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
	)	

To: The Commission

REPLY COMMENTS

DISH Network L.L.C. ("DISH") hereby replies to comments filed in response to the Commission's *Notice of Inquiry* ("*NOI*") in the above-captioned proceeding.[1] As DISH demonstrated in its comments, the Commission should not impose billing and consumer disclosure regulations on Direct Broadcast Satellite ("DBS") providers absent concrete evidence of a market failure and substantial evidence of public harm.[2] The record is devoid of such evidence with respect to the DBS industry. Thus, billing and consumer disclosure regulations should not be imposed on DBS providers.

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[1] *Consumer Information and Disclosure*, CG Docket No. 09-158, *Notice of Inquiry*, FCC 09-68 (rel. Aug. 28, 2009) ("*NOI*").

[2] *See* Comments of DISH Network L.L.C. at 1-4 (noting that such an approach is consistent with the Communications Act of 1934 (the "Act"), 47 U.S.C. §§ 151 *et seq.,* and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"))("DISH Comments"). Other commenters also claimed that regulation was unnecessary given the competitive nature of the markets the Commission proposes to regulate. *See, e.g.*, Comments of AT&T Inc. at 1-3, 5-11; Comments of CTIA – The Wireless Association® at 1-2, 10-19; Comments of Independent Telephone and Telecommunications Association at 1-2; Comments of Sprint Nextel Corporation at 2, 8-10 ("Sprint Nextel Comments"); Comments of Verizon and Verizon Wireless at 1, 6, 14-16 ("Verizon Comments").

Sixty-eight comments were filed in response to the *NOI* and only a small number mentioned a need to impose regulations specifically on DBS (or satellite) providers.[3] None of those comments (or any focusing on subscription video services generally), however, demonstrated that regulation of DBS billing and consumer disclosure practices is necessary due to a market failure. Instead, those advocating for regulation argued that it was necessary (i) without providing any justification,[4] (ii) in order to create parity with other services subject to regulation,[5] or (iii) in light of consumer complaints.[6] As discussed below, these rationales do not support the imposition of billing and consumer disclosure regulations on the DBS industry.

Congress enacted the 1992 Cable Act due to the lack of competitive market forces in the provision of cable service and, in doing so, expressly stated that its policy is to "rely on the marketplace, to the maximum extent feasible."[7] This policy mandates some evidence of market failure before the Commission imposes regulations on the DBS industry. Thus, comments urging the Commission to adopt regulations, but which fail to justify the need for regulation, are insufficient to overcome the congressional preference to rely on market forces rather than regulation.

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[3] Comments of Consumer Federation of America, *et al.* at 32-33 (filed under "Free Press *et al.*") ("Joint Consumer Group Comments"); Comments of the Massachusetts Department of Telecommunications and Cable at 11 ("MDTC Comments"); Comments of the Attorneys General of American Samoa, *et al.* at 3-4 (filed by "Andrew Shull, Oregon Dept. of Justice")("Joint AG Comments"); Comments of David W. Austin at 1 ("David Austin Comments").

[4] *See* Joint Consumer Group Comments at 32-33; Comments of Montgomery County, Maryland, Office of Consumer Protection at 2; Joint AG Comments at 3-4.

[5] *See* Comments of MetroPCS Communications, Inc. at 11; MDTC Comments at 11 n.42; Comments of the National Association of State Utility Consumer Advocates at 22-24 ("NASUCA Comments"); Comments of Qwest Communications International Inc. at 29.

[6] *See* MDTC Comments at 10; NASUCA Comments at 5; Telogical Solutions Comments at 1-6.

[7] 1992 Cable Act, § 2(b)(2). *See* H. Conf. Rep. 102-862, at 51, *reprinted in* 1992 U.S.C.C.A.N. 1231, 1233; 47 U.S.C. § 160.

Comments requesting the extension of billing and consumer disclosure regulations to the DBS industry for the sake of parity fail for the same reason. There is absolutely no evidence before the Commission suggesting the kind of "abominable" customer service record in the DBS industry that has existed in the cable industry.[8] The DBS industry is fundamentally different than the cable industry in that it has been a competitive national service from the outset, rather than a traditionally local monopoly.

A few commenters claim regulation is necessary to protect consumers but they fail to provide sufficient evidence to support their claims.[9] No commenter provided data regarding complaints filed against DBS providers. At most, commenters attempted to justify regulation for subscription video services as a whole by referring to the combined total of complaints filed against cable and satellite providers. For example, NASUCA claims that regulation is necessary because of the high number of complaints filed regarding the practices of cable and satellite providers, but provides no specific data regarding complaints against DBS providers.[10] Similarly, the MDTC urges the Commission to impose billing and disclosure obligations on all subscription video services, yet only cites complaints filed against cable providers.[11] These complaints do not justify regulation of the DBS industry.

Moreover, even if data regarding consumer complaints against DBS providers had been supplied, the data would have to show that complaints involving billing and consumer disclosure

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[8] S. Rep. 102-92, at 3 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1135. *See* H. Conf. Rep. 102-862, at 49-51, 53 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1231-33, 1235.

[9] *See* MDTC Comments at 7-11; NASUCA Comments at 5; Telogical Solutions Comments at 1-6.

[10] NASUCA Comments at 5 (citing the aggregate number complaints filed against cable and satellite providers, but supplying no data regarding how many of these complaints involved DBS providers).

[11] *See* MDTC Comments at 10-11 (generally citing complaints for cable service, but offering no data on complaints involving DBS).

issues were increasing for DBS providers at a rate significantly greater than the rate at which the DBS industry is adding new subscribers.[12] Without concrete complaint data demonstrating that consumers are experiencing problems with the billing and consumer disclosure practices of the DBS industry, regulatory intervention is unwarranted and the Commission should continue to rely on market forces to ensure consumers receive the information they desire in a clear and concise format.

As further evidence that new consumer disclosure regulations are not necessary for the DBS industry, DISH notes that, although 28 individuals filed comments, only one suggested that such regulations be extended to satellite television providers.[13] If there was widespread consumer concern over the billing and disclosure practices of the DBS industry, the record would contain numerous comments from individuals urging Commission action.

Finally, DISH demonstrated in its Comments that the Commission lacked jurisdiction to impose billing and consumer disclosure requirements on the DBS industry.[14] However, the Joint Consumer Groups claim that the FCC has jurisdiction under Section 335 of the Communications Act.[15] The Joint Consumer Groups misconstrue the statute. Section 335 only gives the Commission authority to adopt public interest regulations "for providing video programming."[16] Indeed, Congress adopted this Section only to give the Commission jurisdiction over the

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[12] *See* Sprint Nextel Comments at 3-6 (highlighting the difficulties in extrapolating conclusions from the raw total number of complaints by a small fraction of customers over several years); Verizon Comments at 6-8 (arguing that the wireless subscriber complaint data cited in the *NOI* is not meaningful in part because the changes are so small as to be statistically insignificant).

[13] *See* David Austin Comments at 1.

[14] DISH Comments at 7-11.

[15] Joint Consumer Group Comments at 33 (citing 47 U.S.C. § 335).

[16] 47 U.S.C. § 335(a).

provision of "educational programming" by DBS providers.[17] It did not intend to give the Commission unfettered authority to impose any regulations on the DBS industry that would serve the "public interest."[18] The imposition of regulations governing billing and consumer disclosures is unrelated to the transmission of video (let alone educational) programming and therefore is outside the scope of the authority delegated to the Commission under Section 335.

CONCLUSION

For the reasons set forth above, as well as those set forth in DISH's initial comments, the Commission should refrain from imposing any billing and consumer disclosure regulations on the DBS industry.

Respectfully submitted,

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By: /s/

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October 28, 2009

[17] *See* H. Conf. Rep. 102-862, at 100 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1282 ("The purpose of this section is to define the obligation of direct broadcast satellite service providers to provide a minimum level of educational programming.").
[18] *Cf.* Joint Consumer Group Comments at 33.