

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF STi PREPAID, LLC

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STi Prepaid, LLC (“STi Prepaid”) respectfully makes this submission in response to the request of the Federal Communications Commission (“Commission” or “FCC”) for comments “on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services.”¹ The initial comments in this docket reflect that there is strong support for ameliorating the “sources of uncertainty and confusion” in the telecommunications industry through comprehensive truth-in-billing rulemaking.² In accordance with these comments, the Commission should take expeditious steps to enact STi Prepaid’s proposed set of baseline standards governing prepaid calling.

I. FILED COMMENTS DEMONSTRATE STRONG SUPPORT FOR CLEAR DISCLOSURE RULES AND RIGOROUS FCC REGULATORY ENFORCEMENT

In its initial comments, STi Prepaid proposed five basic disclosure standards for prepaid carrier advertising. These standards, commensurate with the Commission’s recognized statutory authority to regulate telecommunications carrier practices,³ fulfill the outstanding need of consumers for accurate, comprehensive, and usable information concerning prepaid calling services:

¹ FCC 09-68, *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, Notice of Inquiry, ¶ 1 (rel. Aug. 28, 2009) (“NOI”).

² *Id.*

³ See FCC 09-68, *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, Initial Comments of STi Prepaid, LLC, at 8-17 (filed Oct. 13, 2009) (“STi Prepaid Initial Comments”). As STi Prepaid demonstrated, the Commission possesses extensive authority to regulate unjust and unreasonable acts and practices of carriers under 47 U.S.C. § 201(b); regulate

- All limitations on advertised minutes or rates should be disclosed in direct proximity to the advertised minutes or rates themselves. These limitations should be rendered in a font size no less than 50% of that used for the advertised minutes or rates.
- The name of the Section 214 licensed carrier providing the service should be clearly indicated on the face of the advertisement, along with a customer service number rendered in a legible font.
- Any expiration date attributed to the advertisement should be rendered in a font size no less than 30% of that used for the advertisement itself.
- All rates advertised should be valid for at least 30 days.
- The rate per minute applied to the first and subsequent calls during the advertised period should be clearly disclosed.⁴

While no comments other than those of STi Prepaid focused specifically on prepaid calling services, numerous parties stressed the need for enhanced disclosure that will limit the potential for consumer confusion and ensure that consumers are provided with adequate information to make informed purchasing decisions. It is upon these principles that STi Prepaid’s proposed standards rest, and it is from these principles that the Commission’s 21st-century truth-in-billing rulemaking should proceed.

As STi Prepaid explained in its Initial Comments, prospective prepaid calling service customers are confronted with a torrent of promotional materials at the point of sale. Unlike traditional wireline and wireless services - forms of telecommunication that often present terms and conditions on

prepaid calling services according to the underlying telecommunications services they provide, per 47 C.F.R. § 153(43) and (46), and thus under the carrier registration provisions of 47 U.S.C. § 214(a) as well; and apply its level playing field mandate, interstate commerce, and Title I ancillary powers to ensure that all similarly situated carriers are treated equally under state market entry requirements and regulations. *See also, e.g.,* FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Consumer Federation Of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge, at 31-35 (filed Oct. 13, 2009) (“Consumer Federation Comments”) (describing Commission’s Section 201(b) and Title I authority to make “rules to ensure that carriers and other entities provide consumers with the information necessary to make informed decisions when purchasing and using the wireless, wireline, video, and broadband Internet access services of their choice.”); FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of MetroPCS Communications, Inc., at 18 ((filed Oct. 13, 2009) “MetroPCS Comments”) (citing *NOI* ¶ 56 and *NCTA v. Brand X*, 525 U.S. 967, 996 (2005) for proposition for court recognition of “Commission’s ancillary jurisdiction under Title I to impose certain regulatory obligations on broadband Internet access service providers.”); FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Dish Network, L.L.C., at 7 (filed Oct. 13, 2009) (explaining general scope and applicability of Commission’s Title I authority).

⁴ STi Prepaid Initial Comments at 17.

an upfront basis, and levy charges through easily comparable monthly statements - prepaid calling is largely an ad hoc, trial-and-error experience. Qwest is correct - service providers do “aggressively vie for consumers, touting facts about their own service offerings and often going to great lengths to ensure that consumers are aware of how their services are superior to competing options.”⁵ The unfortunate reality is that “there continues to be a disconnect between advertised prices and clear, conspicuous disclosures of all costs and fees,”⁶ belying the notion that consumers possess “ample information to make educated choices and to navigate the selection of products among a wide range of service providers.”⁷ In a market where the cost-per-minute rate for long-distance service may be up to 87 percent higher than expected,⁸ “[c]arriers should inform consumers of all charges, including fees and surcharges, associated with a particular service, so that consumers will have a reasonable expectation of what they will pay”⁹

“In the current [telecommunications] market,” observed the Consumer Federation Of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge, “consumers are forced to choose and manage providers and services with minimal information. These problems begin with the initial research into service prices and features, as

⁵ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Qwest Communications International, Inc., at iii (filed Oct. 13, 2009) (“Qwest Comments”).

⁶ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Attorneys General 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, at 6 (filed Oct. 13, 2009) (“Attorneys General Comments”).

⁷ Qwest Comments at iv; *contra* Consumer Federation Comments at 8 (“Service advertisements, whether in marketing materials or in the ordering process, do not give consumers a good indication of the true cost of service. Service providers deliberately obscure the true monthly cost of services through numerous strategies, including fees and surcharges, mandatory bundles, and promotional periods. By obscuring true cost, consumers cannot make meaningful comparisons when shopping for service, and instead will make decisions on the basis of misleading promotional prices.”).

⁸ STi Prepaid Initial Comments at 6, n. 24 (citing Denise Horton, *Prepaid Phone Cards: Caller Beware*, University of Georgia Research Magazine (Fall 2005), available at <http://researchmagazine.uga.edu/fall2005/printphonecards.htm>).

⁹ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of California Public Utilities Commission and the People of the State of California, at 5 (filed Oct. 14, 2009).

advertisements and point-of-sale information often fail to disclose hidden fees and limitations to the service. They continue with service usage and management, as information of importance to consumers is buried in the fine print and short on detail, particularly through the use of vague and overbroad terms of service.”¹⁰ As the Organization for the Promotion and Advancement of Small Telecommunications Companies noted, “[t]he Commission should consider that a consumer’s choice of service provider, and the services they subscribe to, are based in large part on information provided by customer service representatives, advertising, and other sources unrelated to the end-user bill.”¹¹ AT&T, like many other commenters, has called for providers to “include clear and non-misleading information in marketing and advertising campaigns and sales promotions” and “disclose the information necessary for consumers to make inquiries or complaints”¹² Accordingly, the Commission should meet the unfilled “need for meaningful rules that protect consumers with regard to billed charges, billing statements and descriptions, point-of-sale and post-sale disclosures of terms and conditions of service,” through “action . . . expanded to other sectors of the communications industry that have long operated largely free from any constraints on their business practices.”¹³

The disclosure standards proposed by STi Prepaid represent the most effective and least intrusive form of this action – “[b]y mandating the clear and consistent disclosure of service pricing, the

¹⁰ Consumer Federation Comments at 7.

¹¹ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, at 4 (filed Oct. 13, 2009) (“OPASTCO Comments”).

¹² FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of AT&T, Inc., at 37 (filed Oct. 13, 2009).

¹³ FCC 09-68, *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, Initial Comments of the National Association of State Utility Consumer Advocates in Response to Notice of Inquiry, at 15 (filed Oct. 13, 2009) (“NASUCA Comments”); *see also id.* at 29-30 (“[t]he Commission should extend the ‘net impression’ analysis articulated in the *Joint Advertising Policy* in adopting rules extending to any communications provider’s billing practices and any marketing or other disclosures directed at consumers and designed to induce them to subscribe to the provider’s service, to remain subscribed to that service, or make material changes to that service that have a material, adverse effect on the consumer”).

Commission can place providers and consumers on the same page”¹⁴ As STi Prepaid illustrated in its Initial Comments, users of prepaid calling services are dissatisfied with providers that utilize confusing advertising tactics.¹⁵ In providing the basic limitations and conditions on advertised rates in a readable form on an upfront basis, STi Prepaid’s proposed standards “respond narrowly to an existing, significant problem, as demonstrated by valid consumer complaints and specific evidence of communications providers’ practices”¹⁶

II. COMMENTERS’ OBJECTIONS TO ENHANCED DISCLOSURE STANDARDS ARE INAPPLICABLE TO THE PREPAID CALLING SERVICE INDUSTRY

While many respondents to the *NOI* have called upon the Commission to update and enhance extant truth-in-billing rules, several comments allege that the competitive telecommunications market has matured to a point where comprehensive disclosure regulations are largely superfluous.

Emphasizing the putative efficacy of industry self-regulation, SouthernLINC Wireless claimed that “[d]issatisfied customers can, and do, ‘vote with their feet’ and will freely leave a carrier that does not provide them with the services, value, and experience that they expect and demand.”¹⁷ USTelecom cited the Federal Trade Commission for the proposition that “[i]n the highly competitive communications marketplace, service providers have an economic incentive to provide information to consumers and to offer favorable terms of service.”¹⁸ “In a competitive market,” postulated the

¹⁴ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the City of Chicago’s Department of Business Affairs and Consumer Protection, at 4 (filed Oct. 16, 2009).

¹⁵ See STi Prepaid Initial Comments at 5-8.

¹⁶ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Independent Telephone & Telecommunications Alliance, at 1 (filed Oct. 13, 2009) (“ITTA Comments”); see also Qwest Comments at 12 (“The better policy, even in situations of imperfect consumer information, is to mandate information disclosures only when there is evidence of significant consumer harm.”).

¹⁷ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of SouthernLINC Wireless, at 2 (filed Oct. 13, 2009).

¹⁸ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the United States Telecom Association, at 12 (filed Oct. 13, 2009) (“USTelecom Comments”) (citing Comments of the Federal Trade Commission, *In the Matter of A National Broadband Plan for Our Future*, at 3 (“Competition pressures producers to offer consumers the most attractive

Independent Telephone & Telecommunications Alliance, “providers would be ill-advised to alienate customers with obscure or misleading practices. . . . carriers will be moved by the market to provide the information consumers want most.”¹⁹

STi Prepaid disagrees with this analysis. While it may be that oligopolistic “carriers have powerful incentives to ensure that increasingly well-informed consumers have access to accurate, timely and helpful information,”²⁰ there exists a strong “competitive advantage to non-participation” in industry best practices in the fractured prepaid calling market.²¹ In contrast to established providers like STi Prepaid, some providers can tailor their business model for quick profitability by maximizing customer confusion. These providers post eye-catching rates in convenience stores and bodegas without reference to hidden fees and surcharges - by the time consumers object, the provider has left the market, never bothering to arrange for customer support or even share the identity of the underlying resold long-distance carrier. Such practices harm all industry participants, “not only creat[ing] artificial distortions in the marketplace, but also confus[ing] and frustrat[ing] consumers who are unlikely to understand or appreciate nuanced differences among their current or potential providers.”²² As “the free flow of information to potential customers is the bedrock for . . . competition,” it is incumbent upon the Commission to adopt STi Prepaid’s proposed baseline standards

array of choices with respect to price, quality, and other options. Competitive firms are constantly searching for superior profit opportunities as they seek to win the favor of customers, who effectively vote for preferred products and services with their dollars.’)).

¹⁹ ITTA Comments at 7.

²⁰ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Sprint Nextel Corporation, at 10 (filed Oct. 13, 2009).

²¹ NASUCA Comments at 34.

²² *Id.* at 24.

for disclosure.²³ Only then will “a flexible model which relies on competition as supplemented by industry ‘best practices’ and existing law” operate to the advantage of all prepaid calling participants.²⁴

Even if seamless transition from supplier to supplier is the rule in the subscription-based wireless or wireline industries, it does not easily translate to the prepaid calling market. As STi Prepaid explained in its initial comments, prepaid carriers often serve as the providers of last resort for rural, low-income and immigrant individuals.²⁵ Ideal economic equilibrium is quickly destabilized by a paucity of disposable dollars - as The Hispanic Institute noted of recent Mexican immigrants, 62% of whom earned less than twice the poverty level, “international calls using 10-10 dial-around services cost 22% more [than comparable prepaid calling services], those using traditional long-distance plans cost 58% more, and those using wireless services cost 176% more -- or almost three times as much.”²⁶ The notion that prepaid calling service users, unhappy with overall market trends, will simply transition *en masse* to a comparable long-distance solution ignores their motivations for selecting prepaid service in the first place.

In addition, transitioning *between* prepaid providers according to “service, value, and quality” is stymied by the very shortcomings in disclosure that STi Prepaid urges the Commission to address in this proceeding. While “personalization or customization” may be an attractive feature in industries with a baseline level of disclosure,²⁷ and “information overload”²⁸ a concern in markets with a substantial “richness of information,”²⁹ providers must be “required to supply fundamental information

²³ Consumer Federation Comments at 36.

²⁴ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Verizon and Verizon Wireless, at 53 (filed Oct. 13, 2009) (“Verizon Comments”).

²⁵ See STi Prepaid Initial Comments at 2-3.

²⁶ The Hispanic Institute, Facts & Figures, <http://thehispanicinstitute.net/research/callingcard/scamfacts>.

²⁷ Qwest Comments at iv; see, e.g., *id.* at 3 (“Because the communications market has become so competitive, each provider has its own suite of offerings, often easily tailored or customized. It is precisely this aspect of personalization or customization -- the antithesis of standardization -- that so many customers find appealing.”).

²⁸ *Id.* at 22.

²⁹ USTelecom Comments at 1.

needed by customers to make informed decisions”³⁰ for the prepaid calling market to operate in a rational, equitable fashion. STi Prepaid agrees with MetroPCS that while competition is generally a powerful force for ensuring equitable service in the telecommunications market, it “can only be expected to act as an effective governor of carrier conduct if the competition is fair and being played out on a level playing field.”³¹ To the extent that “[e]ach potential customer has his or her own information (and product) needs,” an accurate and comprehensible presentation of advertised rates and their limitations “is critical to establishing a meaningful and fulfilling supplier-customer relationship.”³²

Several parties echoed the Commission in insisting on the promulgation of “disclosure policies that have a high ratio of consumer benefit to industry cost.”³³ This calculation weighs heavily in favor of STi Prepaid’s proposed disclosure standards. In contrast to the “‘perestroika-like’ revolution in terms of the free flow of information between consumers and carriers” heralded in Sprint’s assessment of the wireless market, the confusion and uncertainty of the prepaid calling market has grown exponentially with each iteration of prepaid product development.³⁴ Moreover, as USTelecom observed, low-income and rural individuals - the sorts of consumers who are often most dependent on prepaid calling solutions - are “the very groups that we should be most concerned are aware of information about communications services” and the very “groups who may be less able than others to access and understand disclosures or independently search out information.”³⁵ As weighed against the

³⁰ Consumer Federation Comments at 5.

³¹ MetroPCS Comments at 11.

³² Qwest Comments at 3.

³³ *NOI* ¶ 5; see, e.g., FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Wireless Communications Association International, Inc., at 2 (filed Oct. 13, 2009); OPASTCO Comments at 5.

³⁴ Sprint Comments at 9.

³⁵ USTelecom Comments at 12. This reliance of particular groups on information presented at the point of sale detracts from the force of Qwest’s insistence that “[t]o the extent advocacy groups claim there is insufficient (or insufficiently clear) information available to consumers, they have an obligation to supply some of it themselves and to become more active in their outreach and education efforts.” Qwest Comments at 4.

low cost of reformatting disposable advertising media to existing and potential carriers (some of which can enter the prepaid calling market for as little as \$20,000),³⁶ the “benefits of general requirements for clear and conspicuous disclosures, both in advertising and at the point-of-sale . . . [and] material terms, conditions, costs, and fees”³⁷ retain their supremacy.

The efficacy of Section 201(b) of the Communications Act of 1934, as amended (the “Act”) has also been called into question as the means by which the Commission may update its truth-in-billing rules. As a general principle, STi Prepaid agrees with MetroPCS that the Commission has repeatedly demonstrated the federal government’s “substantial interest in ensuring that consumers are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace.”³⁸ Accordingly, STi Prepaid disputes Verizon’s assertion that Congress could not “have intended to give the Commission such broad authority [to regulate advertising generally] through Section 201(b),”³⁹ and disagrees with Qwest’s belief that measures other than “targeted enforcement actions” under Section 201(b) will “impose excessive costs and fail to provide necessary flexibility among carriers.”⁴⁰ As demonstrated in STi Prepaid’s Initial Comments, the Commission has consistently and definitively asserted its authority to take action against “unfair and deceptive marketing practices by common carriers” as “unjust and unreasonable practices” in connection with communications service” through both broad mandates and targeted enforcement actions.⁴¹

³⁶ See STi Prepaid Initial Comments at 10, n. 32.

³⁷ Attorneys General Comments at 8.

³⁸ MetroPCS Comments at 9 (citing *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, ¶ 61; *NOI* ¶ 21).

³⁹ Verizon Comments at 51.

⁴⁰ Qwest Comments at 34.

⁴¹ *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, 15 FCC Rcd 8654, ¶ 3 (2000); see STi Prepaid Initial Comments at 10-15.

CONCLUSION

Stating that “[t]here always will be ‘opportunities’ for the Commission to adopt additional regulatory requirements pertaining to information disclosure,” MetroPCS emphasized the importance of restricting regulatory policies to instances in which “market forces have broken down to the point where such policies are *necessary*.”⁴² It is STi Prepaid’s contention that the continued potential for customer confusion in the prepaid calling services market have made more rigorous enforcement of existing rules and adoption of additional disclosure regulations necessary. Mindful of the fact that “a lack of information leads to abuses in the marketplace that diminish competition, waste consumers’ time and money, and generally thwart a functioning market” the Commission should expeditiously adopt STi Prepaid’s proposed standards for prepaid calling advertising and disclosure.⁴³

Respectfully submitted,

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⁴² MetroPCS Comments at 4 (emphasis in original).

⁴³ *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Utility Consumers’ Action Network, at 13 (filed Oct. 13, 2009).