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**

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS

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I. INTRODUCTION AND SUMMARY

As demonstrated in the comments filed in response to the NOI,[2] communications providers are virtually united in their view that the key to survival in the intensely competitive market for communications services is "empower[ing] American consumers by ensuring [that they have] sufficient access to relevant information about communications services."[3] This is so because consumers have an ever-expanding array of options available to fit their communications needs, and they demand access to useful information in order to determine their preferences.[4] Accordingly, communications

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

[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] NOI, ¶ 1. *See* Comments of Verizon & Verizon Wireless at 1; Comments of AT&T Inc. at 2, 9; Comments of Comcast Corp. at 4.

[4] *See* Comments of CTIA—The Wireless Association at 2 ("[D]riven by the intense amount of information that is available, from pre-paid, to post-paid, to family plans, calling

providers constantly strive to find new and better ways of offering clear and accurate information to consumers in order to differentiate themselves from competitors and to enable consumers to make well-informed purchasing decisions. In this way, communications providers are driven to compete vigorously not only as to price, features, and terms of service but also as to *the provision of information* about price, features, and terms of service.

As part of that competitive effort, providers regularly seek feedback from consumers in order to ensure that they remain attentive and responsive to changing consumer preferences. Providers across the industry modify how they provide information in response to consumer feedback. But providing all information that a customer may deem relevant to his or her purchase decision in all instances, as the public interest group commenters' mandatory, one-size-fits-all proposals presuppose, is not always better. For example, a consumer would not want, need, or expect all the information about the service or the pricing terms contained in a printed brochure or on a monthly bill to be included in a radio or print advertisement or on a billboard. Too much data may impair, rather than facilitate, consumer decisionmaking. Moreover, not all consumers want or need the same amount of detail or have the same amount of time to spend on the issue: to the contrary, the amount of information that a consumer needs depends upon the circumstances.

What consumers have indicated they *do* want is helpful information, at an appropriate point in time, conveyed in a clear and concise manner that is easily

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circles, all-inclusive plans, subsidized phones, un-subsidized phones, unlocked phones, and more, carriers are constantly upgrading the information available and provided to consumers—through in-store information, advertising and online tools—in an effort to win, and keep, customers in this competitive industry.").

understandable. Thus, providers strive to convey to the consumer the information most helpful at a particular time and place. And, in response to consumer feedback, providers create new and innovative ways to communicate with consumers in order to satisfy consumer demand and enhance consumer welfare. Providers, working with consumers, are best positioned to determine the proper balance of information to be provided in order to achieve those important goals. For this fundamental reason, the mandatory-disclosure regimes proposed by consumer groups such as NASUCA and the coalition led by Consumer Federation of America (collectively, "CFA") in their comments are unnecessary and inappropriate. What is more, those commenters have failed to identify any evidence of consumer confusion warranting such a regime.

To the contrary, as numerous other commenters persuasively explained, *flexibility* is the key to fostering this market-driven give and take between consumers and providers that results in consumers receiving the optimal amount of information. Thus, the Commission should promote the use of broad industry standards and "best practices" in order to "ensur[e] sufficient access to relevant information about communications services."[5] Contrary to the suggestion of NASUCA, this model has proven quite successful in the wireless context, via the industry-adopted CTIA Consumer Code for Wireless Service[6] and the Assurance of Voluntary Compliance[7] developed by wireless providers in conjunction with state attorneys general. The CTIA Consumer Code and the AVC set out industry standards ensuring that consumers receive helpful information

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[5] NOI, ¶ 16.

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

[7] *In re Cellco P'ship d/b/a Verizon Wireless*, Assurance of Voluntary Compliance (June 29, 2004) ("AVC").

about wireless products and services. Moreover, their flexibility allows room for innovation and competition, enabling providers to invent new ways of providing information in order to better serve consumers.

On the other hand, adopting rigid, heavy-handed regulations would hamstring communications providers' ability to respond to changing consumer preferences and lock them into particular practices that may not work for consumers. This would diminish innovation and competition with regard to the provision of information and, ultimately, harm consumers. Flexibility—not rigid, highly detailed rules—is thus the key to empowering consumers.

In addition to being counter-productive, prescriptive regulation may be legally problematic. In particular, suggestions that the FCC regulate advertising would intrude upon the consumer-protection jurisdiction of existing federal and state regulators. And other proposals requiring providers to provide specified information or information in certain formats may raise significant First Amendment issues. Given the absence of a factual basis of substantial customer confusion in the record to justify prescriptive regulation, it will be difficult for the Commission to meet this burden.

II. TO SUCCEED IN THE MARKETPLACE, COMMUNICATIONS PROVIDERS MUST ENSURE THAT CONSUMERS HAVE SUFFICIENT ACCESS TO RELEVANT INFORMATION ABOUT COMMUNICATIONS SERVICES.

The opening comments revealed broad agreement across all sectors of the communications industry that "consumers should have access to clear, well-organized, and non-misleading information about the services they are purchasing."[8] Intense

[8] Comments of The Voice On The Net Coalition at 4; *see also* Comments of Comcast Corp. at iii ("We agree with the goal of ensuring that consumers receive clear, accurate, and usable information about the products and services available to them."); Comments of Verizon &

competition "has forced providers to become ever more consumer-focused in all their business practices."[9] In response to this competition, providers of all sizes and across all segments of the communications services market go to great lengths to make available to consumers extensive information about the prices, features, and terms of service of their products and services.[10] The robust competition in the market for communications services thus serves to empower consumers by requiring providers to offer consumers

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Verizon Wireless at 1 ("Verizon and Verizon Wireless are strong proponents of informed consumer choice, and of providing consumers with the information they need to make those choices."); *see also* Comments of AT&T Inc. at 1-2 ("[C]onsumers unquestionably must have, and are entitled to, the information necessary to evaluate and select a provider and service plan; manage their use of services; and decide whether and when to change providers or plans."); Comments of Independent Telephone & Telecommunications Alliance at 1 ("ITTA members recognize that consumers should have access to accurate information about services to which they subscribe."); Comments of Qwest Communications International Inc. at iii ("It is important that consumers who make communications purchases be knowledgeable about providers and products.").

[9] Comments of AT&T Inc. at 2; *id.* at 9 ("[I]n this competitive industry, customer loyalty must be earned every day. And today's customers want information—relevant, easy-to-find, easy-to-use, and comprehensive information. AT&T is therefore striving to respond to this need, by giving customers more and better information about their service options, the terms, conditions, and usage of the services they ultimately select, and the bills they are asked to pay."); Comments of CTIA—The Wireless Association at 2 ("In this competitive environment, carriers' billing and other consumer practices must be responsive to consumers' immediate needs."); Comments of OPASTCO at 4-5 ("Rural ILECs take seriously the disclosure of information that existing and potential customers need in order to make informed decisions regarding the purchase of communications services. Customer goodwill is important to rural ILECs that must strive to retain customers and attract new ones in order to remain viable in a competitive marketplace."); Comments of SouthernLINC Wireless at 2 ("To compete successfully, a carrier must ensure that consumers have as complete and accurate information as possible about all aspects of its services and service offerings.").

[10] *See* Comments of Verizon & Verizon Wireless at 14-48; *see also* Comments of AT&T Inc. at 2 ("AT&T, like many companies, has responded to these competitive pressures by adopting consumer-friendly disclosure practices and continuing to strive to provide consumers with transparent, easy-to-find, and easy-to-use information."); Comments of CTIA—The Wireless Association at 11 ("U.S. wireless carriers are constantly adapting their consumer practices to the needs, demands and interests of their customer base. . . . [W]ireless providers excel at monitoring and responding to changing preferences."); Comments of MetroPCS Communications Inc. at 3 ("MetroPCS prides itself on continually providing relevant information to the customer both at the point of sale and throughout the customer experience."); Comments of Rural Cellular Association at 5 ("RCA shares the Commission's goal of providing American consumers with access to relevant information about their communications services.").

"access to clear, easily understandable information they need to choose a provider, to choose a service plan, manage use of the service plan, and decide whether and when to switch an existing provider or plan"[11] in order to succeed in the competitive market.

This competition has spurred innovation in the manner in which providers convey information to consumers in order to ensure that consumers have access to relevant information when they need it most. For example, to improve customer satisfaction levels and to reduce the number of customer inquiries if the first bill is larger than expected, Verizon and Verizon Wireless provide a First Bill Estimate for many of their new customers that clearly sets forth the rates, taxes, and fees that will be included on the first bill.[12] As a result, Verizon has experienced a marked decrease in the number of calls from its new customers and expects that trend to continue in the future. And "My Verizon," an online account management tool, allows Verizon and Verizon Wireless customers to access information about their service and the terms of service at any time, while also enabling customers to view and pay bills online, and obtain customer service support.[13] Other communications providers have also begun giving new customers an estimate of their first bill and online account management options.[14]

Moreover, at least in part due to rapid innovation and development with respect to

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[11] NOI, ¶ 16.

[12] *See* Comments of Verizon & Verizon Wireless at 28, 36, 55.

[13] *See* Comments of Verizon & Verizon Wireless at 38, 41, 46-47.

[14] *See, e.g.*, Comments of The Voice On The Net Coalition at 4 ("For example, Vonage provides an online sample bill that not only includes all services charges but also provides hyperlinks to details about regulatory compliance charges and surcharges"); Comments of AT&T Inc. at 15 ("AT&T provides new wireless and wireline customers a 'first-bill explanation' to provide upfront transparency and detailed information at the beginning of the customer relationship."); *id.* at 29 (noting that "broadband, voice, and video providers have increasingly moved to accessible online billing platforms"); Comments of Comcast Corp. at 14 (noting that customers can "manage their accounts online at Comcast's website").

communications services, consumer preferences evolve, even with respect to the information they receive from providers. Competitors that want to survive in the market for communications services must remain attentive and responsive to changing consumer preferences.[15] This is why Verizon and Verizon Wireless monitor sources, such as online customer feedback fora, that provide instant customer feedback about their services and practices and regularly utilize focus groups as a mechanism to obtain consumer feedback about the way in which Verizon and Verizon Wireless provide information to consumers.[16] In particular, as Verizon has only recently begun offering video services as it rolls out FiOS, Verizon has redoubled its efforts to ensure that customers new to Verizon or those that are newly purchasing bundles of services from Verizon have all the information they require when making purchase decisions and on their bills. Other providers engage in similar efforts in order to ensure that they remain responsive to consumer demand.[17] Providers that fail to respond to consumer concerns risk substantial harm to their competitive positions, particularly in today's environment where issues raised in online fora can quickly propagate and cause significant reputational harm.

An important message that providers have learned through consumer feedback is that consumers do not always want more information or specific details.[18] Indeed,

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[15] Comments of AT&T Inc. at 10-11 ("[T]he lesson providers in this market overlook at their peril is that providing clear and simple information will establish meaningful brand differentiation, create stronger and longer customer relationships, decrease churn and increase revenues." (quotation omitted)).

[16] *See* Comments of Verizon & Verizon Wireless at 38, 41, 46-47.

[17] *See, e.g.*, Comments of AT&T Inc. at 14 (describing the fruits of AT&T customer research regarding the format of its bills); Comments of Comcast Corp. at 13-14 (discussing Comcast's reformatting of its bills pursuant to consumer feedback and focus groups); Comments of Sprint Nextel Corp. at 9-10 (detailing Sprint's efforts to utilize online social networking to obtain and respond to customer feedback).

[18] *See* Comments of Verizon & Verizon Wireless at 54-55.

sometimes consumers want less information with added clarity.[19] This is because too much information may actually hinder, rather than aid, decisionmaking.[20] Scholars and regulators alike have recognized the decreasing utility for consumers of relatively large amounts of information.[21] Notably, Professor Cass Sunstein—one of the leading scholars on the topic of agency regulation and the present Administrator of the federal Office of Information and Regulatory Affairs—has emphasized that agencies must consider the "pervasive risk of information overload, causing consumers to treat a large amount of information as equivalent to no information at all."[22] Even the studies cited by the Commission in the NOI highlight the dangers of information overload.[23] In particular, the NOI cites an OECD study on protecting and empowering communications consumers, which emphasizes that "adding more information may result in information

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[19] *See* Comments of AT&T Inc. at 14 ("AT&T customer research has repeatedly shown that its customers" want their bills "as brief as possible—preferably no more than a page or two. AT&T accordingly works to improve the clarity of its bills for both its wireless and wireline customers and to provide them with sufficient detail to evaluate their charges while not overwhelming them with minutia.").

[20] *See* Comments of Verizon & Verizon Wireless at 54-55 (citing 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.")).

[21] *See, e.g.*, Melvin Aron Eisenberg, *Text Anxiety*, 59 S. Cal. L. Rev. 305, 307 (1985) ("Consumers may respond to too much information not by overloading, but by refusing to load any information at all."); Howard Buskirk, *Justice, FTC Economists Say FCC Should Avoid Static Definitions in Broadband Plan*, Communications Daily, at 7 (Oct. 13, 2009) (noting that the FTC's Director of the Bureau of Economics emphasized that "not everything can be prominently disclosed" and that, "if everything is in 14-point type, it really doesn't help").

[22] Cass Sunstein, *Informing America: Risk, Disclosure, and the First Amendment*, 20 Fla. St. U. L. Rev. 653, 668 (1993).

[23] *See, e.g.*, Howard Beales, Richard Craswell & Steven C. Salop, *Information Remedies for Consumer Protection*, 71 Am. Econ. Rev. 410 (May 1981); *Enhancing Competition in Telecommunications: Protecting and Empowering Consumers*, Ministerial Background Report, Directorate for Science, Technology and Industry, Committee for Information, Computer and Communications Policy, Organization for Economic Co-operation and Development (June 2008) *available at* http://www.oecd.org/dataoecd/25/2/40679279.pdf (cited in NOI, ¶ 5 nn.7 & 8).

overload and hence in worse decision making."[24] And, while the consumers who desire particularized details can ask for that information, those who do not want or need it should not be required to participate in burdensome and time-consuming disclosures in mandatory customer service scripts.

Consumer feedback on issues such as information overload allows providers to modify the way in which they convey information to consumers and thus results in tangible, pro-consumer benefits. For instance, in direct response to feedback from consumer focus groups, Verizon Wireless has revised its 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.[25] Furthermore, Verizon has made changes to its bills to make the pricing of bundled packages more understandable, reducing the length of bills on average from eight to four pages while preserving the substantial white space on the first page that customers prefer.[26] Since Verizon made these changes to its billing format, it has experienced a marked decrease in the number of billing inquiries and expects that trend to continue in the future.

In short, as the comments confirmed, providers have every reason to listen to consumers and in fact do so, taking directly responsive measures to provide the kind of information in the format that consumers prefer and continually updating those measures. Consumer feedback (and the competition-fueled responses by providers such as Verizon and Verizon Wireless) thus undermines the position of certain consumer groups that

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[24] *Enhancing Competition in Telecommunications: Protecting and Empowering Consumers*, Ministerial Background Report, Directorate for Science, Technology and Industry, Committee for Information, Computer and Communications Policy, Organization for Economic Co-operation & Development, at 40 (June 2008) *available at* http://www.oecd.org/dataoecd/25/2/40679279.pdf.

[25] *See* Comments of Verizon & Verizon Wireless at 39-40.

[26] *See id.* at 46.

assert—without factual support—that providers fail to give consumers enough information.

For example, CFA identifies a few advertisements that it believes are confusing. In particular, the CFA asserts that a specific Verizon print advertisement for Internet access service hides from consumers the true rates and terms of service.[27] As an initial matter, the CFA ignores the fact that a print advertisement is not the final information the customer receives before making a purchase decision.[28] As Verizon has explained, there is substantially more information conveyed to the customer at the point of sale, including in many cases, the First Bill Estimate described above. Moreover, the CFA conveniently overlooks the fact that the advertisement states within the first few lines of text that it is a "special introductory offer."[29] In any event, the CFA concedes that the advertisement in question actually states that "the price does not include 'taxes and fees' or a onetime charge of 'up to $55,'" that, "to get the promotional price, the customer must also purchase Verizon telephone service," and that the rates will change following the six-month introductory period.[30] Perhaps most importantly, these commenters fail to identify a single consumer that found the advertisement at issue defective.

Similarly, CFA's claim that the failure to disclose the actual speed of Internet

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[27] *See* Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge at 9 & App. B, Ex. 4.

[28] *See* Comments of Verizon & Verizon Wireless at 27 (describing all of the information disclosed via the "Consumer Brochure" utilized by Verizon Wireless at the point of sale in retail stores). The CFA seems to miss this point entirely. It spends much effort criticizing the advertisements of communications providers without considering the difference between advertisements and communications at the point of sale and without considering the fact that providers convey much more information to a consumer before the consumer ever purchases service. *See* Comments of Verizon & Verizon Wireless at 25-39.

[29] *Id*. at App. B, Ex. 4.

[30] *Id*.

access service is misleading cannot withstand scrutiny. As Verizon explained in its Comments, Verizon clearly informs customers that actual speed may vary from the advertised speed based on numerous factors, many of which are wholly outside of Verizon's control. The fact that the actual speed may vary is disclosed on advertising, and the particular factors that affect the actual speed, including the condition of the wiring at the customer's location, computer configuration, Internet and network congestion, and speed of website servers customers access, are listed in Verizon's term of service and on Verizon's website. Moreover, this information is conveyed when the customer orders service, and when the FiOS data service is installed. At installation, the installer tests the connection speed and informs the customer how to do a similar test through a free speed-testing website. As before, CFA points to no evidence that customers are unaware that their actual speeds may be less than the advertised "up to" speeds.

This failure to identify any evidence of consumer confusion is a defect that runs throughout the comments of both the CFA and NASUCA—the leading advocates for new regulation requiring standardized mandatory disclosures. Indeed, the CFA and NASUCA cite no independent data showing a need for regulation. Rather, they rely almost solely on the Commission's complaint data to support their position that new regulation is necessary.[31] But, as several commenters have explained, the Commission's complaint data fails to demonstrate meaningful evidence of consumer confusion.[32]

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[31] *See generally* Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge at 6, 8, 29; Initial Comments of the National Association of State Utility Consumer Advocates at 3-5.

[32] *See* Comments of Verizon & Verizon Wireless at 6-9; Comments of AT&T Inc. at 30-31; Comments of Sprint Nextel Corp. at 2-6; *see also infra* note 46.

III. FLEXIBLE INDUSTRY STANDARDS ARE THE KEY TO EMPOWERING CONSUMERS.

Just as the opening comments revealed a consensus among providers regarding their support of the goal of consumer empowerment, the comments also demonstrate agreement among providers on the most effective means of achieving that goal. Providers uniformly agree that the best approach for empowering consumers by ensuring they receive the information they need is to supplement competitive pressures with flexible industry standards.[33] Industry standards, such as the CTIA Consumer Code, can promote the use of "best practices" in order to ensure that consumers receive "sufficient access to relevant information about communications services"[34] while affording providers the flexibility to adjust to consumer preferences that can change as fast as

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[33] *See id*. at 48 ("[T]he 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.'"); *see also* Comments of AT&T Inc. at 35 ("[T]he most effective and efficient solution lies not in the Commission's regulatory tool kit, but in its ability to bring together stakeholders from across the industry and from representative consumer groups to develop a workable, comprehensive consumer protection framework. Indeed, the best model here is the industry-driven, consensus approach represented by the CTIA Consumer Code."); Comments of Independent Telephone & Telecommunications Alliance at 1 ("The Commission . . . however, should refrain from imposing additional regulations that would change the manner or content of information required; rather, the Commission should rely upon existing regulations and safeguards imposed by the competitive marketplace, and not obstruct provider opportunities to respond flexibly and to market demands."); Comments of MetroPCS Communications Inc. at 14 ("voluntary industry codes such as the CTIA consumer code are appropriate in lieu of regulatory mandates."); Comments of Qwest Communications International Inc. at 3 ("[T]he Commission should rely on voluntary industry action with respect to the provision of consumer information."); Comments of Rural Cellular Association at 5 ("[V]oluntary standards mechanisms can serve as a useful model for the entire communications industry."); Comments of United States Telecom Association at 9 ("[I]ndustry self-regulatory best practices and further consumer education are the best ways to remedy any problems that this Inquiry identifies. . . . Voluntary disclosure through industry-developed best practices has real advantages over regulations."); Comments of Time Warner Cable Inc. at 5 ("[C]ollaborating with industry in developing best practices based on the information gathered in this proceeding . . . would enable service providers to consider enhancements to their customer communications while retaining the flexibility needed to innovate and compete in a dynamic marketplace.").

[34] NOI, ¶ 16.

providers develop new offerings in the market for communications services. As many commenters showed, consumers and providers, working together, are best able to determine the optimal level of information that consumers need to determine their preferences and make educated purchasing decisions.[35]

As several commenters explained, the wireless industry has utilized such a flexible approach in the CTIA Consumer Code and, in so doing, has achieved record levels of consumer satisfaction.[36] Thus, contrary to the suggestion of some commenters, these standards are highly effective in that they allow providers to more quickly respond to changing consumer demand through real-time interactions with consumers.[37] Indeed, the American Consumer Institute for Citizen Research recently lauded the CTIA Consumer Code as "quite responsive to consumer needs."[38]

At the same time, competitive pressures create significant incentives for providers

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[35] *See, e.g.*, Comments of Verizon & Verizon Wireless at 52 ("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."); Comments of Comcast Corp. at 28 ("Service providers are in the best position to determine what information is most important to their customers.").

[36] *See, e.g.*, Comments of CTIA—The Wireless Association at 2 (noting the "record high customer satisfaction levels" of the wireless industry); Comments of Verizon & Verizon Wireless at 3, 9-10, 49-50; Comments of AT&T Inc. at 28-29.

[37] Specifically, some consumer groups have criticized the CTIA Consumer Code as inadequate. *See* Initial Comments of the National Association of State Utility Consumer Advocates at 33 ("Codes such as CTIA's wireless Consumer Code are glaringly deficient in many respects, at least from the standpoint of consumers."); Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge at 17, 20. But these criticisms ring hollow in light of the Commission's recognition of a carrier's acceptance of the CTIA Consumer Code as evidencing a commitment to consumer protection, *see infra* p.14, as well as the record levels of customer satisfaction in the wireless industry, *see supra* note 36.

[38] Comments of AT&T Inc. at 35 (citing Wireless Consumer Protection: Hearing Before the House Subcomm. on Telecomms. and the Internet (statement of Dr. Larry F. Darby, The American Consumer Institute for Citizen Research) (Feb. 27, 2008), *available at* http://archives.energycommerce.house.gov/cmte_mtgs/110-tihrg.022708.Darby-testimony.pdf (discussing draft of the Wireless Consumer Protection and Community Broadband Empowerment Act of 2008)).

to compete over and above the CTIA Consumer Code's benchmarks by reaching out to consumers to solicit their feedback and further refine the way in which providers communicate with consumers.[39] As commenters noted, "the very competitive forces that have made the market both robust and complex continue to compel providers to adopt more transparent approaches."[40]

Even the Commission has acknowledged the consumer benefits realized through the adoption and implementation of the CTIA Consumer Code.[41] In 2004, the Commission included compliance with the CTIA Consumer Code as a means for a wireless carrier to demonstrate its qualifications to be designated as an eligible telecommunications carrier.[42] Moreover, the NOI itself notes that the "[c]arriers that sign the Code are allowed to display a 'Seal of Wireless Quality/Consumer Information' if they certify each year that they are in compliance with the Code,"[43] thereby "signaling to consumers and investors that they take seriously their responsibilities to protect

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[39] For example, the CTIA Consumer Code requires that wireless providers give new customers a 14-day trial period within which they may cancel service without incurring an early termination fee. Verizon Wireless goes beyond this 14-day industry standard and "offers a Worry Free Guarantee that allows customers to cancel service for any reason within the first 30 days and not incur an early termination fee." Comments of Verizon & Verizon Wireless at 31. Likewise, AT&T offers a 30-day trial period within which new customers may cancel service without an early termination fee. *See* Comments of AT&T Inc. at 18 ("Since 2004 AT&T has offered customers a 30-day service trial period, with no early termination fee if the customer chooses to cancel within that trial period.").

[40] Comments of AT&T Inc. 41-42 (citations omitted).

[41] Notably, "carriers serving more than 94 percent of all wireless customers have implemented the Code." Comments of Rural Cellular Association at 8.

[42] *See Federal-State Joint Board On Universal Service Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, 19 FCC Rcd 1563, 1576-77 (¶ 30) (2004). *See also Notice of Proposed Rulemaking, High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, 23 FCC Rcd 1495, 1508 ¶ 33 (Jan. 29, 2008) ("A commitment to comply with CTIA's Consumer Code for Wireless Service currently satisfies [the commitment to consumer protection] requirement for a wireless ETC applicant seeking designation before the Commission.").

[43] NOI, ¶ 11.

consumers."[44]

By contrast, inflexible and prescriptive regulation[45] would inhibit providers' ability to respond to consumer demand, locking them into particular mandatory practices that may not work for consumers themselves. An inflexible and prescriptive regulatory scheme is also likely to limit providers' abilities to make the best possible use of new and developing technological tools, such as those referenced in the NOI,[46] and would likely chill information enhancing innovations like the estimates of first bills provided by Verizon, Verizon Wireless, and other communications providers.[47]

Furthermore, prescriptive regulation would raise serious legal concerns if they restrict the advertising of communications providers or mandate particular advertising[48]

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[44] Comments of AT&T Inc. at 13. Comments of SouthernLINC Wireless at 3 ("The CTIA Consumer Code provides the public with a clear guidepost regarding what consumers can and should expect from their wireless service provider, and adherence with the Code effectively serves as a publicly-accessible 'seal of approval' for consumers.").

[45] *E.g.*, Initial Comments of the National Association of State Utility Consumer Advocates at 33 (suggesting that the Commission consider "adopting something similar to the 'Schumer box' that now accompanies a credit card contract and clearly sets forth, in an outlined section and in bold face type, such material terms of the credit agreement such as the applicable APR, the billing cycle, late fees, etc., so that consumers can easily compare one card to another without having to shift through tomes of legalese and terms of service").

[46] *See* NOI, ¶¶ 48-49.

[47] *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."). In addition to the problems highlighted above relating to prescriptive regulation, a highly standardized disclosure requirement like the "Schumer box" is completely impractical for the communications industry, where there is great variation among products and services. *See* Comments of Verizon & Verizon Wireless at 65 ("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. 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.").

[48] *See* Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge at 7 ("We urge the

because the Commission has no general regulatory authority over the advertising of communications providers.[49] Congress did not confer upon the Commission any express authority to regulate advertising generally. Nor did Congress impliedly bestow upon the Commission wide-ranging authority over advertising in Section 201(b).[50]

In addition, as several commenters observed, regulation of providers' marketing and billing statements would raise significant First Amendment issues.[51] For example, proposals to mandate certain disclosures[52] would constitute compelled speech.[53] And NASUCA's "Schumer box" proposal[54] would not only compel speech but also regulate the format in which providers communicate with their customers.[55] Because the federal courts have found that a communications provider has a First Amendment right in the statements it makes to consumers,[56] any attempt to restrict, dictate, or otherwise regulate the billing or marketing statements made to consumers by communications providers will

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Commission to adopt protective and enforceable advertising and point-of-sale disclosure standards.").

[49] Comments of Verizon & Verizon Wireless at 51.

[50] *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001) ("Congress . . . does not, one might say, hide elephants in mouseholes.").

[51] *See, e.g.*, Comments of Verizon & Verizon Wireless at 49 ("[P]rescriptive or burdensome regulations . . . would raise significant issues under the First Amendment."); *see also* Comments of CTIA—The Wireless Association at 54-56; Comments of MetroPCS Communications Inc. at 9-11; Comments of Qwest Communications International Inc. at 39-50.

[52] *See, e.g.*, Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge at 7 (suggesting mandated disclosures).

[53] *See United States v. United Foods, Inc.*, 533 U.S. 405 (2001).

[54] *See* Initial Comments of the National Association of State Utility Consumer Advocates at 33.

[55] *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).

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

face First Amendment scrutiny. The Commission will thus bear the burden of justifying any new speech regulation it may impose in the billing or marketing contexts.[57] Given the failure of commenters such as NASUCA and the CFA to supply a factual basis to justify prescriptive regulation,[58] it will be difficult for the Commission to meet this burden.

In particular, the CFA proposes that the Commission preclude service providers from advertising "base rates" to the extent the rates do not include all "mandatory line-item charges, one-time fees, and recurring fees."[59] To justify such compelled-speech regulation, the Commission would have to demonstrate a reasonable fit with its stated interest in empowering consumers.[60] But rigid mandates on provider speech would be unlikely to advance that interest, given the lack of a factual record demonstrating a need for such regulation[61] and the fact that providers and consumers, working together, are best positioned to determine the optimal level of information that consumers need.[62] Indeed, CFA's suggestion to include one-time fees in all base rate advertising seems

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[57] *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.").

[58] *See supra* p.11; Comments of Verizon & Verizon Wireless at 6-9; Comments of AT&T Inc. at 30-31; Comments of Sprint Nextel Corp. at 2-6.

[59] Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge at 23.

[60] *See* Comments of Verizon & Verizon Wireless at 59 (citing *United States v. United Foods, Inc.*, 533 U.S. 405, 410-15 (2001); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985)).

[61] *See supra* p.11; Comments of Verizon & Verizon Wireless at 6-9; Comments of AT&T Inc. at 30-31; Comments of Sprint Nextel Corp. at 2-6.

[62] To the extent that the CFA's proposed regulation were intended to require the disclosure of taxes, it would be even less likely to survive First Amendment scrutiny because such a requirement would impinge upon core protected speech. *See Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 571-72 (1968) (concluding that speech addressing a proposed tax increase was "matter of legitimate public concern").

more likely to confuse customers who are interested in what their recurring charges would be.

IV. CONCLUSION

For the reasons set out herein and in the opening comments of Verizon and Verizon Wireless, 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 provider flexibility.

Respectfully submitted,

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