection, voice distortion, echoes, no

Wireless consumers who want mobile broadband service are also interested in the speed of data downloads and uploads transfer. Verizon Wireless discloses online and in brochures available at the point of sale the speeds its mobile broadband service consumers can expect.[50]

In addition to quality, price and related terms of service also differentiate wireless providers. Carriers certifying compliance with the CTIA Consumer Code agree to ensure that consumers receive adequate information about their rates (including differentiating the carrier charges from taxes), as well as the carrier's terms of service and the extent of its coverage.[51] Verizon Wireless' disclosures of this information are substantial, particularly in print advertisements. When Verizon Wireless advertises a service offer in a print advertisement, the advertisement discloses the activation fee, the monthly access charge (including the maximum rate for any voice overage and data overage charges), and the fact that taxes and other charges apply.[52] For the latter category, Verizon Wireless discloses the amount and nature of its national surcharges, such as a surcharge to help it recoup its costs in supporting the Federal Universal Service Fund, and provides a toll-free number to call for more information about them. Verizon Wireless also

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immediate voicemail notification, and no immediate text message notification. Press Release, *J.D. Power and Associates Reports: Overall, Wireless Carriers Reduce Dropped Class, Failed Connections And Static, Driving an Improvement in Call Quality Performance* (August 27, 2009), *available at* http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID =2009155.

50 (Ex. 2.)

51 CTIA Consumer Code at 1, 2, *available at* http://files.ctia.org/pdf/The_Code.pdf. In particular, the CTIA Consumer Code requires participating wireless carriers to disclose "material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows," information about activation or initiation fees, monthly access fees or base charges, the contract term, any early termination fee, the times of any peak and off-peak calling periods, whether any additional taxes, fees or surcharges apply, and any such fees or surcharges collected and retained by the carrier. *Id.* at 2.

52 (Ex. 1.)

provides a percentage range of potential taxes and surcharges, such as for E911, for the Verizon Wireless operating area in which the advertisement runs. Finally, Verizon Wireless discloses the amount of any early termination fee in its print advertisements.

Verizon Wireless' equipment offers in print ads are similarly detailed. With respect to the price of the equipment, Verizon Wireless discloses the price of the equipment before any available rebate, the amount of the rebate, the net price after subtracting the rebate, and the minimum contract term required to purchase the equipment at the advertised price.[53] Verizon Wireless also describes the nature of any rebate, such as via check or debit card, and the length of time it usually takes to receive such rebate. Finally, Verizon Wireless discloses the activation fee and the amount of any early termination fee.

In addition to proceedings to investigate false or misleading advertising that may be instituted by state attorneys general or the FCC within the areas of the respective authority, the competitive nature of the wireless industry also prompts carriers to police one another's advertising to ensure that it is not false, misleading or likely to deceive. When carriers are unable to informally resolve disputes over each others' advertising. They can file a complaint with the National Advertising Division of the Council of Better Business Bureaus, a self-regulatory body that helps parties resolve advertising disputes, or seek recourse in federal or state court.

2. Wireline Voice Service

Customers who are selecting a wireline voice provider are interested in the features of the voice service, such as whether local and long distance calls are unlimited

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[53] (Ex. 1.)

and whether call-waiting and voicemail are included. Wireline voice customers also care about the service's reliability. Verizon advertises its network reliability and routinely includes information regarding calling features and reliability in its advertisements for wireline voice service.[54]

Disclosures in Verizon's advertisements for wireline voice service include the base price of the service, and the fact that additional taxes, charges and fees apply. Finally, the advertisement explains the eligibility requirements for the service(s), pricing and any promotional offers and that the rate may change after the offer term expires.[55]

3. Wireline Subscription Video Service

Customers are better able to make a purchase decision for subscription video service when they are informed about the content available and the picture quality. Verizon's print advertisements for subscription video services frequently provide a robust sampling of the popular channels available and indicate which channels are available in HD. In addition, Verizon provides the address to Verizon's website (*i.e.*, www.verizonfios.com) where the complete list of channels is available.[56]

In certain advertisements, Verizon highlights the picture quality of its subscription video service.[57] Verizon also cites in appropriate circumstances third-party studies that demonstrate Verizon's leadership position in HD picture quality.[58]

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[54] (Ex. 3.)

[55] (Ex. 3.)

[56] Exhibit 4 contains an example of print advertisements for Verizon's subscription video service.

[57] (Ex. 5.)

[58] (Ex. 6.)

Moreover, in Verizon's experience, overall customer satisfaction scores are meaningful information to prospective customers of Verizon's subscription video service. In its advertisements, Verizon has cited third-party studies of consumer satisfaction that provide valuable information about how Verizon's subscription video services have been ranked by independent consumer reporting agencies and other consumers. For example, recent Verizon advertisements refer to a J.D. Power and Associates study that shows Verizon ranked highest in residential television service satisfaction in the East. To allow consumers to evaluate the study, the advertisements disclose the basis for the ranking and provides J.D. Power's website (*i.e.*, www.jdpower.com).[59]

In addition to disclosing meaningful measures of its video quality, Verizon's advertising sets out the key terms of service. Verizon advertises the price of the bundled subscription video service and identify any services included in the bundle with the subscription video service.[60] Verizon also informs consumers of the material elements of the offer, including the applicable term commitments and clearly and conspicuously discloses additional material information such as activation and early termination fees, qualifications (*e.g.*, credit checks), and additional taxes, charges and fees. Finally, Verizon's subscription video advertisements explain the eligibility requirements for any applicable promotions and that rates may change once the promotional period ends.

4. Wireline Internet Access Service

In Verizon's experience, customers are interested in the speed of the various Internet access services Verizon offers. Like its cable competitors, Verizon advertises its upload and download speeds. In addition, Verizon clearly informs consumers that the

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59 (Ex. 7.)

60 (Ex. 7.)

actual speed may vary based on numerous factors and provides more detailed information on speed through its website.[61] These factors, listed in Verizon's terms of service and on Verizon's website, include the condition of wiring at the customer's location, computer configuration, Internet and network congestion, and speed of website servers customers access, among other factors. As explained in Section III.B. below, Verizon reinforces this information through its terms of service, when the customer signs up for service and/or has the service installed.

Verizon often provides its customers with comparisons and examples as a way to illustrate the speed of its services. For example, with respect to Verizon's fiber optic based Internet access service, FiOS, Verizon provides comparisons of the relative speed performance of FiOS against cable.[62] For its digital subscriber line service, marketed under the name High Speed Internet (HSI), Verizon provides comparisons of the relative speed performance of HSI against a dial-up Internet connection.[63]

Verizon also helps customers understand how the speed of a particular Verizon Internet access service works in practice.[64] For example, Verizon makes available information on its websites and occasionally in its advertisements regarding how long it would typically take to download songs or a movie and upload photos or a video at particular speed.

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[61] *See* Verizon FIOS Internet FAQs, *available at* http://www22.verizon.com/Residential/FiOSInternet/FAQ/FAQ.htm (Ex. 8.).

[62] *See* Verizon, FIOS Internet, FiOS v. Cable, *available at* http://www22.verizon.com/Residential/FiOSInternet/FiOSvsCable/FiOSvsCable.htm (Ex. 9.).

[63] *See* Verizon High Speed Internet (HSI) Fact Sheet, *available at* http://newscenter.verizon.com/fact-sheets/verizon-high-speed-internet.html (Ex. 10.).

[64] (Ex. 11.)

To show how Verizon's Internet access services stack up against the competition, Verizon includes current results of third-party studies of Verizon's Internet access service in its advertisements.[65]

In Verizon's experience, Internet access consumers generally do not select a provider based on the router or modem equipment associated with the service. For Verizon's FiOS consumer Internet access service, Verizon supplies a wireless router at no cost and that router is optimized for FiOS Internet service. For Verizon HSI consumers, Verizon offers a standard modem or a wireless router (often for an additional charge), but consumers can use a modem or router purchased elsewhere if they choose.

Verizon's advertisements for Internet access services include clear disclosures similar to those made in its subscription video service advertisements.[66] These advertisements include the price of the Internet access service and disclosure of material terms, such as the requirement for an annual term, any upfront charges, activation fee or early termination fee, and that other charges, taxes, and terms apply. Finally, Verizon's print advertisements for Internet access service explain the eligibility for the offer and that the rate may change once the term agreement (where applicable) or promotional period ends.

B. At the Point of Sale, Verizon and Verizon Wireless Seek To Fully Inform Their New Customers.

1. Wireless Services

Verizon Wireless acquires new customers primarily at company-owned and agent-owned retail stores, telephone calls, and online. Verizon Wireless has processes in

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65 (Ex. 12.)

66 (Ex. 13.)

place in all sales channels to ensure that customers are provided with complete and accurate information about Verizon Wireless' service at the outset of its relationship or when service is changed. These processes surpass the AVC's standards relating to the provision of information to consumers at the point of sale, including its required disclosures of information about the minutes in the plan, any early termination fee, and the fact that certain taxes or monthly discretionary charges may be added.[67]

To determine the most effective manner of providing this information, Verizon Wireless conducts consumer research via focus groups to better understand customer perceptions of its marketing and sales materials. Verizon Wireless has used the results of these focus groups to examine the design and content of its confirmation letters and its pricing grids, and how it conveys information regarding calling plan changes and equipment rebates. Verizon Wireless has also conducted interviews to test customers' understanding of overage charges and data plan options. The process is iterative and ongoing, because Verizon Wireless knows that failure to address areas of customer concern will lead to loss of those customers to competitors. As a result of these focus groups and customer interviews, Verizon Wireless has made significant changes to its point of sale material, including consolidating the number of pieces it distributes as well as organizing all its product information differently. Verizon Wireless has also adjusted its pricing grids to improve customer comprehension.

In Verizon Wireless company-owned retail stores, equipment prices are disclosed on cards below each phone. These cards list the prices of the equipment with a two-year agreement, a one-year agreement, and without any long-term contractual commitment,

[67] AVC, ¶ 18.

any available mail-in rebate and the net price after subtracting the rebate. Customers can purchase equipment from agents, such as Best Buy or Costco, for use on Verizon Wireless' network. While those agents set their equipment prices and policies, the equipment must be certified by Verizon Wireless for use on its network.

At Verizon Wireless' company-owned and agent retail stores, a brochure describing wireless service is provided to the consumer at the time of activation. The "Consumer Brochure"[68] describes the available plans, including the plans' monthly allowances and features, where those allowances and features can be used (*i.e.*, the applicable coverage areas), and the monthly and pay-per-use charges associated with them. The brochure also describes available optional services, such as text messaging packages. Activation fees, minimum contract terms, early termination fees, Verizon Wireless surcharges, and the percentage range of potential taxes and surcharges are also disclosed. Moreover, the brochure provides information that would enable a new data customer to choose the best plan for her expected data use, including providing estimates of the amount of data used for certain activities, such as downloading a game or ringtones or viewing web pages. The stores also have a "Business Brochure" that includes services that may be of interest to consumers, such as global voice and data services.

Verizon Wireless also provides potential customers at the retail stores with a Welcome Guide,[69] which includes Verizon Wireless' Customer Agreement Terms and Conditions, prior to contract acceptance. The Customer Agreement describes the early termination fee (and the fact that it declines over time) and the customer's right to cancel service within 30 days of activation. In addition, the Welcome Guide describes the free,

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68 (Ex. 14.)

69 (Ex. 15.)

self-service tools Verizon Wireless offers to help customers manage their usage, including a description of available shortcuts for a customer to obtain information about his service using his wireless phone. For example, a customer can dial "#BAL" to obtain outstanding balance; "#PMT" to make a payment; "#MIN" to obtain the number of minutes used during the current bill cycle; and "#DATA" to obtain the number of messages and amount of data sent/received during current bill cycle. This information is also available by calling customer service. The Welcome Guide describes Verizon Wireless' 30-day return and exchange policy for equipment purchased at Verizon Wireless company-owned stores as well.

Depending on the demographics of the surrounding community, many Verizon Wireless company-owned and agent locations employ sales representatives who are fluent in both English and Spanish. Further, in those locations, Verizon Wireless' in-store signage and brochures are available in both languages as well.

At the time of contract acceptance, the customer signs an Agreement Receipt,[70] which highlights the specific plan selected, the contract term (which may be month-to-month, or for one or two years), and any optional services selected. The receipt's signature block informs the customer that he is agreeing to the Customer Agreement Terms and Conditions and reminds the customer of the early termination fee, if applicable. The customer also receives a First Bill Estimate receipt,[71] which describes the expected charges that will appear on the customer's first bill, including pro-rated charges for the service prior to the start of the first full billing cycle and the Verizon

[70] (Ex. 16.)

[71] (Ex. 16.)

Wireless surcharges and government taxes that will apply. The customer also receives an equipment receipt, which details the equipment purchased and the cost.

Although the information is conveyed differently, the online ordering experience is similar. The same information contained in the service plan brochures and Welcome Guide is disclosed online in the ordering process, and the customer accepts through an online "click-through" process. Further, a direct translation of Verizon Wireless' English website is available in Spanish.

Verizon Wireless operates call centers that are open 24 hours a day, seven days a week for customers to order or change service. If a consumer orders service and equipment by telephone, telesales representatives (both English- and Spanish-speaking) orally disclose the material terms of the available plans (including the monthly access charge, the number and type of monthly allowance minutes, coverage areas, overage rates, minimum contract term, early termination fee, Verizon Wireless surcharges, and a percentage range of surcharges and taxes). If a consumer elects to proceed with ordering service and equipment, the applicable service plan brochure and the Welcome Guide are shipped to the customer in the same box as the equipment ordered, along with a receipt that details the plan chosen and contract term. After reviewing the materials, the customer accepts the agreement by calling an automated voice response unit.

Before the customer's call with the telesales representative concludes, the following recorded message is played to ensure that there is no customer confusion about the terms of service:

> Your new Customer Agreement begins the day your equipment is activated in our system, which typically occurs on the day it is delivered to

> you. If you selected a 1 or 2 year minimum term and cancel your service prior to the expiration of that minimum term, you will be billed an early termination fee up to $175 per line. Every device you purchase from Verizon Wireless comes with a 30-day satisfaction guarantee. A $35 restocking fee may apply to exchanges. Night and Weekend minutes are from 9:01pm until 5:59am, Mon-Fri and from 9:01pm Friday thru 5:59am on Monday.
>
> If you do not activate or return your equipment within 30 days of your order, the difference between the retail price of the equipment and the discounted price you paid may be charged to your bill. Tolls, taxes, fees, and Verizon Wireless surcharges, vary by market and add between 5% and 36% to your monthly bill and are in addition to monthly access fees and airtime charges.

After listening to the recording, the customer is able to confirm for the telesales representative that he wishes to continue with the order.

Regardless of the particular method that a customer uses to order service, the customer is sent a confirmation letter,[72] either electronically or via U.S. mail, within ten days of accepting the customer agreement. The confirmation letter provides yet another description of the customer's plan, the activation fee, the contract end date, the applicable early termination fee, and how the customer can easily check her minutes used, data used, and balance. The confirmation letter also estimates the amount of taxes and surcharges

72 (Ex. 17.)

for the first bill and provides four methods of contacting Verizon Wireless if the customer has questions about the letter. To the extent anything in the confirmation letter is not what the customer expected, Verizon Wireless offers a Worry Free Guarantee[73] that allows customers to cancel service for any reason within the first 30 days and not incur an early termination fee. Furthermore, customers will receive confirmation letters any time a change is made to the plan, such as adding optional services or a new phone. Confirmation letters, like bills, are available in Spanish if the customer has indicated that preference. If a customer disagrees with anything disclosed in a confirmation letter, or disputes subscribing to the service indicated, the customer can contact Verizon Wireless to have the transaction reversed.

2. Wireline Services

Although Verizon provides a variety of sales channels through which customers can obtain information about, and order its products and services (customer contact centers, online websites, retail stores, door to door contacts, mall kiosks, telemarketers, and other local agents), the vast majority of customers of wireline services call Verizon's consumer call centers to purchase new services. Because Verizon believes that the first impression made on the customer is often the most important one, Verizon works to provide customers with sufficient information at the outset of the relationship. In addition, Verizon has found that "doing it right the first time" from a customer service standpoint reduces customer inquiries and complaints. This, in turn, reduces costs in terms of customer handling time, and increases customer satisfaction.

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73 (Ex. 18.)

Verizon operates call centers in its East area (former Bell-Atlantic service areas) that are open from 8 am to 9 pm EST Monday through Friday and from 9 am to 5 pm on Saturdays. In its West area (former GTE service areas), Verizon's call centers are open from 6 am to 10 pm EST Monday through Friday and from 6 am to 9 pm on Saturdays. Former MCI's call centers are open from 8 am to 8 pm EST. In addition, customers who speak Spanish, Russian, Chinese, Korean, and Vietnamese can call Verizon from 8 am to 5 or 6 pm (depending on the language) Monday through Friday and reach a customer service representative who speaks that language by dialing the appropriate toll-free number.

For customers with disabilities, Verizon's Center for Customers with Disabilities is open from 8:30 am to 5 pm EST in the East and 8 am to 6 pm PST in the West. Customers who call Verizon's other customer service centers are transferred to the Verizon's Center for Customers with Disabilities once the customer is identified as having a disability. Verizon's Center for Customers with Disabilities is staffed with representatives that have received training on the disabilities so that customers can communicate with Verizon. For example, Verizon offers a videophone customer service line, which enables deaf callers using American Sign Language to communicate directly to a representative who can sign with the customer. Communicating in the customer's native language is much less susceptible to misinterpretation than communicating through other means, such as written language on a TTY. Verizon understands that it is the only communications company that offers such a service.

When a customer calls Verizon to place an order, that customer may be calling in reference to an advertised promotion that contains unique eligibility requirements.

Verizon has recently added a new desktop tool to one of its ordering systems that more quickly provides the representative with information regarding the services for which the customer qualifies, the specific advertising the customer may have received and offers which may be of interest to the customer.

Regardless of the particular product, service offering or promotion that is the subject of the customer's call, the representative is trained to guide the customer through the ordering process and to provide the customer with information about products and services that will be responsive to the customer's needs. The representative is evaluated on his or her ability to describe the key features of the available packages and the options the customer could select.

For orders involving subscription video service, the representative will explain the optional channel packages, such as HBO and other premium channels, channel offerings available to the Spanish speaking and bilingual communities, and the associated pricing and minimum term commitment, if any. The representative will also walk the customer through the set-top box selection process by asking the customer how many televisions he or she has and whether the customer has an HDTV and whether the customer wants a digital video recorder. During the call, the representative will make clear to the customer that he or she must return the equipment if he or she cancels Verizon's video service and that a replacement equipment fee will be charged if the equipment is not returned.

For orders involving Internet access service, the representative will explain the speed options available to the customer. Verizon attempts to eliminate any confusion about the speed customers will actually receive as compared to the "up to" speed. For example, for Verizon's digital subscriber line service, the representative will read a script similar to the following:

> Your Verizon High Speed Internet order will be provisioned for our up to 1.5M/384k product. This means that your maximum connection speed to our network will be up to 1.5Mbps. Throughput speed (the speed you experience when you download or upload files) will be lower than connection speed. The actual speed of your service will depend on a number of factors like the condition of your phone line and the wiring inside your location, Internet or network congestion, and the speed of websites you connect to on the Internet, among others. Actual connection and throughput speeds and uninterrupted use of the service are not guaranteed.

For Verizon's FiOS Internet service, the representative will read a script similar to the following:

> The service you've selected provides data transfer speeds of up to [XX] Megabits per second downstream and [XX] Mbps upstream. These speeds are between your home and our central office. The actual speeds you experience could vary based on your computer's configuration, the sites you're visiting on the Internet and the speed of website services you visit, among other factors.

When FiOS Internet is installed, the technician will optimize the customer's PC to take full advantage of the service. In addition, the technician will test the speed of the customer's FiOS Internet access service and inform the customer about the speed of the customer's service. The technician also shows the customer how to test the speed of the customer's service.

For orders involving wireline voice service, the representative will describe the key features of the plan to the consumer. For example, if a customer inquired about Verizon's Freedom Essentials plan, the representative will state that it offers unlimited calling across the United States and to Canada and Puerto Rico, Caller ID, call waiting, and home voicemail. The representative will make clear, however, that unlimited long distance does not include international calls.

If the customer has a disability, the VCCD representative will discuss with the customer his or her particular needs and recommend the services that would best meet those needs. For example, deaf customers that use videophones require Internet access service with speeds fast enough for use with a videophone.

Once the customer's selection of service(s) is done, the representative must read a statement recapping the offer and its key terms of service. In particular, the representative will highlight promotional terms, the contract duration and any early termination fee and whether the customer has the right to cancel service before such fee would apply.

Because consumers may have uncertainty regarding how well the ordered services will fit their needs, for many of Verizon's services, Verizon allows customers a grace period to cancel, ranging from 15-30 days, before any applicable early termination fee would apply.

Once the recap is complete, Verizon provides its new FiOS customers with an estimate of his or her first bill. The customer is orally informed of pro-rated amounts, one-time and monthly charges, and the amounts of taxes and fees. Typically by the next business day, a confirmation letter will be emailed or mailed to the customer.[74] The confirmation letter identifies the promotion the customer ordered and provides a link to "What's Next," which is Verizon's newly developed website that details the order and installation process and allows changes to be made to the order. In addition, the confirmation letter sets out the First Bill Estimate that was recited over the phone, with a written estimate of the charges the customer will see on his or her first bill. If the customer feels that the written estimate is not consistent with what they were quoted by the representative, the customer can contact Verizon to request clarification or, at his or her option, can cancel the installation at no charge. The confirmation letter further explains the cancellation policy for the selected offer after installation, including (if applicable) any minimum term commitments and early termination policies that apply to the customer's service selection. The confirmation letter provides a link to the complete terms of service for each of the Verizon products the customer ordered.

Verizon began orally providing the First Bill Estimate in its call centers and sending this confirmation letter to new FiOS customers in June 2009 in response to customer feedback. As a result of this effort, Verizon has experienced a significant reduction in customer calls with questions about the first bill. The percentage of customers that called to inquire about their bills within the first 31-45 days of service (*i.e.*, the time period when the first bill is most likely to arrive) fell by over 50% the month after the First Bill Estimate was put into place. Verizon is gradually expanding the

[74] (Ex. 19.)

First Bill Estimate to all customer channels selling FiOS services, and intends to complete that effort as early in 2010 as possible.

For door-to-door sales, customers and representatives have similar interaction. One major difference, however, is that the customer has the opportunity to read printed material. For example, the representative typically provides the prospective customer with a Sales Order Form, a Buyer's Right to Cancel form, a What's Next brochure and brochures similar to print advertisements.[75] If the customer orders service through the door-to-door representative, the customer also is asked to initial and sign the Sales Order Form, and is provided with a copy of the form. The representative is trained to orally disclose any material charges which should be disclosed to the customer, and to have the customer initial his or her acknowledgement of those charges. One line, for instance, indicates the amount of the activation fee. Furthermore, the text just above the signature line informs the customer of the cancellation policy, indicates that taxes and surcharges are billed separately, and refers the customer to the reverse side of the form for additional disclosures. There, the customer is informed of the activation fee, the fact that additional charges apply (*e.g.*, for set top box), any contract term and early termination fee, and that speeds may vary for data service.

The online ordering process also provides a significant amount of information to the consumer. In addition to providing the key features and pricing associated with Verizon's products, services, bundles and promotions, Verizon's website, verizon.com, provides the customer with the terms of service for all of its offerings. In ordering service, the customer goes through similar steps and is directed at the relevant stage of

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[75] (Ex. 20.)

the process to select any necessary equipment and any optional services. Descriptions of the equipment and optional services are available to enable consumers to make informed choices.[76] On the checkout page, the online ordering process recaps the customer's order, describes the conditions of service, early termination fees, applicable charges and taxes. For customers with sight disabilities, all online material is accessible to screenreaders, which speak aloud information from a computer display.

Verizon's online account management tool, "My Verizon" provides registered users with the ability to view and pay their bill online. Quick links are provided with information on how to set up new service, what to do when moving to a new location, and how to add or change services. Customers are also provided with information on how to obtain online support, order status, requesting repairs, yellow and people pages information, and signing up for email updates. My Verizon also includes information regarding Verizon's privacy policy, store locations, and how to contact Verizon if the customer has any additional questions.

Once a customer's order is submitted, the next step for a FiOS order is for Verizon to send the customer a confirmation letter by email or by mail. Within two days of the order, Verizon mails the customer a postcard to encourage him or her to go to Verizon's "What's Next" site. Installation by a technician is required for all FiOS orders. When the technician installs the service, he or she will provide the customer with a Welcome Kit, which contains a user guide, a guide to understanding the bill, remote control instructions, channel lineup, privacy notice, contact information, and the full

[76] (Ex. 21.)

terms of service applicable to all services.[77] Finally, an order confirmation email is sent to the customer, which includes information about the order, key dates in the process, information about the promotional offer (as applicable) and a link to the appropriate terms of service for Internet access customers.

For a HSI order, the customer is mailed the Welcome Kit, which includes the terms of service, a user guide, a quick start guide, a guide to understanding the first bill, a modem or router if ordered by the customer, and a CD-ROM to explain the self-installation.[78] For all services, customer service is available 24/7 to address any installation questions.

In its terms of service, Verizon clearly sets out customers' obligations. To that end, Verizon emphasizes the key terms for those customers who are not inclined to read the entire document. For instance, customers of Verizon's Internet access service are informed in bold that speed will vary, depending on a number of listed factors. In addition, the terms for subscription video and Internet access services emphasize in all capital letters any early termination fee requirements and the fact that no early termination fee applies if service is canceled during a specified period.

C. Customers Have Good Information to Manage Their Services Post-Sale.

1. Wireless Services

Verizon Wireless takes significant measures surpassing its obligations under the AVC and the CTIA Consumer Code in order to ensure that its customers understand their bills. For example, Verizon Wireless initiated a bill simplification project in 2005 that

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77 (Ex. 22.)

78 (Ex. 23.)

resulted in re-design of consumer bills. In February 2005, Verizon Wireless conducted focus group sessions in four markets nationwide, with a mix of consumer and business customers. Based on the initial feedback from these sessions, Verizon Wireless then held separate consumer and business focus groups in June 2005. Participants in the eight consumer sessions were shown variations on a new bill design, as well as format options for account summaries, line summaries, call detail, and "need to know" information. Verizon Wireless responded to its customers' concerns by proposing new consumer and business bill formats to additional focus groups in October and November 2005. The end result of this process was the launch in 2006 of new, simplified bills that highlight the information that customers want. Verizon Wireless' efforts on bill simplification did not end in 2006. Earlier this year, Verizon Wireless again convened four focus groups to gather customer responses to the current bill format and to gauge customer understanding of pro-rated charges.

Verizon Wireless provides significant detail on the customer's bill.[79] The customer's bill includes a brief description of charges, by line. It also includes a simple description of the customer's plan and provides detail on the customer's minute allowances and minutes used. Verizon Wireless' bills are also organized to highlight the information that is of most importance to consumers. As a result of the focus groups, Verizon Wireless changed the format of its bills so that the first page more prominently displays the amount due. Also included on the first page of the bill, in an easy-to-read information bar, is Verizon Wireless' toll-free number. In latter pages, Verizon Wireless more clearly sets out the particular charges by line, as well as a simple description of the

[79] (Ex. 24.)

customer's plan and detail on the customer's minute allowances and minutes used. Verizon Wireless continues to provide a free paper bill to all customers who have not elected paperless billing. Further, Verizon Wireless customers can contact a Verizon Wireless retail store or customer service for assistance in determining whether a different plan would better fit the customer's usage patterns.

Verizon Wireless encourages all of its consumers to enroll in My Verizon. On My Verizon, a wireless customer can view his or her current and six most-recent bills (including detail on the date, time, length and other telephone number for each call made or received), the details of his or her plan, the contract end date, upgrade eligibility date, optional services, the minutes/megabytes/messages used since the last billing date, and information on any rebates. Verizon Wireless customers who register for My Verizon receive alerts if they have usage significantly in excess of their allowed minutes over a three month period and might benefit from selecting a different plan.

Further, customers can purchase a usage control service for $4.99 per line, per month. Customers can set a cap on minutes or data used, block unwanted calls and text messages from being sent or received, and allow use only during certain hours of the day (*e.g.*, outside of school hours). The service also allows a customer to set up allowances for family members and have text alerts sent when family members near and reach their allowance.

In addition to offering Braille, large font, CD Rom and 3.5" diskette bill formats for those customers who desire them, Verizon Wireless offers other accommodations to its customers with disabilities. For example, Verizon Wireless offers free 411 service to its customers with disabilities that make dialing a phone burdensome or difficult, and clearly discloses the Hearing Aid Compatibility rating of the wireless phones it offers. Verizon Wireless' website provides a description of the various products and services it offers to assist its customers with disabilities.[80]

Last, Verizon Wireless has particular processes in place to handle billing for third-party content. Third-party products for which Verizon Wireless bills typically involve products that content providers offer through the text messaging (SMS) functionality on subscribers' handsets. Companies wishing to market content to wireless subscribers can set up a "common short code" through CTIA that serves as an address with which subscribers can communicate via SMS. The code must be activated on each participating carrier's wireless network. Through the short code, the content provider can offer a wide range of content, from weather and news reports, to ringtones and wallpaper. For some content delivered in this manner, subscribers only pay the standard SMS charge applicable to their service plan. "Premium content" may be offered for an additional fee, either on a per transaction or subscription basis.

As an initial matter, placing a charge on a Verizon Wireless bill is not available to any provider. The billing function can only be accessed through a billing aggregator that Verizon Wireless has approved for this specific purpose. The content vendor must submit an application through the aggregator to Verizon Wireless, describing the details of the content and its procedures for compliance with Verizon Wireless' guidelines for delivery of such content and the Mobile Marketing Association's ("MMA") best practices.

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80 (Ex. 25.)

MMA guidelines generally require that content be delivered only to customers who affirmatively opt-in to receive the content to protect against cramming and delivery of unwanted content. Premium content delivered through these short code campaigns typically requires a double opt-in by the subscriber, through which first the subscriber learns of all the charges, contact information and how to cancel, and then the subscriber must opt-in a second time before being billed. These procedures protect subscribers from inadvertent opt-ins for products or unanticipated premium charges. Verizon Wireless also uses its advanced Information Technology systems to confirm that a customer has received the content he or she requested before being billed for it. The company regularly audits short code campaigns and has initiated a program to test each premium text message service monthly using “mystery shoppers” to measure the provider’s compliance with disclosure and opt-in procedures. Verizon Wireless has not hesitated to take action, including termination of a campaign, against providers that violate either the MMA or company guidelines.

Verizon Wireless also acts quickly to resolve customer complaints about billing for these charges. If a subscriber disputes a charge, he or she calls Verizon Wireless customer service, which will either promptly verify or remove the charge. Verizon Wireless trains its customer service representatives to address any issues regarding unauthorized charges on the first call whenever possible. The company’s customer service representatives are also trained to instruct subscribers in how to opt out of a service by texting STOP to the short code in question. Alternatively, the customer service representative can handle such requests. Verizon Wireless offers subscribers the option to block all premium text messaging services, which a customer can use to prevent another user (such as a child) on the customer's account from opting into premium SMS content. These practices vastly reduce the risk of cramming, while allowing customers access to a variety of forms of mobile content.

In addition to these efforts to ensure that its customers understand the text messaging services they subscribe to, Verizon Wireless has devoted considerable resources to detecting and stopping spamming and telemarketing. Through its Information Technology department, the company is continually working on filters and other technology to prevent literally millions of unwanted text messages from harassing customers. In addition, since 2004, the company has brought nearly 20 lawsuits against wireless spammers, telemarketers and other persons and entities that seek to engage in unlawful contacts with its customers.[81] In many cases it has won permanent injunctions and settlements, and has donated tens of thousands of dollars to domestic violence prevention and law enforcement organizations as a result of these settlements.

2. Wireline Services

Verizon endeavors to ensure its bills are clear and understandable so that customers do not need to place a call to customer service for an explanation. (Nonetheless, Verizon provides a toll free number, physical address and its website on its bills for customers with questions.) Verizon also provides online tools to help customers read their bills and a self-help video on FiOS billing.[82] To aid customer understanding,

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[81] *E.g.*, Press Release, *Verizon Wireless Steps Up Fight Against Illegal Auto Warranty Telemarketing* (April 28, 2009), *available at* http://news.vzw.com/news/2009/06/pr2009-06-17a.html; Press Release, *Verizon Wireless Continues Efforts to Stop Spammers; Files Lawsuit Against Money Warehouse, Inc.* (May 5, 2009), *available at* http://news.vzw.com/news/2009/05/pr2009-05-05a.html.

[82] *See* FiOS TV Equipment and Service Help Videos, *available at* http://www22.verizon.com/residentialhelp/fiostv/general+support/how-to+videos/how-to+videos.htm.

Verizon provides bills in Spanish. Furthermore, for blind and low vision customers, Verizon provides bills in Braille or large print and online bills that are accessible by screenreaders.

A customer's first bill includes a fulfillment message that recites what offer the customer ordered and what is included in that offer.[83] The bill also indicates the date when the customer's promotion ends. As the customer's promotional period ends, the bill will include a statement that the promotion is ending this month. Verizon recently added this feature after analyzing customer inquiries. This allows customers to contact customer service (either by phone or online) prior to the end of the promotion to change service options, rather than incur a more expensive bill (*e.g.*, canceling HBO once the free or discounted period ends). The second page of the bill provides information about bill cycle dates, the address for mailing a payment, making a payment by check, electronic funds transfer, credit reporting, and change of address. In addition, as noted earlier, included in the Welcome Guides that are provided to new customers is a guide, in the form of a brochure or single page, that describes the components of the customer's first bill.

Following the success of the focus groups used to modify the Verizon Wireless' bills, Verizon convenes focus groups on a regular basis to determine whether it can improve its bills to further customer understanding. Verizon also uses focus groups to redesign its channel line up guide for its subscription video service, to determine what kind of self help tools customers want, and to examine viewing habits and set top box

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[83] (Ex. 26.)

configurations. Verizon also plans to use focus groups to examine remote control design. These groups have met quarterly in the past few years.

In response to customer feedback, Verizon has recently made significant changes to its bill format for all wireline bills. Prior bills listed each service with a separate price and a separate discount because the service was purchased in a bundle; the amount due for the bundle was calculated by adding the service prices and subtracting their specific discounts. Now, Verizon prominently displays the advertised bundle price net of discounts, e.g., $99.99 for the triple play, and then lists any additional charges that may apply under the headings for the specific service, *e.g.*, set-top boxes under video.[84] Taxes for all products are aggregated into one section and totaled. This effort has caused bills to decrease on average from eight to four pages while preserving the substantial white space on the first page that customers prefer. In addition, Verizon now includes a single telephone number to contact Verizon (1-800-VERIZON).[85]

Moreover, like Verizon Wireless, Verizon encourages all of its consumers to enroll in its online tool for managing accounts, known as My Verizon (for former MCI customers, the online tool is known as Online Account Manager). With this online tool, customers can view six months of detailed bills, pay bills, and order or change services. My Verizon also allows customers to set a password for video service so that children do not order Video on Demand. (Customers may also do this by calling customer service.)

In general, apart from optional services customers can order and initial bill pro-rations and promotional period discounts, the amount a customer pays for subscription

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[84] (Ex. 27.)

[85] Shortly after Verizon's billing format changed, Verizon began observing a marked decrease in the number of calls from its new FiOS customers and expects that trend to continue in the future.

video, Internet access, and Verizon's most popular voice plans, which have unlimited local and long distance calls, does not fluctuate on a monthly basis. As a result, once they understand their initial bill, customers of these services require no additional information from Verizon to decide whether the particular service plans and options they ordered and the prices work for their circumstances. Because Verizon's competitors frequently advertise (and make available online) their services and prices, Verizon's customers can readily assess whether to remain with Verizon or not.

There are, however, voice customers who do not choose the unlimited options and select a long distance plan with per minute charges. As described above, My Verizon allows these customers to view detailed bills for the past 6 months online to determine the trends in those bills. At any time, the customers can contact Verizon's customer service for assistance determining whether a different plan would better fit the customer's calling patterns.[86]

Finally, Verizon is responsive to cramming issues raised by its wireline customers. Verizon processes over 1.8 million bills for wireline services carrying charges for a number of third-party service providers or aggregators on a monthly basis. As required, all bills display a toll free number to reach the third-party provider or the billing aggregator for that provider. Therefore, the customer is able to directly question any third-party charges by calling the appropriate number. However, in Verizon's experience, a significant number of customers call Verizon about these charges because

[86] Verizon wireline voice service customers are also protected by extensive service quality standards set out by the states. For example, in July of this year, the California Public Utility Commission adopted service quality reporting requirements for wireline carriers relating to installation, maintenance, and operator answer time. *See* Suzanne Toller & Robert Millar, *California PUC issues New Service Quality Rules for All Telecom Providers, available at* http://www.martindale.com/communications-law/article_Davis-Wright-Tremaine-LLP_765008.htm.

they are on Verizon's bill. Verizon therefore has significant incentives to prevent instances of cramming.

As an initial step, Verizon's First Call Resolution program requires representatives to remove any third-party charge from a customer's bill at the customer's request, no questions asked. Verizon will then offer the customer a free service called Cramming Block, which prevents future third-party charges from appearing on that customer's bill. Verizon will then seek recourse from the third-party and enter the complaint into a tracking database.

Verizon monitors cramming complaints on a monthly basis. Verizon has stringent provisions in its billing contracts with third-party communications service providers that require remedial action on the part of the provider if cramming complaints exceed certain minimum thresholds in one month. At that point, Verizon will require the third-party to develop an action plan to reduce the number of complaints to acceptable levels. Verizon will cancel the contract with the third-party 90 days after the action plan if Verizon continues to receive cramming complaints that exceed the contractual thresholds. Since 2007, Verizon has terminated dozens of service providers on this basis.

IV. COMPETITIVE PRESSURES COUPLED WITH INDUSTRY GUIDELINES IS THE BEST APPROACH FOR EMPOWERING CONSUMERS BY ENSURING THEY RECEIVE THE INFORMATION THEY NEED.

As we explain above, the appropriate model for meeting consumers' needs in today's competitive communications marketplace is to rely upon providers' own incentives to satisfy consumers, supplemented by voluntary industry guidelines and principles to promote the use of "best practices," rather than prescriptive or heavy-handed regulations that would limit the flexibility of providers to respond to consumers' evolving needs. The wireless industry is already using a combination of providers' strong business incentives and negotiated industry guidelines and principles to ensure adequate consumer disclosures. The same basic approach also can best serve consumers' interests when it comes to other services, including wireline and broadband services. The contrary approach of prescriptive or burdensome regulations, however, threatens to deprive consumers of pro-competitive industry initiatives and would raise significant issues under the First Amendment. Finally, the industries that operate pursuant to detailed consumer disclosure requirements are fundamentally unlike the communications industry, and those regimes are thus not instructive here.

A. Consumers' Interests Are Best Served By Relying On Providers' Incentives To Satisfy Customers, Supplemented By Industry Guidelines and Existing Law.

In order to continue to improve consumer communications, providers must have the flexibility necessary to tailor their communications with consumers in response to changing customer needs. Thus, the appropriate model for meeting consumers' needs is to rely on providers' own incentives to satisfy consumers in a competitive market, supplemented by voluntary industry guidelines or principles to promote best practices, rather than heavy handed regulations that are overly-detailed and prescriptive.

The wireless industry is a prime example of the benefits of this approach. In the wireless industry, for example, the competitive incentive to satisfy consumers is supplemented by industry guidelines and principles. As explained above, Verizon Wireless helped develop and abides by both the AVC and the CTIA Consumer Code. Negotiated industry standards like these have the capacity to be far more dynamic and adaptive than regulation, and can also better take advantage of the industry's real-time interactions with consumers. Indeed, the FCC noted in the NOI that voluntary industry codes like the CTIA Consumer Code can play a significant role in ensuring that consumers have the information they need to make well-informed decisions.[87] Voluntary best practices programs give providers the agility they need in a marketplace where products and services are rapidly evolving, to give consumers the information they need, while simultaneously ensuring adequate consumer disclosures.

At the same time, competitive pressures create significant incentives that ensure robust compliance with voluntary industry codes. These pressures foster competition among carriers as to the provision of helpful marketing and billing information to consumers, which inures to the benefit of all consumers. Indeed, there are now 31 signatories to the CTIA Consumer Code, including every national wireless carrier. And carriers that want to best serve the consumer—like Verizon Wireless—go beyond these industry guidelines and continue to refine and improve the information they provide to consumers as a result of competitive pressures.

By affording carriers the agility they need in order to give consumers what they want in terms of information, these programs have boosted consumer satisfaction in the wireless industry. As highlighted above, Consumers Reports recently concluded that there has been a "surge" in wireless customer satisfaction, and the May 2009 American Customer Satisfaction Index showed that "[c]ustomer satisfaction with wireless telephone service reache[d] a new all-time high for the third consecutive year."[88]

The wireless model of industry guidelines and standards is supplemented by existing consumer protection laws of general applicability, which are administered by

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87 *See* NOI, ¶ 32.

88 Press Release, *ACSI: Customer Satisfaction Rises Again, Now Joined by Other Economic Indicators* (May 19, 2009), *available at* http://www.theacsi.org/images/stories/images/news/0901q_Press_Release.pdf.

federal and state authorities. With respect to advertising, the FTC is authorized to police "[u]nfair methods of competition . . . and unfair or deceptive acts or practices in or affecting commerce."[89] The Commission, on the other hand, has no general regulatory authority over the advertising of communications providers. Congress certainly included no express grant of authority in the Communications Act giving the Commission the power to regulate advertising generally. Nor could Congress have intended to give the Commission such broad authority through Section 201(b).[90] "Congress . . . does not, one might say, hide elephants in mouseholes."[91] It would be especially odd for Congress to do so where a sister federal agency possesses authority to regulate the advertising and marketing practices of businesses generally.

Moreover, the FTC's authority over advertising generally is supplemented by state laws. "Every state has a consumer protection statute prohibiting deceptive acts and practices. These broad general statutes are supplemented in all jurisdictions by laws that address specific industries or practices."[92] All of these laws are actively policed by the fifty state attorneys general, who "have primary responsibility in their states for the enforcement of their state's consumer protection laws."[93] The fifty attorneys general wield broad authority and have "varied tools" at their disposal "to address abuses and

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89 15 U.S.C. § 45(a).

90 47 U.S.C. § 201(b) ("All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful[.]").

91 *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001).

92 NAAG, Projects: Consumer Protection, *available at* http://www.naag.org/consumer_protection.php.

93 *Id*.

illegalities in the market place."[94]

In addition to laws governing deceptive acts and practices, wireless and wireline providers are subject to the FCC's Truth-in-Billing requirements.[95] The Commission's Truth-in-Billing rules are flexible, requiring generally that billing descriptions be brief, clear, non-misleading, and in plain language.[96] For example, the Commission's rules require billing descriptions to be "specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged."[97] This flexibility allows carriers to react to customer feedback in order to determine the optimal amount of information to provide to consumers for particular services. Because of this give-and-take in the customer relationship, providers are best positioned to strike the right balance between too much and too little information in responding to consumers, which ultimately inures to the benefit of all consumers. In conjunction with competitive market pressures, these rules provide a sufficient framework for providing customers with clear information about the charges they must pay and where to turn to address questions.

Video providers are subject to FCC consumer disclosure requirements—not unlike the Truth-in-Billing rules—that ensure subscription video consumers receive a

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94 *Id*. The varied tools "include civil and criminal litigation, mediation, public and business education, creating and commenting on state and federal legislative proposals, and cooperative enforcement ventures with state, local, and federal enforcement agencies." *Id*.

95 47 C.F.R. § 64.2401. The Commission had excepted wireless carriers from Section 64.2401(b) of the Truth-in-Billing rules, but has since removed this exception. *See Truth-in-Billing and Billing Format*, 20 FCC Rcd 6448, 6456 (¶ 16) (2005) ("*2005 Truth-in-Billing Order*").

96 47 C.F.R. § 64.2401(b).

97 *Id*.

wealth of marketing and billing information. At the federal level, the Commission has promulgated standards "by which cable operators may fulfill their customer service requirements."[98] Those rules require that: certain information be provided to subscribers at particular times;[99] monthly bills be clear and include particular information;[100] and subscribers be given at least thirty-days advance notification of certain changes.[101] States and local franchising authorities enforce the Commission's customer service rules,[102] but also maintain express authority to adopt more stringent standards.[103]

Accordingly, the Commission should avoid prescriptive and overly detailed rules in favor of a flexible model which relies on competition as supplemented by industry "best practices" and existing law. This approach, which combines providers' incentives to satisfy customers with negotiated industry guidelines or principles, is used today in the wireless industry and could fruitfully be extended to other services, such as traditional wireline and broadband services. Such a framework would promote consumer welfare while ensuring that providers have the continued flexibility necessary to share information with consumers about, for example, terms of service or the speed of connections for broadband.

This model can be applied not only to network providers, but also to application and service providers. Specifically, in order to facilitate a clearer understanding of the demands placed on broadband networks and services by new and evolving applications –

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98 47 U.S.C. § 552(b).

99 *See id.* § 551(a); 47 C.F.R. § 76.1602.

100 *See id.* §§ 76.952, .1619.

101 *See id.* § 76.1603.

102 *See id.* §§ 76.309(a)-(b), .1602, .1619.

103 *See id.* § 76.309(a)-(b).

and also to help ensure informed choices as consumers consider which applications to use – the industry standards would encourage application developers fully and clearly to disclose to consumers the foreseeable effects of their applications on a subscriber's broadband service, on the consumers' devices or other applications, on the broadband network, and on other broadband subscribers. Broadband Internet access providers are likely to receive an increasing number of customer complaints for content over which the providers have no control. Requiring disclosures by application providers would help alleviate this problem.

B. Prescriptive or Heavy-Handed Regulation Limits the Flexibility Needed to Respond to Consumers' Evolving Needs, Hinders Innovation and Competition, and Raises Significant First Amendment Issues.

In contrast to flexible industry guidelines, an overly rigid and detailed regulatory scheme that micromanages exactly what providers must or must not say to consumers, and how they must say it, risks impeding competition and innovation with regard to the provision of information to consumers by limiting the flexibility that carriers need in order to respond to consumers' evolving needs. In addition, such a scheme would create significant problems under the First Amendment.

Verizon and Verizon Wireless have learned from consumer focus groups and feedback that, consistent with studies showing that more information is not always better,[104] customers actually prefer a certain amount of white space on the first page of bills and find too much information on that page to be confusing. With an inflexible and

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[104] *See, e.g.*, Troy A. Paredes, *Blinded by the Light: Information Overload and its Consequences for Securities Regulation*, 81 Wash. U. L. Q. 417, 419 (2003) ("Studies show that at some point, people become overloaded with information and make worse decisions than if less information were made available to them.").

heavy-handed scheme of required disclosures, however, Verizon and Verizon Wireless might not have the freedom to act on their findings. Consumers would ultimately be worse off, overwhelmed by information that they do not want and yet unable to look to their providers for any relief. An inflexible and prescriptive regulatory scheme is also likely to limit providers' abilities to make the best possible use out of new and developing technological tools, like those referenced in the NOI,[105] and may chill innovations like Verizon and Verizon Wireless' "First Bill Estimate."[106] With higher-level and more broad-based principles, communications providers are more likely to have alternative means of compliance that may lessen their costs and in turn lessen any burden passed through to the consumer.

Academic commentary and the decisions of the Commission and the courts repeatedly conclude that regulation tends to limit the flexibility needed to respond to consumers' evolving needs and hinder innovation and competition. "[I]t is by now well appreciated that even well meaning regulation is a blunt instrument, which can impose its own considerable harm . . . [and] unacceptable collateral damage."[107] "Regulations create costs and constraints for market participants."[108] And "[r]egulation diminishes entrepreneurial incentives to lower costs, improve quality, and develop new products and

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105 *See* NOI, ¶¶ 48-49.

106 *See, e.g.*, *In re Revisions to Price Cap Rules for AT&T Corp.*, 10 FCC Rcd 2962, at ¶ 27 (1995) ("[R]egulation imposes costs on consumers to the extent it denies [a provider the] . . . flexibility it needs to react to market conditions and customer demands.").

107 M. Schwartz & F. Mini, *Hanging up on Carterfone: The Economic Case Against Access Regulation in Mobile Wireless*, at 2 (May 2, 2007), Ex. A to Reply Comments of AT&T, Inc., RM 11361 (filed May 15, 2007).

108 J. Gregory Sidak & Daniel F. Spulber, *Deregulation and Managed Competition in Networked Industries*, 15 Yale J. on Reg. 117, 125 (1998).

services."[109] When compared with regulation, "[d]eregulation can achieve greater efficiency in entry and investment decisions, lower administrative costs, elimination of pricing distortions, increased innovation, and greater opportunities for customer choice."[110] Indeed, "regulation can discourage innovation and capital investment," whereas "[d]eregulation promotes innovation."[111]

The Commission has long recognized these regulatory externalities. Decades ago, "the Commission determined that regulation imposes costs on common carriers and the public, and that a regulation should be eliminated when its costs outweigh its benefits."[112] Since then, the Commission has made clear that regulatory intervention may interfere with consumers' ability to access to new and innovative offerings.[113] And the

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[109] Jerry Ellig, *Costs and Consequences of Federal Telecommunications Regulations*, 58 Fed. Comm. L.J. 37, 43-47 (2006) (explaining that regulation may not in practice deliver intended benefits to consumers and estimating that the total cost of regulation to providers and consumers is as much as $118 billion per year).

[110] Sidak & Sepulber, *Deregulation* at 120.

[111] *Id.* at 140, 121.

[112] *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14297 (¶ 144) (1999) (discussing *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, 3 (1980)); *see also id.* (explaining that "new service rules currently in effect limit incumbents' incentives to innovate" and "respon[d] to market forces," thus "impos[ing] costs on society by perpetuating inefficiencies in the market for interstate access services").

[113] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities Internet Over Cable Declaratory Ruling Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798, 4802 (¶ 5) (2002) ("[B]roadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.") (quotation omitted) ("*Cable Modem Declaratory Ruling*"); *In re Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd 14853, 14855 (¶ 1) (2005) ("establish[ing] a minimal regulatory environment for wireline broadband Internet access services to benefit American consumers and promote innovative and efficient communications"); Brief of the Federal Petitioners at 31, *NCTA v. Brand X Internet Services*, 545 U.S. 967 (2005) ("[H]eightened regulatory obligations could lead [broadband providers] . . . to raise their prices and postpone or forego plans to deploy new broadband infrastructure, particularly in rural or other underserved areas . . . [and] could also discourage investment in facilities."); *see also* Reply Brief of the Federal Petitioners at 18, *NCTA v. Brand X Internet Services*, 545 U.S. 967 (2005) (emphasizing that the broadband market "has

Commission has emphasized that "regulation imposes costs on consumers to the extent it denies [a provider the] . . . flexibility it needs to react to market conditions and customer demands."[114]

Courts also have long recognized the costs of regulation, the importance of competition, and the need for agencies properly to balance those tradeoffs, particularly in the communications context. Justice Breyer, for example, looked askance at the Commission's attempts to impose shared access of facilities, reminding the Commission that "rules that go too far . . . risk costs that, in terms of the Act's objectives, may make the game not worth the candle."[115] The D.C. Circuit has similarly reminded the FCC of the need to recognize the costs of regulation and tread lightly. In rejecting the FCC's uniform national impairment standard for wireline unbundling, the court criticized the Commission for its "indifference to petitioners' contentions about the state of competition in the market"[116] and concluded that "nothing in the Act appears a license to the Commission to inflict on the economy the sort of costs noted by Justice Breyer under conditions where it had no reason to think doing so would bring on a significant enhancement of competition."[117]

Indeed, the Commission itself has expressly recognized the downsides of rigid rules in the instant context. When the Commission adopted the existing truth-in-billing

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shown enormous growth under a hands-off regulatory regime"); Brief for Respondents, *Orloff v. FCC*, 352 F.3d 415 (No. 02-1189), 2003 WL 25588065, at *7 (D.C. Cir. Jan. 21, 2003) (regulation can "take away carriers' ability to make rapid, efficient responses to changes in demand . . . and remove incentives for carriers to introduce new offerings") (citation omitted).

114 *In re Revisions to Price Cap Rules for AT&T Corp.*, 10 FCC Rcd 2962, at ¶ 27.

115 *AT&T Corp. v. Iowa Utils. Bd*, 525 U.S. 366, 430 (1998) (Breyer, J., concurring in part and dissenting in part).

116 *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002).

117 *Id*.

rules, it explained that "there are typically many ways to convey important information to consumers in a clear and accurate manner,"[118] and deliberately followed a "flexible approach" to allow carriers to "satisfy the[] obligations in widely divergent manners that best fit their own specific needs and those of their customers."[119] The Commission well understood that carriers seek to "differentiate themselves . . . based on their billing practices"[120] by providing "creative and consumer-friendly billing formats,"[121] and it saw no need to stifle that sort of pro-consumer innovation. The Commission also observed the value of relying on industry to work with consumers in lieu of top-down government mandates, expressly leaving it to industry and consumer groups to design the particulars of the regulatory scheme.[122] Accordingly, the Commission rejected calls for a highly prescriptive approach, and chose instead to promulgate "broad, binding principles, rather than detailed comprehensive rules."[123] The Commission's own truth-in-billing rules are thus an explicit recognition of the importance of flexibility and the defects inherent in inflexible rules in this very area.

For all these reasons, the Commission should be mindful of the potential for regulation to restrain innovation, differentiation and competition. This is particularly so in highly technical and dynamic fields such as the wireless, broadband, and Internet markets, where innovation and growth move substantially faster than administrative and

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118 *In re Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492, 7499 (¶ 10) (1999) ("*1999 Truth-in-Billing Order*").

119 *1999 Truth-in-Billing Order*, 14 FCC Rcd at 7499 (¶ 9).

120 *Id.* at 7497 n. 16 (¶ 6).

121 *Id.* at 7497 (¶ 6).

122 *1999 Truth-in-Billing Order*, 14 FCC Rcd at 7519 (¶ 43) ("[I]ndustry is better equipped than the Commission to develop, in conjunction with consumer focus groups, standardized descriptions that are compatible with . . . the systems currently used for billing").

123 *Id.* at 7499 (¶ 10).

regulatory processes.[124]

Not only would prescriptive or burdensome regulations in this area fail to serve consumer interests in pro-competitive developments, they would also raise significant First Amendment issues. The federal courts have found that a communications provider has a First Amendment right in the statements they make to consumers.[125] Accordingly, any attempt to restrict, dictate, or otherwise regulate the billing or marketing statements made to consumers by communications providers will face First Amendment scrutiny. The Commission will bear the burden of justifying any new speech regulation it may impose in the billing or marketing contexts.[126]

Any regulations compelling certain commercial speech in billing or marketing statements would be reviewed under the principles regarding "forced speech" set forth in *United States v. United Foods, Inc.*,[127] or *Zauderer v. Office of Disciplinary Counsel.*[128] In *United Foods*, the Supreme Court indicated that, in most circumstances, its longstanding precedents subjecting compelled speech and compelled subsidies for speech to strict scrutiny apply with equal force in the context of commercial speech.[129] Under strict scrutiny, the government must show "that the regulation is necessary to serve a

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124 *See, e.g.*, *In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 11 FCC Rcd 6235, 6272 (1996) ("Given the rapid pace of technological change, isn't it inevitable that there will be innovations that even the flexible ATSC Standard cannot accommodate?") (Separate Statement of Chairman Reed E. Hundt).

125 *See BellSouth Telecommunications, Inc. v. Farris*, 542 F.3d 499 (6th Cir. 2008).

126 *See United States v. Playboy Entm't Grp.*, 529 U.S. 803, 816 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.").

127 533 U.S. 405 (2001).

128 471 U.S. 626 (1985).

129 533 U.S. at 410-15.

compelling state interest and that it is narrowly drawn to achieve that end."[130]

The exception to *United Foods* is the circumstance presented in *Zauderer*. As the Court explained in *United Foods*, the *Zauderer* standard applies where commercial speech is compelled in order "to make voluntary advertisements nonmisleading for consumers."[131] In that circumstance, the government need not satisfy strict scrutiny, though it must show that the compelled speech is "reasonably related to the [government's] interest in preventing deception of consumers."[132] In light of the NOI's cited interest in "ensuring that consumers are able to make intelligent and well-informed commercial decisions," the *Zauderer* standard may not be appropriate.

Under either strict scrutiny or the more relaxed *Zauderer* standard, any government mandates on commercial speech face a serious test. Both standards require that regulations compelling commercial speech have at least a reasonable fit with the government's stated interest in empowering consumers. Rigid government mandates on provider speech seem unlikely to advance that interest, given that providers are best positioned to assess in real-time whether consumers are receiving the information they actually desire and have the agility required to respond swiftly.[133]

Restrictions or limitations on commercial speech are also subject to First Amendment review under the *Central Hudson* test.[134] Unless the Commission were to

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130 *Boos v. Barry*, 485 U.S. 312, 321 (1988) (internal quotation omitted).

131 533 U.S. at 416.

132 *Zauderer*, 471 U.S. at 651. To survive scrutiny under *Zauderer*, a regulation must also be limited to requiring the disclosure only of "purely factual and uncontroversial information." *Id*.

133 To the extent that the primary concern for consumers appears to be *third-party* spam and telemarketing, *see supra* p.8, strict government requirements on *provider* speech seem particularly out of place.

134 *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980).

establish categorically that the restricted speech is inherently misleading, false, or concerns unlawful activity, it would be required to demonstrate that: (1) there is a "substantial" government interest to be achieved by the speech restriction; (2) the restriction "directly advance[s]" that interest; and (3) the interest could not be "served as well by a more limited restriction on commercial speech."[135] Even if the FCC were to conclude that the restricted speech is *potentially* misleading, the agency would still have to satisfy these requirements.[136]

The "direct advance[ment]" prong of the test requires the government to "demonstrate that the harms it recites are *real* and that its restriction will *in fact* alleviate them to a *material* degree."[137] The Supreme Court has made very clear that "[t]his burden is not satisfied by mere speculation or conjecture."[138] Where the government claims that it has restricted potentially misleading speech, "the record [must] indicate[] that a particular form or method of advertising has *in fact* been deceptive."[139]

The "direct advance[ment]" prong of the test also works in tandem with the third prong of the *Central Hudson* test to ensure that any commercial speech restriction is properly tailored. On the one hand, "exemptions and inconsistencies" call into question whether a commercial speech restriction "can directly and materially advance its aim."[140]

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[135] *Id.* at 564-65.

[136] *See, e.g.*, *Peel v. Attorney Registration & Disciplinary Comm'n of Ill.*, 496 U.S. 91, 100 (1990) ("[W]e must consider . . . whether the potentially misleading character of such statements creates a state interest sufficiently substantial to justify a categorical ban on their use.").

[137] *Edenfield v. Fane*, 507 U.S. 761, 771 (1993) (emphases added).

[138] *Id.* at 770.

[139] *In re R.M.J.*, 455 U.S. 191, 202 (1982) (emphasis added).

[140] *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 489 (1995); *see also City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994) ("Exemptions from an otherwise legitimate regulation of a medium of

But on the other hand, a restriction on commercial speech must also not be "more extensive than necessary."[141]

Again, rigid and categorical regulations seem likely to founder. As the Supreme Court has explained, "if there are numerous and obvious less-burdensome alternatives to the restriction on commercial speech, that is certainly a relevant consideration in determining whether the 'fit' between ends and means is reasonable."[142]

And even a regulation directed only at the format of billing or marketing statements by communications providers would implicate the First Amendment, and be reviewed under one of two standards. If the regulation were to apply only to the format of purely commercial speech, the *Central Hudson* test would apply.[143] If the regulation were to restrict the format of both commercial and non-commercial speech, the test for content-neutral time, place, and manner restrictions would apply. That test requires that the regulation be "designed to serve a substantial governmental interest[,] . . . not unreasonably limit alternative avenues of communication,"[144] and not "burden substantially more speech than is necessary to further the government's legitimate interests."[145] The Supreme Court has made clear on numerous occasions that this test is

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speech . . . may diminish the credibility of the government's rationale for restricting speech in the first place.").

141 *Rubin*, 514 U.S. at 486; *see also id.* ("We have said that the last two steps of the Central Hudson analysis basically involve a consideration of the 'fit' between the legislature's ends and the means chosen to accomplish those ends." (internal quotation omitted)).

142 *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n.13 (1993).

143 *See, e.g.*, *Advantage Media, L.L.C. v. City of Eden Prairie*, 456 F.3d 793 (8th Cir. 2006) (reviewing under *Central Hudson* restrictions on the format of commercial billboards to the extent those restrictions applied to commercial speech).

144 *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47 (1986).

145 *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

"substantially similar" to the *Central Hudson* test.[146]

In short, it is clear that new Commission restrictions and/or mandates with respect to the provision of information to consumers would deprive consumers of the benefits of pro-competitive initiatives by providers and raise thorny First Amendment questions. A model that encourages best practices avoids both these policy risks and difficult constitutional questions altogether, making it a sounder approach than new, prescriptive regulation.

C. The Communications Industry Is Unlike the Industries that Operate Pursuant to Detailed Consumer Disclosure Requirements.

The NOI suggests that consumer disclosure regimes imposed upon other industries may be appropriate regulatory models here.[147] Whatever the merit or legality of those regimes, the communications industry is quite unlike the mortgage, credit card, food and drug, and automobile industries—industries in which detailed disclosure requirements have been adopted.

First, in those industries, Congress specifically determined that certain circumstances (often provider misconduct or abuse) required specified disclosures. With respect to real estate, for example, "Congress [found] that significant reforms in the real

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146 *See, e.g.*, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 554 (2001); *Bd. of Trustees v. Fox*, 492 U.S. 469, 477 (1989). Were the Commission to impose a regulation that either limits or dictates what a communications provider may say in the billing or marketing contexts about government taxes or fees, such a regulation would face the most searching review. Taxation and government fees are longstanding matters of public concern in America, *see Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 571 (1968) (concluding that speech addressing a proposed tax increase was "matter of legitimate public concern"), and it is well settled that "speech on public issues occupies the highest rung of First Amendment values, and is entitled to special protection," *Connick v. Myers*, 461 U.S. 138, 145 (1983) (internal quotation omitted). This sort of regulation includes, for example, the regulation proposed in the *1999 Truth-in-Billing Order* to script billing line items relating to federal universal service charges. 14 FCC Rcd at 7537 (¶ 71).

147 NOI, ¶ 47.

estate settlement process [we]re needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process" because "certain abusive practices that ha[d] developed in some areas of the country."[148] Similarly, Congress found that credit card disclosure requirements were necessitated by evidence of "inaccurate and unfair credit billing and credit card practices."[149] Such specific statutory findings do not exist in the communications context.

Second, the government interests at stake in many of the currently regulated fields are significantly weightier than the FCC's cited interest in "ensuring that consumers are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace."[150] This proceeding relates to consumer "access to relevant information about communications services,"[151] not about protecting the health and safety of the American consumer. By contrast, nutritional information on food packaging, for example, promotes healthy living[152] and reduces the incidence of death

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[148] Real Estate Settlement Procedures Act, 12 U.S.C. § 2601(a).

[149] Truth-in-Lending Act, 15 U.S.C. § 1601(a) ("It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices."); *see also* Fair Packaging and Labeling Act, 15 U.S.C. § 1451 ("Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods."); *see also* Energy Policy and Conservation Act, 42 U.S.C. §§ 6291-6309; Automobile Information Disclosure Act, 15 U.S.C. §§ 1231-1233; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-399;

[150] *NOI*, ¶ 21.

[151] *Id.* ¶ 16.

[152] *See* 136 Cong. Rec. H12951-02, at 12953 (daily ed. Oct. 26, 1990) (Rep. Madigan) ("In the past few years, important scientific evidence has been repeatedly reported that clearly links

and illness from food allergies.[153]

Where disclosure requirements have been imposed in order to aid customer comparison of a product type, the product has been a standardized one, such as a mortgage or a credit card, for which disclosure of pricing information will aid, rather than hinder, consumer comprehension.[154] The product offered by the communications industry, on the other hand, is not standardized; it is a highly-customizable and constantly-evolving package of services tailored to the needs of each particular consumer.[155] Given the variability of communications services, requiring standardized disclosures to all consumers is more likely to confuse consumers than to clarify and may lead to a burdensome and time-consuming customer service experience for consumers.

V. CONCLUSION

In sum, the appropriate model for meeting consumers' needs in today's competitive communications marketplace is to rely upon providers' strong incentives to satisfy consumers, supplemented by voluntary industry guidelines and principles to promote the use of "best practices," rather than prescriptive or heavy-handed regulations that would limit the flexibility of providers to respond to consumers' evolving needs.

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dietary habits to good health. For this reason, the need to provide consumers with better information about the foods they eat is important.").

153 *See, e.g.*, H.R. Rep. 108-608, at 2 (2004), *reprinted in* 2004 U.S.C.C.A.N. 830, 830-831 ("[T]he Food Allergen Labeling and Consumer Protection Act . . . lays out a number of new requirements for the labeling of food in order to protect consumers with food allergies.").

154 *See* 15 U.S.C. § 1601(a) ("It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him . . . .").

155 In the wireless telephony context alone, American consumers have access to over 600 wireless devices, and a wide variety of voice and data packages. *See* Letter from Christopher Guttman-McCabe, Vice President, CTIA, to Marlene H. Dortch, Secretary, FCC, RM-11361, at 2 and accompanying charts (filed May 12, 2009).

Simply put, providers and customers, working together, are best positioned to determine the optimal amount of information to provide to consumers for particular services.

Respectfully submitted,

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