

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

)	
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
)	

REPLY COMMENTS OF AT&T INC.

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AT&T Inc., on behalf of itself and its affiliates (collectively, “AT&T”), respectfully submits this reply to the comments filed in this proceeding.

INTRODUCTION AND SUMMARY

Two things are notable about the record in this proceeding. First, it resounds with evidence that providers have been making, and continue to make, important strides in improving their consumer-disclosure and consumer-protection practices. And second, it contains essentially no evidence of widespread consumer confusion. In short, the record cannot justify adoption of a new slew of regulatory requirements. Instead, it should reassure the Commission that existing requirements and competitive forces are compelling providers to take proactive steps to empower and protect consumers during all phases of the provider-customer relationship.

Nevertheless, it is telling that providers of non-traditional communications services mostly absented themselves from this proceeding. Those providers, which offer services that compete with traditional communications services yet deem themselves outside the reach of the

FCC consumer protection rules that apply to such services, presumably believe that this proceeding should be confined to the providers and services that have traditionally been the focus of the Commission's rules. Yet the greatest risk of consumer confusion today arises precisely when consumers migrate from traditional regulated services to these *newer* services without understanding that they may be leaving behind their rights and settled expectations in the process. Thus, as several commenters have noted, one of the most important contributions the Commission can make to consumer protection in the communications marketplace is to engage these new providers in an industry-wide initiative to develop uniformly applicable transparency and consumer-protection principles. As AT&T has explained, a voluntary approach that includes the full range of stakeholders holds the best promise of promoting a high level of commitment to consumer disclosure and protection. It also avoids the various legal risks inherent in a regulatory solution. AT&T has proposed ten key principles that could form the framework for industry-Commission discussions, and we urge the Commission to use this Notice of Inquiry¹ as an opportunity to launch that process.

DISCUSSION

I. THE RECORD SHOWS THAT PROVIDERS ARE COMMITTED TO IMPROVING CONSUMER DISCLOSURES PRACTICES AND THAT THEIR EFFORTS ARE HAVING A POSITIVE EFFECT IN THE MARKETPLACE.

Though a handful of commenters predictably call for more regulation on all fronts, the dominant motif running through this proceeding is one of a strong commitment by all major providers to enhancing the quality of the consumer experience through consumer-friendly practices. While no provider claims to be perfect, all providers have documented measures that

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

they have voluntarily adopted to improve the quality of their consumer disclosures, make information more accessible to consumers, and otherwise ensure that consumers are empowered to be educated decision-makers about their selection and consumption of communications services.² As CTIA has explained, carriers today are increasingly committed to ensuring that “[c]onsumers have access to full information about their carrier, service plan and options at all stages of their relationship with their carrier.”³ In USTelecom’s words, carriers are “constantly working to improve customer satisfaction and build a loyal customer base by better educating and informing their customers.”⁴ Indeed, as noted below, this is now table stakes in the highly competitive communications market.

AT&T exemplifies this commitment and the continuing industry trend toward better disclosures and more consumer-friendly practices. AT&T’s opening comments describe various measures the company has introduced to ensure that consumers understand their service options and their bills; practices AT&T has adopted specifically to serve the needs of customers with disabilities; and its recent dissemination of an easy-to-understand, comprehensive privacy policy that explains in detail the ways in which the company uses and shares customers’ personal information—an issue of increasing importance to all consumers.⁵ AT&T has attached additional information here that illustrates how it proactively supplies consumers with targeted,

² See, e.g., CTIA Comments at 12-14 (detailing provider measures such as prorating early termination fees, providing online coverage maps, giving consumers the ability to change plans without incurring contract extensions, and the proliferation of non-contract options); USTelecom Comments at 3 (discussing providers’ development of user-friendly websites providing plain-English answers to frequently asked questions and various assistance tools); Sprint Comments at 11-22 (describing adoption of consumer-friendly practices in recent years); Verizon Comments at 14-48 (same).

³ CTIA Comments at 31.

⁴ USTelecom Comments at 1.

⁵ See AT&T Comments at 14-20, 24-25.

relevant, and easily digestible information at the point of sale—a practice developed in direct response to feedback from customers seeking accessible summaries of their likely charges and the terms and conditions that apply to their services.⁶ AT&T’s various disclosure measures, which we discuss further below, go significantly beyond what any regulation does or could reasonably require.

The comments confirm that AT&T is not alone in this regard. Other providers have similarly detailed the customer-friendly measures they have adopted and expressed a uniform commitment to enhancing their disclosure practices and empowering their customers. Verizon declares that it “constantly strives to provide the optimal level of information in order to facilitate educated purchasing decisions” in ways that “go above and beyond [current] industry standards.”⁷ Sprint likewise describes its efforts to continually “ensure that consumers are well-informed throughout all stages of the sales process.”⁸ And Time Warner and Comcast similarly make clear their efforts to constantly “refine” and “improve” their customer-facing practices, in response to feedback from subscribers.⁹

In short, contrary to the suggestion by Joint Commenters Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge (“Free Press”),¹⁰ the vibrant communications market has in fact ensured that providers are closely focused on consumer protection and disclosure issues. As several

⁶ See Appendix A (sample in-store brochures); Appendix B (sample Customer Service Summaries (“CSS”) for AT&T wireless service and sample wireline Welcome Package); Appendix C (sample U-verse email confirmations); Appendix D (sample U-verse bill).

⁷ Verizon Comments at 16.

⁸ Sprint Comments at 11.

⁹ Time Warner Comments at ii; Comcast Comments at iii.

¹⁰ Free Press Comments at 36; *see also* Massachusetts Department of Telecommunications and Cable Comments at 2 (“MDTC Comments”).

commenters note, in today’s market, straightforward information practices are a basic economic imperative, since consumers have made clear that these issues are of paramount importance to them.¹¹ Keeping customers satisfied over the long-term is a powerful economic incentive in a marketplace where churn is a significant and costly concern.¹² Beyond this, providers also recognize that a competitive marketplace bears the most fruit when consumers are educated and informed and can choose services that will prove most useful and rewarding to them.¹³

Not surprisingly, then, the record here shows no evidence that large numbers of consumers are frustrated or feeling misled by their providers. The consumer groups that submitted comments attach little in the way of evidence regarding widespread complaints or unhappiness; they rely solely on the FCC data cited in the *Notice*,¹⁴ which—as AT&T and others showed in their opening comments—actually reflect a *decrease* in consumer dissatisfaction and confusion around billing and terms of service relative to total complaints. The State regulators who submitted comments similarly identify no compelling need for regulatory intervention. In fact, the data submitted by the Massachusetts Department of Telecommunications and Cable

¹¹ See, e.g., AT&T Comments at 2; Sprint Comments at 8 (“[W]ireless carriers have powerful economic incentives to ensure their customers are both informed and satisfied.”); Verizon Comments at 1 (stating that providers “have strong business reasons in the competitive marketplace to provide [customers] with the information they need in order to retain those individuals as satisfied customers”).

¹² See, e.g., Reuters, *Competitive Crunch and Convergence in Communications Marketplace Fueling Increased Customer Churn, Testing Loyalty* (Aug. 3, 2009), <http://www.reuters.com/article/pressRelease/idUS106174+03-Aug-2009+MW20090803>; Reuters, *Convergys thought leadership speaker series: U.S. wireless service providers confront costly customer retention challenges as mobile data usage escalates. Now what?* (Apr. 2, 2009), <http://www.reuters.com/article/pressRelease/idUS152063+02-Apr-2009+BW20090402>.

¹³ See CTIA Comments at 24 (“[W]ell-informed consumers are best positioned to benefit from a competitive marketplace”); USTelecom Comments at 2 (“In the highly competitive communications marketplace, service providers have an economic incentive to provide information to consumers Good information leads to better consumer satisfaction with their service provider and consumer loyalty to that provider.”).

¹⁴ See Free Press Comments at 8 (citing *Notice*’s reference to FCC data).

(“MDTC”), one of the few to present *any* concrete evidence at all, reveal only 7,064 wireline telephone complaints¹⁵ over the three-year period spanning 2005 through 2007, in a state with 2.35 million residential access lines.¹⁶ Indeed, the data show that the number of billing-related complaints *decreased* during that time.¹⁷ And NASUCA—similarly unable to produce compelling evidence—grudgingly recognizes that there has been *improvement* in provider practices in recent years.¹⁸

The absence of any evidence of widespread and persistent complaints is consistent with the data to which AT&T and several other commenters have pointed—data showing a *growing* level of consumer satisfaction with communications services and a shrinking amount of consumer confusion.¹⁹ Third-party surveys reveal that the large majority of consumers are generally satisfied with their communications services and service providers, and they reflect

¹⁵ MDTC does not regulate wireless services and therefore did not present complaint numbers for those services. *See* MDTC Comments at 9.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 8-9.

¹⁸ *See* NASUCA Comments at 40 (recognizing that, under the current Truth-in-Billing rules, “some telephone bills have improved”); *see also* California PUC Comments at 6 (recognizing that “the number of bundled service-related complaints [the PUC has] received is relatively small”). In addition, there were relatively few complaints from actual consumers in this docket, and many concern isolated issues, some of which are not related to the disclosure and consumer protection issues that are the subject of this proceeding. *See, e.g.*, Comments of Victor K. Weber (Verizon Wireless fees); Comments of Darlena Shackley (U.S. Cellular TTY-compatible equipment); Comments of Louis Schwarz (Comcast customer service); Comments of Kenneth W. James (DirecTV channel lineup). In fact, 12 complaints from individual customers related to notice from planned community home owners’ associations regarding the provision of communications services. *See, e.g.*, Comments of Aric Campling at 1; Comments of Dwayne F. Cotti at 1; Comments of Paul Dillmuth at 1; Comments of John Hines at 1; Comments of Vijay K. Joshi at 1; Comments of Song Lee at 1; Comments of Richard Levine at 1; Comments of Baskar Marimuthu at 1; Comments of Murali Pavuloori at 1; Comments of Prasanth at 1; *see also* Comments of Winston Garvey at 1; Comments of Nichole Williams at 1.

¹⁹ *See* AT&T Comments at 28-33; *see also, e.g.*, Verizon Comments at 6-14; Sprint Comments at 2-8; MetroPCS Comments at 5-8; USTelecom Comments at 5-9.

broad satisfaction even in traditional areas of consumer concern.²⁰ And as noted above and as AT&T and others have illustrated, the Commission’s own data support this conclusion: the volume of complaints received by the Commission relative to the number of wireless and wireline subscribers is statistically insignificant,²¹ and the trend data over the last five years show a significant *decrease* in the complaint rate—especially with respect to the disclosure and billing issues raised in the *Notice*.²² Indeed, FCC data reveal that consumers’ primary concerns are centered on wholly unrelated *telemarketing* issues.²³

The drop in consumer billing and related complaints is undoubtedly due in large part to the steps providers have taken in response to consumer demands for more transparent information, easier billing formats, and other consumer-empowering measures. Studies by J.D. Power and Associates link an increase in consumer satisfaction to providers migrating to web-based billing and online terms of service, both of which provide consumers with accessible,

²⁰ AT&T Comments at 28-29; CTIA Comments at 15-19; Qwest Comments at 9; Sprint Comments at 6-8; Verizon Comments at 9-11.

²¹ See Verizon Comments at 7 (“[L]ess 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.”); Sprint Comments at 3 (“[A]pproximately 40 FCC complaints per one million customers were filed that involved either billing or rates [in 2008].”); see also USTelecom Comments at 8-9; MetroPCS Comments at 5-6.

²² Sprint Comments at 3-4 (“[T]he effective complaint rate actually fell by half from 79 complaints per million customers in 2004 to only 40 complaints per million customers in 2008.”).

²³ AT&T Comments at 30-31; Verizon Comments at 8; USTelecom Comments at 6-7.

easy-to-use information, all in one place.²⁴ AT&T has seen this trend firsthand. The company has seen increasing satisfaction, and a *downward* trend in consumer complaints concerning billing, contract terms, and similar issues, as it continues to enhance its billing formats and its customer disclosures, simplify its terms and conditions, and provide comprehensive information to answer consumers' questions online. And due to its stringent protective measures, it also has seen consistently low rates of cramming and slamming complaints.²⁵

In short, the record here should reassure the Commission that—at least with respect to traditional communications service providers—there is no problem to be addressed and thus no need for new rules. In the following section, we further illustrate this by showing how AT&T's comprehensive consumer-disclosure practices thoroughly undermine the handful of isolated and misleading examples Free Press and others have introduced in support of their arguments.

²⁴ See J.D. Power and Associates Reports, *Cable Modem Usage Gains Market Share as Internet Customers Continue to Move to High-Speed Service* (Oct. 30, 2008), <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008236> (“Customers who use online billing experience fewer billing errors and have higher satisfaction scores compared with the average customer.”); 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), <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008180> (noting that “Web sites [that] offer customers useful ways to manage their billing needs, review their account information and explore available product and service offerings” have helped to create higher customer satisfaction levels).

²⁵ AT&T Comments at 31-33.

II. FREE PRESS AND THE HANDFUL OF OTHER COMMENTERS WHO ADVOCATE PRESCRIPTIVE RULES PRESENT MISLEADING AND MYOPIC EVIDENCE AND SIMPLY IGNORE MAJOR STEPS PROVIDERS LIKE AT&T HAVE UNDERTAKEN TO IMPROVE CONSUMER DISCLOSURE AND PROTECTION.

Free Press and its fellow commenters, as well as NASUCA and several State Attorneys General,²⁶ advocate a regulatory “solution” to a problem they cannot quite define. To begin with, they cannot decide whether the alleged problem is that carriers *withhold* the information consumers need, that carriers provide too *much* information so that consumers are overwhelmed, or that consumers simply do not read the information that is made available to them. The only thing they are certain about is their desire for more regulation. But there is no cause for more regulation—and not just because these parties cannot identify the source of the so-called problem, but because there is no significant problem to be solved here. In that regard, the handful of examples that Free Press and others cite as evidence of provider “malfeasance” are either erroneous or are taken out of context and ignore alternative sources of information available to consumers.

A. Free Press’s Litany of Inconsistent Complaints Illustrates the Inherent Tension in Seeking to “Regulate” the Details of Consumer Disclosures.

Free Press and others supporting regulatory intervention here try to paint the marketplace as awash in misleading information, misinformation, or insufficient information.²⁷ Yet they cannot quite decide what the problem is. On the one hand, they complain that providers are not prominently disclosing every single relevant element or term to potential customers. For

²⁶ The “State Attorneys General” are comprised of the chief legal officers of American Samoa, 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.

²⁷ *See, e.g.*, Free Press Comments at 6 (alleging that “[c]onsumers are bombarded with inconsistent and incomplete information when shopping for service providers or service plans, and they are subjected to misleading, confusing, and even anticompetitive billing practices once they choose a provider and a plan”).

example, Free Press argues that communications service advertisements are necessarily misleading if they do not include mandatory line-item charges, one-time fees, recurring fees, data usage limits, and overage charges.²⁸ Yet on the other hand, where providers do, of necessity, include *all* relevant information, as in their terms of service, Free Press complains that the result is that important disclosures are “hidden” in “8 point font legalese” among several pages of text or included “on the back of a brochure.”²⁹

Free Press offers no safe path through the Scylla of too *little* information and the Charybdis of too *much* information. It appears to believe that every document must include every potentially relevant piece of information, and that in every document, every important piece of information should be included “*prominently.*” But of course, the more arguably “important” terms that are “prominently displayed,” the more any term’s prominence will be diluted.

In all events, Free Press’s comments suggest that “prominence” is in the eye of the beholder. Free Press points to AT&T’s Netbook advertisement, attached as Exhibit 5 at Appendix B to the Free Press comments, in support of its claim that providers tend to *hide* key terms.³⁰ Yet almost every term it claims is missing or “hidden” is actually present and easily readable on the face of the advertisement. For instance, Free Press complains that the device offer fails to make clear that the pricing reflects a rebate card and is dependent on a service contract with a defined term.³¹ Yet immediately adjacent to the advertised price is the promotional price disclosure specifying that the customer will receive a \$100 promotion card and

²⁸ *Id.* at 22-24.

²⁹ *Id.* at 26; *see also id.* at 15-16.

³⁰ *See id.* at 9-10, 18-19.

³¹ *See id.* at 9-10.

making clear that the offered price is dependent on a two-year DataConnect service agreement.³² Other terms that Free Press complains are missing or unclear are in fact presented in bold lettering to catch the reader’s attention (*e.g.*, provisions concerning “offnet usage,” “early termination fee,” “limited-time offer,” and “sales tax”). And Free Press is wrong on both counts when it makes the inconsistent claims that the advertisement either buries disclosures about data overage charges in small type³³ or “contains *no* disclosure of substantial overage charges for data usage in excess of the service limit.”³⁴ In fact, the advertisement explicitly advises consumers that the “DataConnect Plan is not unlimited” and that “substantial charges may be incurred if included allowance is exceeded.”³⁵

If such disclosures are not sufficiently “prominent,” it is unclear what Free Press thinks *would* suffice, or what rule it suggests the Commission adopt to satisfy Free Press’s preferred “prominence” style. Or perhaps Free Press means simply to illustrate its other complaint—which is that “[m]ost American consumers do not take the time to read through” *any* detailed disclosures, such as the terms of service for their Internet connection, even when that information is “extremely important” to them.³⁶ But if the alleged problem lies not in the quality of providers’ disclosures but in consumers’ failure to read them, it is hard to see how this would be

³² See Netbook advertisement, Free Press Comments, App. B, Exh. 5 (stating the price is “AFTER MAIL-IN REBATE. Pay \$299.99 for device and after mail-in rebate receive \$100 AT&T Promotion Card. 2-year service agreement on qualifying DataConnect Plan required.”).

³³ Free Press Comments at 10.

³⁴ *Id.* at 18-19 (emphasis added).

³⁵ Free Press misses two other key points about this advertisement. For one thing, the applicable terms and charges may differ from state to state. Free Press’s desire for even more explicit and extensive disclosures could have the effect of precluding national advertising altogether by compelling providers to disclose state specific requirements, in detail, in each relevant advertisement, which would have to then be reproduced state by state. This not only serves no purpose, it also would raise serious First Amendment concerns. See *infra* at 26.

³⁶ Free Press Comments at 15.

solved by rules requiring the inclusion of yet more information in provider advertisements or billing materials, as Free Press advocates.³⁷

In any event, it is unclear how regulators could dictate the perfect balance between too much and too little information, guarantee the perfect “readability” of advertising materials, or define precisely which terms must be emphasized to which customers. The FCC has recognized this impracticality in the past in its Joint Advertising Policy Statement regarding advertising of long distance service. There—as NASUCA correctly notes³⁸—it clarified that long-distance providers may not mislead or deceive consumers about a material fact such as the cost of a service.³⁹ But, NASUCA misses a crucial distinction between the Statement and what some commenters advocate here: In the Statement, the FCC made clear that *how* providers communicate the key facts about their rates and terms of service is up to them. The FCC *avoided* mandating hard-and-fast rules dictating how to strike the balance, opting instead to issue the Statement as “guidance”⁴⁰ and declaring that “advertisers are free to highlight whatever attribute of their products or services they choose” and that there are “many ways that creative advertisers can effectively convey” information essential to an informed purchase decision.⁴¹

In the real world, and absent any detailed regulatory fiat, providers are tackling the challenge of designing advertising and disclosure strategies that are comprehensive but that do

³⁷ *Id.* at 23.

³⁸ NASUCA Comments at 28.

³⁹ *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, 15 FCC Rcd 8654, 8655 ¶ 5 (2000) (“*Joint Advertising Policy Statement*”).

⁴⁰ *Id.* at 8657 ¶ 10.

⁴¹ *Id.* at 8657 ¶ 11, 8663 ¶ 21.

not overload consumers with so much information as to be useless.⁴² As AT&T has previously explained, its own focus group research indicates that consumers do not want *more* information, but instead want key topics presented in simple, clear ways.⁴³ AT&T accordingly has undertaken to redesign its materials to present the most important information to consumers in a simple, accessible format. For example, AT&T's revamped, comprehensive privacy policy was designed to highlight key information and be extremely user-friendly, precisely in response to such concerns. And AT&T also is working to simplify its wireless service terms and conditions to make them more digestible, reducing their length significantly. It expects to roll out the new wireless Terms of Service in 2010.

Ultimately, provider efforts to thread the needle between too much and too little information present the best way to ensure that consumers *do* read ads and their terms of service thoroughly. There is no regulatory magic bullet that can do a better job. What makes the most sense is the general voluntary principles approach AT&T advocates: one in which providers commit to avoid misstatements or material omissions in the materials and advertisements they disseminate, yet are free to tailor their materials in a way that is most focused and relevant to their offering and their target customers.

B. The Examples Free Press and Others Cite Disregard the Context of the Full Provider-Consumer Relationship in Which Extensive Information Is Exchanged, and Ignore the Many Proactive Steps Providers Already Are Taking.

In their effort to find a market failure, Free Press and others cite a handful of examples of marketing materials they fault, *not* for containing information that is false or misleading, but for

⁴² See, e.g., USTelecom Comments at 5 (explaining mandatory disclosures may be counterproductive by exposing consumers to too much information); Verizon Comments at 54-55 (explaining that consumer research shows customers can find too much information confusing).

⁴³ See AT&T Comments at 14 (discussing billing format).

failing to include the full panoply of information relevant to consumer purchasing decisions. This criticism wrongly assumes that these materials are the sole source of information the provider makes available to consumers. In fact, communications service providers offer consumers a host of information prior to, at the point of, and following the sale of a service. It is nonsensical to take one isolated step in that chain—an individual advertisement or an individual document—and condemn it as “misleading” simply because that isolated material does not contain every single piece of information that may at any point prove to be relevant in the consumer’s ultimate purchase or service usage decisions. Indeed, no advertisement could possibly present would-be customers with *all* relevant information without becoming so dense as to be useless. Of course, that is *not* to say that *misleading* ads are permissible. But it does not follow from the need to prohibit misleading ads that the Commission must (or should) insist that every ad be a service manual. So long as customers have access to the information they need in a timely and useful manner, that is enough, and the record demonstrates that they do.

As AT&T and other providers demonstrated, to obtain service, a consumer will have to interact with the provider either online, by phone, or in a retail store, and in each scenario, customers are provided with relevant information to enable them to make an informed decision as to whether to purchase service. Moreover, and equally important, AT&T gives wireless customers (including wireless data service customers) that have committed to a term arrangement 30 days post-sale to terminate service with no early termination fee,⁴⁴ further mitigating Free Press’s and other commenters’ concerns that consumers are locked into agreements based on misleading advertisements. That policy goes well beyond the CTIA

⁴⁴ See AT&T Comments at 18; *see, e.g.*, AT&T, DataConnect Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/data-connect-plans.jsp> (go to “Plan Terms” and then “Wireless Data Service Terms and Conditions”).

Consumer Code’s 14-day minimum trial period requirement,⁴⁵ and it exists precisely so that any consumer who finds that the service does not live up to his expectations—for any reason, no questions asked—has an opportunity to change his or her mind.

AT&T’s Netbook, a focus of Free Press’s comments, is a case in point. As discussed above, Free Press faults AT&T’s Netbook ad for failing to disclose data overage charges, when in fact the ad clearly discloses that information. But apart from the fact that the ad actually includes an overage charge disclosure, no actual purchaser of an AT&T Netbook could claim that the company failed to provide clear and comprehensive information about data overage rates. That information is shared repeatedly and expressly in several other ways. For instance, AT&T posts its data rates on the AT&T website, providing in concise chart form on the DataConnect Plans web page the “domestic overage fees” for each plan.⁴⁶ As illustrated by the brochures attached at Appendix A, AT&T explicitly discloses its data rates and overage charges in its in-store materials provided to customers: the AT&T Data Rate Plan brochure clearly discloses the amount of data included in each plan, the types of access, and the cost for additional data usage. AT&T also discloses overage charge information to customers who order a Netbook by phone, as well as information on how to manage data usage.

Furthermore, the wireless Customer Service Summary (described below), which is provided at the point of sale to in-store customers, explicitly discloses the overage rate, and

⁴⁵ See CTIA, Consumer Code for Wireless Service, principle 4, <http://files.ctia.org/pdf/ConsumerCode.pdf>.

⁴⁶ See AT&T, <http://www.wireless.att.com/cell-phone-service/>. To find the DataConnect plans available in a particular service area, search for “DataConnect” and enter the applicable zip code.

collateral plan materials also provide this information.⁴⁷ And even after the point of sale, AT&T offers tools to assist customers in monitoring and managing their data usage,⁴⁸ and thus helps them avoid data overage charges. Indeed, AT&T proactively notifies customers when they approach their usage limit.⁴⁹ There is, in other words, no basis for any claim that AT&T is misleading or uninformative on this point—and that would be true even if the advertisement itself were not as forthcoming as it is.

While Free Press, NASUCA, and other pro-regulatory commenters thus miss the mark in their criticism of existing disclosure practices, they also fail to take into account the continuing progress that is being made in this area. To be sure, NASUCA grudgingly concedes that things have improved “somewhat” for consumers of communications services.⁵⁰ But the other proponents of more regulation make no concession and insist on blinking at reality.

The reality, as the record demonstrates, is that carriers throughout the industry are striving—without any regulatory compulsion—to provide information to consumers in various formats throughout the course of the customer relationship in order to ensure that the customer

⁴⁷ The notion that AT&T’s data overage charges are “severe,” Free Press Comments at 10, is also absurd. Generally, customers who signed up for service prior to July 31, 2009 pay per-use data rates of \$.01 per kilobyte, while newer customers pay a per-use data rate of \$2.00 per megabyte. The domestic overage rate for our DataConnect Plans is \$10 per 100 megabytes and \$.49 per megabyte, depending on the plan. What is more, AT&T offers data *unlimited* domestic rate plans of \$15.00 for customers with feature phones and \$30 for customers with smartphones, which contain no overage fees.

⁴⁸ See AT&T Comments at 21-22.

⁴⁹ A customer is notified when he reaches 3.5 gigabytes, is notified again at 4.5 gigabytes, and then (through a policy launched in April 2009) the account is suspended when he reaches 5 gigabytes. The customer can lift the suspension by calling Customer CARE, and he is told at that time what his overage charge will be. Notification also may be made by SMS text message or email, if known. A customer’s usage is monitored as it approaches the threshold, but because a number of systems are involved in the monitoring and notification process, there could be a delay of up to 24 hours from the time the customer reaches the threshold until the suspension, and the customer could potentially exceed the 5 gigabyte mark.

⁵⁰ NASUCA Comments at 40.

has repeated, meaningful opportunities to understand her service options, usage, and terms.⁵¹

AT&T in particular has prioritized this endeavor, and its practices belie the advocacy for greater regulation.

For example, the State Attorneys General argue that providers' coverage maps are insufficient to provide adequate coverage information⁵² and suggest that regulatory intervention is required. Yet AT&T has gone far beyond any industry requirement with respect to its wireless coverage map practices. It makes available online and at retail stores detailed, interactive street-level coverage maps that consumers can use to estimate the coverage in a very granular area, and can even illustrate whether coverage is likely available at an indoor location in the target area.⁵³

AT&T's practices also refute Free Press's claim that broadband Internet access providers fail to provide "actual minimum network speeds" and only disclose speed ceilings—another problem supposedly requiring a regulatory response.⁵⁴ Yet AT&T does not merely disclose "up to" broadband service speeds. In its Terms of Service, AT&T discloses both the upper *and* lower speed capabilities that consumers can expect from its wireline broadband services for each tier of service, and it advises consumers about factors that may affect experienced speeds.⁵⁵ Similarly, while Free Press suggests that "early termination fees and limitations on keeping and reusing

⁵¹ See, e.g., Free Press Comments at 7; State Attorneys General Comments at 6.

⁵² State Attorneys General Comments at 6.

⁵³ AT&T Comments at 17; AT&T Coverage Viewer, <http://www.wireless.att.com/coverageviewer/>.

⁵⁴ Free Press Comments at 7, 12.

⁵⁵ AT&T High Speed Internet Terms of Service / att.net Terms of Use, <http://info.yahoo.com/legal/us/att/terms/all/>; AT&T Comments at 19-20.

wireless devices are not clearly disclosed to consumers,”⁵⁶ AT&T in fact does clearly disclose both early termination fees—which it has prorated since 2008—and relevant device terms such as locking policies in its wireless Terms of Service.⁵⁷

And more generally, as AT&T has previously explained, AT&T ensures that consumers have ready access to the information they need to make an educated purchase decision *prior* to the point of sale.⁵⁸ For example, in AT&T’s retail stores, consumers can review coverage maps, price cards for each wireless phone offering the price of the available service plans, and service and product brochures that detail the rates and key terms and conditions for whatever service they may be considering. Those consumers seeking information about available wireless plans online can view available individual, family, prepaid, and data plans on AT&T’s website, with a comparison of plans by key terms.⁵⁹ Detailed plan descriptions explain overall monthly costs,

⁵⁶ Free Press Comments at 27. In truth, Free Press’s real complaint in this regard is not that providers do not disclose their early termination fees, but that they charge them at all. But this *substantive* complaint is not relevant in this proceeding, and Free Press’s flawed analysis of early termination fees already has been disproved elsewhere. *See, e.g.*, Letter from Charles W. McKee, Director, Government Affairs, Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-194, at 1-6 (filed July 3, 2008) (refuting Dr. Lee L. Selwyn’s testimony before the FCC Public Hearing on Early Termination Fees held June 12, 2008). The same is true with respect to Free Press’s complaint about providers’ changes to contract terms, which it insists should not be permitted. *See* Free Press Comments at 19-20. In fact, AT&T provides customers with advance notice about material changes in contract terms and offers them an opportunity to terminate the contract in light of those changes—*without* having to pay an early termination fee. *See* AT&T Wireless Service Agreement, Terms of Service, <http://www.wireless.att.com/learn/articles-resources/wireless-terms.jsp>.

⁵⁷ AT&T Wireless Service Agreement, Terms of Service, <http://www.wireless.att.com/learn/articles-resources/wireless-terms.jsp>.

⁵⁸ *See* AT&T Comments at 16-20.

⁵⁹ *See* AT&T Cell Phone Plans, http://www.wireless.att.com/cell-phone-service/cell-phone-plans/?_requestid=261102; *and see, e.g.*, AT&T, Individual Cell Phone Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/individual-cell-phone-plans.jsp>.

the one-time activation fee, and the length of any required contract, among other terms.⁶⁰ Consumers can also access even more detailed information about monthly charges.⁶¹ This information includes a clear explanation of the fee AT&T imposes to help defray the costs it incurs in connection with collecting and paying regulatory fees, belying Free Press’s suggestion that consumers cannot access information about that cost when searching for a provider or seeking to understand their bill.⁶² And consumers can access comprehensive information about plan terms, online pricing, the return policy, and additional messaging and data charges.⁶³ Furthermore, while Joint commenters Consumer Advocacy Groups assert that consumers are confused about mobile service providers’ and other companies’ privacy policies and practices,⁶⁴ AT&T (as noted above) has made definitive and substantial strides to remedy any potential confusion through its frank and inclusive privacy policy, and that policy is easily accessed on its website.⁶⁵ And as a general matter, AT&T ensures that the Terms of Service and a wealth of

⁶⁰ See, e.g., AT&T, Individual Cell Phone Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/individual-cell-phone-plans.jsp> (select “View Details” next to listed plans).

⁶¹ Consumers need only follow the “Other Monthly Charges” link on the bottom of that page. From the pop-up window, consumers can further link to a detailed break-out of the charge components.

⁶² Free Press Comments at 14 n.39.

⁶³ See, e.g., AT&T, Individual Cell Phone Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/individual-cell-phone-plans.jsp> (follow the relevant links at the bottom of the page).

⁶⁴ See Consumer Advocacy Groups Comments at 13. The Center for Digital Democracy, Consumer Action, Consumer Federation of America, Consumer Watchdog, Privacy Rights Clearinghouse, and US PIRG comprise Consumer Advocacy Groups.

⁶⁵ See AT&T Privacy Policy, <http://www.att.com/gen/privacy-policy?pid=2506>.

other information are provided online for *every* service it offers, so that interested consumers and current subscribers can always access the information they need.⁶⁶

AT&T similarly is committed to providing customers with comprehensive, useful, and accessible information *after* they have purchased a service to ensure that they can maximize their efficient use of the service, understand its terms, and understand their service charges. Thus, AT&T worked to personalize wireless customer account information to maximize the effectiveness of the content and layout of the information presented. This effort resulted in AT&T's personalized Customer Service Summary ("CSS"), which is designed to respond to customers' desire for personalized, relevant information. The CSS helps customers understand the particular terms and charges that will apply to the services and options they have ordered. Notably, AT&T has continued to refine the CSS over the years in response to consumer focus groups, illustrating the company's commitment to enhance its consumer disclosures.⁶⁷ The current CSS form is short and tailored to meet the expressed needs of today's customers, and it is provided to *every* customer for *any* product ordered through a retail store.⁶⁸ In two summary pages, it lays out all material terms and key information in a customer-friendly, easily usable

⁶⁶ See, e.g., AT&T, Answer Center, <http://www.wireless.att.com/answer-center/main.jsp>; AT&T Comments at 18 (referencing online comparison tools for wireless, wireline, U-verse, Internet and WiFi service options).

⁶⁷ In just the last year, AT&T added to the wireless CSS an explanation of the *New feature (which provides free instant access to AT&T's automated bill pay system); disclosures of picture/video, data, and international voice and data roaming charges; and disclosure of a change in the device restocking fee. AT&T also has bolded references to the arbitration clause, to ensure that consumers understand they are agreeing to this provision.

⁶⁸ Wireline customers who order their service online or by phone also receive a Welcome Package, see App. B, Exh. 2, containing similar information, and all online and telephone customers receive confirmations with similar information, see, e.g., U-verse confirmation, at App. C.

format; the third page contains the actual service agreement. Attached as Exhibit 1 at Appendix B is a sample wireless CSS document.⁶⁹

AT&T also provides customers with information above and beyond the CSS. For example, wireless and wireline customers receive a “first-bill explanation”; wireline customers receive a Welcome Package that provides account information, the Terms of Service, and links to helpful information and telephone numbers; U-verse video and voice service customers receive email confirmations that provide account information, explanations of what to expect at installation, and links to useful information such as the Terms of Service and billing information; and U-verse consumers can view a sample bill online that explains how to read each line item.⁷⁰ As AT&T has explained, it also provides special information and assistance to its customers with disabilities to ensure that they, too, are fully served and fully informed.⁷¹ In short, there is simply no basis for allegations by Free Press or others that AT&T or other providers withhold key information or seek to hide it in a sea of irrelevant terms.

Finally, AT&T also has taken significant steps to respond to the one concern that seems prevalent in the comments of most of the state regulatory commenters: cramming of third party

⁶⁹ Some states have different disclosure requirements than others, and therefore some services have more than one potential CSS format.

⁷⁰ See, e.g., AT&T Comments at 19; see also How to Read the AT&T U-verse Bill, https://www.att.com/support_media/images/pdf/uverse/Sample_Bill.pdf. Consumers can easily retrieve the sample U-verse bill by going to “Support” on AT&T U-verse’s web page and selecting “understanding charges” in the billing and accounting section under “Support Topics.” Alternatively, they will be given the option of viewing a sample bill if they search for “bill” in the “Ask a Question” query box. The sample U-verse bill provided at AT&T’s website can be found attached at Appendix D.

⁷¹ See AT&T Comments at 24-25; see, e.g., AT&T, The National Center for Customers with Disabilities (NCCD), <http://www.wireless.att.com/learn/articles-resources/disability-resources/nccd.jsp>.

charges.⁷² This is an issue almost every major provider has taken to heart, and AT&T in particular has described its very effective measures for confronting the issue and reducing cramming, including its use of easy-to-read bill formatting, a third-party service provider application process, and contractual provisions that include disciplinary action.⁷³ As a result, AT&T's internal data since it began collecting and tracking cramming data complaints in early 2008 reflect remarkably low complaint rates.⁷⁴

III. VOLUNTARY INDUSTRY GUIDELINES THAT APPLY UNIFORMLY ACROSS THE COMMUNICATIONS MARKETPLACE OFFER THE MOST PROMISING WAY TO ENSURE CONTINUED ENHANCEMENT OF AND COMMITMENT TO CONSUMER PROTECTION PRACTICES.

The initiatives of AT&T and other providers demonstrate that Free Press is simply wrong about the powerful effect of today's competitive market on consumer-protection practices.⁷⁵ But this does not mean there is not more to be done. As AT&T's continuing revisions of its CSS demonstrate, in a changing and complex industry, providers must remain vigilant and committed to improving their practices to meet new challenges.

One of the most pressing challenges in the communications industry is the significant risk of consumer confusion arising from the disparate regulatory treatment of functionally similar services. Consumers have come to expect certain protections when they obtain services from traditional, regulated providers, for instance protection from unscrupulous practices such as slamming and cramming and protection of their proprietary information. Consumers do not

⁷² See, e.g., NASUCA Comments at 49-57; California PUC Comments at 4-5; see also State of Minnesota Office of the Attorney General Comments at 1-2; State Attorneys General Comments at 9-10.

⁷³ AT&T Comments at 14, 16.

⁷⁴ See *id.* at 33 (reporting that the number of cramming complaints has never exceeded two complaints for every thousand bills that contain third-party charges in any month during that period).

⁷⁵ See *supra* Part I.

understand obscure regulatory distinctions, such as the distinction between “telecommunications service” providers and “information service” providers, and they certainly do not understand that different rules may apply to different categories of providers based on such distinctions. The absence of any kind of uniform set of principles thus creates uncertainty for consumers and may leave them exposed to practices they neither like nor expect simply because they have changed platforms or providers.

As AT&T has argued and NASUCA, Qwest, Verizon, the Massachusetts Department of Telecommunications and Cable, the State Attorneys General, Telogical Systems, and others in this proceeding have noted, meaningful improvements in consumer disclosure, protection, and empowerment in the communications industry can be achieved only if providers from all corners of the industry are involved in the process and committed to the solution.⁷⁶ And the best way to achieve that result is for the Commission to convene an industry-wide initiative that will involve participation by and input from all types of communications service providers—the traditional telecommunications service providers; broadband providers; providers of applications-based communications services; video providers of all types; and others. The Commission’s process also should include consumer groups across all those service platforms, and input by interested government stakeholders.

The goal of this initiative should be to fashion a collaborative, industry-driven set of principles that can serve as the voluntary framework that will guide providers’ consumer

⁷⁶ See NASUCA Comments at 34 (arguing successful industry code requires full industry participation); Qwest Comments at 12; Verizon Comments at 53-54; MDTC Comments at 11; State Attorneys General Comments at 3-4; Telogical Systems Comments at 1.

protection and disclosure efforts.⁷⁷ In Time Warner’s words, the goal should be for the Commission to “collaborat[e] with industry in developing best practices.”⁷⁸ Or, as the Wireless Communications Association has noted, the Commission would do well to “establish a broad-based advisory committee with representatives of all relevant stakeholders” to “examine” the issue and “reach consensus” on a meaningful solution.⁷⁹ This approach would mirror the development of CTIA’s Consumer Code, although it would involve a far greater cross-section of the industry, and the resulting code would apply to *all* communications services and to all phases of the provider-customer relationship.⁸⁰ Although many commenters support this approach in principle, AT&T alone has proposed a way forward, setting forth ten key principles that cover advertising, billing, customer trial periods, ongoing service, and termination—along with key issues such as privacy and disabilities access. The Commission and the industry should use this as a vehicle for the important dialogue that should emerge from the *Notice* process.

To be sure, some commenters question the value of a voluntary code, on the basis that such codes lack teeth.⁸¹ But AT&T has recommended that there be some mechanism to enforce

⁷⁷ *E.g.*, OPASTCO Comments at 2, 6, 8 (advocating industry-developed consumer codes); Qwest Comments at 51-55 (advocating industry, consumer, and regulator involvement to develop voluntary industry codes); Rural Cellular Association Comments at 5-8 (explaining advantages of voluntary industry codes); USTelecom Comments at 9-11 (arguing “industry self-regulatory best practices” are the most promising approach); Verizon Comments at 49 (“[T]he 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”); *see also* Time Warner Comments at 14-20 (advocating the development of best practices).

⁷⁸ Time Warner Comments at 14.

⁷⁹ The Wireless Communications Association International, Inc. Comments at 1.

⁸⁰ *See* AT&T Comments at 33.

⁸¹ *See* NASUCA Comments at 34 (arguing voluntary industry codes are often ineffective due to lack of “adequate enforcement and investigatory procedures”); Free Press Comments at 17 (arguing CTIA Consumer Code is inadequate for this reason).

providers' commitment to the proposed consumer disclosure and protection framework. As AT&T discussed in its opening comments, there are many different enforcement models that can be considered,⁸² and identifying an appropriate approach that avoids jurisdictional stumbling blocks will be an important order of business during industry-Commission discussions. Moreover, the focus on enforceability misses one of the key benefits of a voluntary industry-driven model. The key to achieving an agreed-upon framework will be stakeholder commitment to the process—and that commitment should help engender compliance and reshape consumer disclosure and protection norms across the industry. In other words, if the collaborative process is successful, providers should have a sense of ownership in the resulting product that causes them to approach compliance far more proactively than they would in the case of thrust-upon regulatory requirements.

Free Press and NASUCA also argue that the CTIA Consumer Code approach must be rejected because it is overly “vague” and “flexibl[e],”⁸³ and permits too much room for “discretion.”⁸⁴ This criticism is flawed for two reasons. First, the evidence demonstrates that the Code, combined with voluntary efforts by carriers to exceed its requirements, is working. Indeed, in 2008, there were 270 million wireless subscribers and only 10,930 complaints about billing and rates to the Commission.⁸⁵

Second, in all events, the argument is a red herring. A regulatory framework that applies to a broad array of services and providers would—just like the Code—have to use general principles and flexible language, and by necessity, providers would have to interpret and apply

⁸² See AT&T Comments at 37-39.

⁸³ Free Press Comments at 20.

⁸⁴ NASUCA Comments at 38.

⁸⁵ Notice ¶ 15 & n.41.

those terms in the context of their own services. Surely the commenters cannot truly be advocating that the Commission devise concrete, granular guidelines dictating the precise content and presentation of every type of advertisement, every consumer bill, and every consumer contract or brochure, for every single service or provider. That would be an impossible objective, doomed to failure—and anything even remotely close would result in inflexible rules that would be entirely unworkable in this dynamic industry. This idea not only makes no sense and bears no relationship to the way the Commission regulates in any other context; it also would raise serious legal questions. Any rules that restricted, directed, and compelled speech to that degree would have significant First Amendment implications.⁸⁶

The voluntary approach AT&T and others advocate is also ideal because it avoids questions about the Commission’s regulatory authority and avoids the creation of overlapping rules for providers already subject to state and FTC oversight. Beyond this, it would allow the industry to tackle issues that are particularly complex in the changing communications marketplace. As Verizon notes, “[v]oluntary 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.”⁸⁷

Furthermore, some of the thorniest issues in today’s communications marketplace will *require* a collaborative solution. For instance, disabilities access, which was a focus of several comments,⁸⁸ will almost certainly require cooperation among the platforms and services that

⁸⁶ See, e.g., *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 564-66 (1980); *United States v. United Foods, Inc.*, 533 U.S. 405, 410-16 (2001); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 650-51 (1985).

⁸⁷ Verizon Comments at 50.

⁸⁸ E.g., American Association of People with Disabilities Comments; Telecommunications for the Deaf and Hard of Hearing, Inc., et al. Comments; Comments of Darlena Shackley.

consumers use together: an accessible broadband platform will be of little use to a consumer with a hearing impairment if online video service providers and home equipment makers do not support closed captioning. A voluntary industry initiative presents an ideal opportunity for providers to begin to tackle these issues collectively.

Likewise, industry-wide collaboration will be necessary to develop anything like the “Schumer Box” that the FCC discussed in the *Notice* and many commenters propose.⁸⁹ In the context of the communications industry, where entirely different types of technologies and platforms provide like services, it will be extremely challenging to come up with a chart that can be populated with meaningful information that can be compared across providers and platforms. This is not the credit card industry, in which certain factors are clearly defined and obviously applicable across all like product offerings. Any hope for creating a parallel model for some or all communications services will depend on providers working together, first, to define the categories of information that are most critical to a comparison among services; and second, to agree on universally acceptable interpretations of the defined categories and the terms used. The comparison “box” will prove useless if providers populate it with inconsistent information or various explanatory notes and caveats. Consensus on this issue may be extremely difficult to achieve, but there will be no meaningful solution in the absence of such consensus.

CONCLUSION

For the foregoing reasons, AT&T respectfully requests that the Commission convene the industry collaboration that AT&T and others have proposed, and use AT&T’s ten consumer disclosure, protection, and empowerment principles to begin the dialogue among interested stakeholders.

⁸⁹ See, e.g., Free Press Comments at 26; NASUCA Comments at 33; State Attorneys General Comments at 10; Citizens’ Utility Board Comments at 3-4.

Respectfully Submitted,

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