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

In the Matter of	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
IP-Enabled Services	)	WC Docket No. 04-36 FCC 09-68

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

REPLY COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] responds to the October 13, 2009 Initial Comments filed regarding the August 28, 2009 Federal Communications Commission (Commission or FCC) Notice of Inquiry (NOI).[2] In the NOI, the Commission seeks comment on information that consumers need to: 1) choose a provider of communications services, 2) choose a service plan, 3) manage and use the service plan, and 4) choose whether and when to switch providers.[3] The Commission also seeks comment on

[1] NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 585 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.
[2] *In the Matter of Consumer Information and Disclosure, Truth-in-Billing Format, IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry (rel. Aug. 28, 2009) (NOI). Silence on any positions raised by parties in these proceedings connotes neither NTCA's agreement nor disagreement with their positions or proposals.
[3] *Id*. ¶ 4.

formatting and displays of consumer information, available technological tools, resolving disputes, disabilities issues, and consumer education efforts.[4]

The Commission should first examine the record created by the NOI to determine if there is a need for any additional guidelines or rules. Several commenters reasonably urge consideration of opt-in guidelines or rules against cramming by third-party providers on wireless bills. The Commission should enhance its own education, federal investigation and enforcement actions regarding consumer complaints at the federal level. In the absence of additional federal guidelines, states have stepped in; consequently, the Commission should ensure that any new federal enforcement or regulatory action does not preempt state efforts to protect consumers.

I. EXAMINE THE RECORD FOR DATA DEMONSTRATING A NEED FOR GUIDANCE BEFORE CREATING GUIDELINES OR RULES.

The Commission seeks comment on what additional information communications providers should give consumers to 1) choose a provider, 2) choose a service plan, 3) manage use of the service plan, and 4) decide whether and when to switch providers.[5] The Commission's NOI is an apparent first step towards either consumer information principles, akin to the Commission's Internet Principles, or to proposed regulations.

Before creating either guideline principles or regulations regarding advertising and point-of-sale disclosures, the Commission should first determine a need for directive and tailor the directive for the need. USTelecom agrees.[6] Small rural communications providers, such as NTCA's membership, are striving to provide their customers with complete, accurate and updated disclosures at all phases of sale and service. Additional directives or regulation will impose additional costs on rural ILECs, and rural consumers will bear those costs

[4] *Id.* ¶¶ 6, 7, 46-60.
[5] *Id.* ¶ 4.
[6] USTelecom Comment, p. 5.

disproportionately to urban counterparts because of the small consumer base. OPASTCO agrees.[7]

The Regulatory Flexibility Act, 5 U.S.C. § 604, (RFA) requires the Commission to consider less economically burdensome alternatives as part of any rulemaking proceeding. The United States Court of Appeals for the District of Columbia has held:

> The Regulatory Flexibility Act requires that agencies issuing rules under the Administrative Procedure Act publish a final regulatory flexibility analysis. *See* 5 U.S.C. § 604. Such an analysis must meet certain statutory requirements. It must state the purpose of the relevant rule and the estimated number of small businesses that the rule will affect, if such an estimate is available. In addition, each analysis must summarize comments filed in response to the agency's initial regulatory flexibility analysis, along with the agency's assessment of those comments. Finally, each analysis must include "a description of the steps the agency has taken to minimize the significant economic impact" that its rule will have on small businesses, "including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected." § 604(a)(5).

National Telephone Cooperative Association v. FCC, 563 F.3d 536 (D.C. Cir. 2009) (No. 08-1071, decided April 28, 2009).[8] Any rules ultimately adopted as a result of this NOI should reflect RFA consideration and should minimize the economic impact on small rural communications providers.

Several commenters contend that any guidelines or rules should be drafted so they can apply equally to interconnected VoIP providers and all other communication service providers.[9] NTCA agrees. Technology-neutral consumer information directives will provide consumers with the most comparable format for information. Furthermore, industry-negotiated guidelines like the CTIA Code of Conduct for wireless providers may be more cost-effective than

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[7] OPASTCO Comment, p. 2.
[8] This court opinion by the D. C. Circuit Court of Appeals is publicly available at: http://pacer.cadc.uscourts.gov/docs/common/opinions/200904/08-1071-1177914.pdf, accessed Oct. 28, 2009.
[9] Massachusetts Department of Telecommunications and Cable (MA DTC) Comment, p. 2; NASUCA Comment, p. 15.

regulations because industry directives are created with consumer advocacy in mind.[10] The CTIA Code and similar efforts are designed to stave off state and federal regulatory action, state consumer protection law enforcement, and class action lawsuits. The Commission should not create new consumer information guidelines or rules absent a demonstrated need, and any new rules should reflect consideration of the Regulatory Flexibility Act for small rural communications providers.

II. THE RECORD CONTAINS SUFFICIENT INFORMATION TO SUPPORT CONSIDERATION OF OPT-IN GUIDELINES OR RULES AGAINST CRAMMING ON WIRELESS BILLS BY THIRD PARTY PROVIDERS.

Several commenters submitted data and urge consideration of opt-in rules to regulate cramming on wireless bills by third party providers.[11] Twenty-four state attorneys general plus the attorney general from American Samoa jointly urged the Commission to require providers to receive "opt-in" consent from their subscribers before third-party charges can be placed on their bills, or else to require providers to allow their subscribers to selectively block third parties from placing charges on the subscribers' bills.[12] These state law enforcement officers cite growing consumer complaints in Illinois, Oregon and elsewhere about the deceptive practices of third party billing agents who surreptitiously obtain uninformed consumer consent to place monthly, recurring charges on telephone bills.

The Commission's Consumer and Governmental Affairs Bureau (CGAB) reports over 1,000 cramming complaints were filed with the FCC in the First Quarter (January – March)

[10] NOI, ¶ 11; USTelecom Comment, p. 9; OPASTCO Comment, p. 2.
[11] *See, e.g.*, NASUCA Comment, pp. 44-46.
[12] Attorneys General from the States of Arizona, Arkansas, Connecticut, Delaware, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming and American Samoa (Attorneys General) Joint Comments, pp. 9-10.

2009.[13] The Minnesota Attorney General cites a specific example plaguing subscribers in Minnesota and elsewhere in which consumers have unwittingly provided their telephone numbers in response to a prompt for an "IQ Quiz." The consumers do not realize, however, that by providing their phone numbers, they have agreed to allow a monthly premium text messaging fee to appear on their telephone bill.[14] The Illinois CUB supports the use of bill blockers to thwart cramming.[15] The California Public Utilities Commission (CA PUC) provided cramming data and agreed that customers should be allowed to block third party billing.[16] The CA PUC furthermore suggests that third party billing agents should be required to disclose their contact information, an approach that also is reasonable and will help reduce cramming complaints.[17]

Unsuspecting consumers have been duped into paying premium text messaging fees, according to the Minnesota Attorney General, so consumers need more information and better tools to deal with third party subscriptions. NTCA recognizes the legitimate concerns of these consumer advocates. Being able to unsubscribe to cramming charge subscriptions via a secured web page and obtaining information available about third-parties, as the Minnesota Attorney General suggests, will give consumers the necessary information to directly contact the third party and remove the unwanted cramming charges. The Commission should review the cramming data and evidence in the context of possible regulation of third-party billing and disclosure of third-party billing contact information through consumer opt-in provisions.

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[13] *Quarterly Report on Informal Consumer Inquiries and Complaints Released, First Quarter 2009,* FCC Consumer and Governmental Affairs Bureau (rel. Sep. 8, 2009), p. 8.
[14] Minnesota Attorney General (MN AG) Comment, pp. 1-2.
[15] Illinois Citizens Utility Board (IL CUB) Comment, p. 5.
[16] CA PUC Comment, pp. 4-5.
[17] *Ibid.*

III. THE COMMISSION SHOULD DEDICATE MORE RESOURCES TOWARD ENHANCING FEDERAL EDUCATION, INVESTIGATION OF CONSUMER COMPLAINTS AND ENFORCMENT OF EXISTING CONSUMER PROTECTION MEASURES.

The Commission, in the NOI, "seeks comment on the general state of consumer awareness about the purchase of communications services and opportunities to improve consumer welfare."[18] The Commission's core functions include educating consumers about their telecommunications bills, investigating consumer complaints, and prosecuting violations of federal telecommunications consumer protection laws. The FCC Consumer and Governmental Affairs Bureau (CGAB)'s mission includes serving "as the public face of the Commission through outreach and education, as well as through our Consumer Center, which is responsible for responding to consumer inquiries and complaints."[19] The CGAB tracks consumer inquiries and complaints by quarter and by segment.[20] Consumer complaints to the FCC alone have skyrocketed in 2008.[21] Statistics on successful resolution of those complaints, however, are not so readily apparent.

NASUCA notes that consumers do not know whom to contact with complaints and encourages the Commission to enhance its enforcement measures.[22] While some consumers know that they can contact the companies directly (if contact information is provided), these same consumers may not realize that other consumer advocate resources exist at the federal level -- the Commission and the Federal Trade Commission.[23] Additional resources exist at the state and local level -- state public service commissions, state attorneys general, local consumer advocacy programs, regional consumer protection groups and national consumer advocates like AARP, Consumers Union and the Better Business Bureau. By opening

[18] NOI, ¶ 56.
[19] FCC CGAB Website, http://www.fcc.gov/cgb/cgb_offices.html#CGB, accessed Oct. 26, 2009.
[20] *Quarterly Report on Informal Consumer Inquiries and Complaints Released, First Quarter 2009*, FCC Consumer and Governmental Affairs Bureau (rel. Sep. 8, 2009), p. 1.
[21] *Quarterly Report on Informal Consumer Inquiries and Complaints Released, Fourth Quarter 2008*, FCC Consumer and Governmental Affairs Bureau (rel. May 6, 2009), p. 2.
[22] NASUCA Comment, p. 26.
[23] The Federal Trade Commission (FTC) protects consumers from fraudulent, deceptive and unfair business practices. 15 U.S.C. § 45 (Section 5 of the Federal Trade Commissions Act). The FTC's jurisdiction does not include common carriers. 15 U.S.C. § 45(a)(2).

this NOI the Commission has created a portal for those consumer advocates to identify themselves. More, however, is needed. The Commission should dedicate additional resources into collecting and responding to consumer complaints and alerting consumers of different, additional avenues for dispute resolution. USTelecom and others concur.[24]

IV. FEDERAL EFFORTS SHOULD NOT PREEMPT STATE EFFORTS TO PROTECT CONSUMERS.

In lieu of federal regulations, state PUCs, state legislatures, and state attorneys general have stepped in to protect consumers using state consumer protection laws.[25] For example, several commenters have referenced three Assurances of Voluntary Compliance (AVCs) executed in 2004 by Verizon Wireless, Cingular Wireless (now AT&T) and Sprint PCS (now SprintNextel).[26] These AVCs are settlement agreements, resulting from three years of intensive investigations and negotiations between 33 state attorneys general and the three wireless providers pursuant to state consumer protection statutes. The attorneys general investigation was prompted in part by consumer complaints about the wireless providers' inadequate point-of-sale disclosures, early termination fees, and coverage maps.

NTCA recognizes the significant role that states perform in protecting their consumers. The Commission must be careful not to preempt the state attorneys general AVCs or other state efforts to protect consumers regarding communications information disclosures. NASUCA and other commenters likewise caution the Commission against preemption of state action, including preemption under 47 U.S.C. § 332(c)(3)(A).[27] Of significant note in the AVCs is the conflict of

[24] USTelecom Comment, pp. 11-12.
[25] Attorneys General Joint Comments, pp. 4-5, 7, 8-9; MN AG Comments, pp. 4, 7, 8; MA DTC Comment, p. 9; CA PUC Comment, p. 2; NASUCA Comment, p. 16.
[26] Attorneys General Joint Comments, pp. 4-5; NASUCA Comment, p. 30, fn 57; MA DTC Comment, p. 12, n. 44; Verizon Wireless Comment, pp. 4, 15.
[27] 47 U.S.C. § 332(c)(3)(A) provides: "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." *See* NASUCA

laws paragraph (#67 for the Verizon Wireless AVC) that addresses the AVCs' effectiveness in light of subsequent federal action.[28] That paragraph provides:

> 67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

Verizon Wireless considers the AVC to be enforced and enforceable.[29] The efficacy of the three AVCs, which now cover approximately 210 million wireless subscribers,[30] could be compromised if the Commission adopts rules that may be construed to preempt state enforcement efforts. States are in a good position to protect consumers, and FCC-inspired federal action should respect those state efforts.

V. CONCLUSION

For these reasons, the Commission should first examine the record created by the NOI to determine if there is a need for any additional guidelines or rules. One area developed in this NOI record supports consideration of opt-in rules against cramming by third-party providers on wireless bills. The Commission should enhance its own federal education, investigation and

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Comment, p. 13; CA PUC Comment, p. 2; MA DTC Comment, p. 18.

[28] *See* NASUCA Comment, p. 30, fn. 57. The Verizon Wireless AVC is available on NASUCA's website at: http://www.nasuca.org/VERIZON%20WIRELESS%20AVC%20FINAL%20VERSION.pdf.

[29] Verizon Wireless Comment, p. 4.

[30] Verizon Wireless has over 89 million wireless customers, according to Verizon Wireless website, http://aboutus.vzw.com/ataglance.html, accessed Oct. 27, 2009; AT&T has 77 million wireless customers, according to AT&T SEC Form 10-K (Feb. 25, 2009), available at http://phx.corporateir.net/phoenix.zhtml?c=113088&p=irol-sec, accesses Oct. 27, 2009. SprintNextel has over 44 million wireless subscribers, according to SprintNextel SEC annual report ending December 31, 2008, available at http://investors.sprint.com/phoenix.zhtml?c=127149&p=irol-sec, accessed Oct. 27, 2009. *See also* NASUCA Comment, p. 21.

enforcement actions regarding consumer complaints at the federal level. In lieu of additional federal guidance, states have stepped in; consequently, the Commission should ensure that any new federal enforcement or regulatory action does not preempt state efforts to protect consumers.

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CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in GN Docket No. 09-158, CC Docket No. 98-170, & WC Docket No. 04-36, FCC 09-68, was served on this 28th day of October 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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