

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 QWEST
COMMUNICATIONS INTERNATIONAL INC.**

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SUMMARY

The comments filed in response to the *NOI* make abundantly clear that information about communications providers and services is broadly available; and that the volume of information is extensive. A wide range of communications service providers -- landline, wireless, broadband, cable and satellite -- recite the detailed information they make available at all phases of the purchasing process from preliminary investigation to customer care activities post-purchase. And commentors cite to a significant number of third-party information sources, as well.

Not only is there substantial amounts of information available but the media used to communicate that information is increasingly varied, accommodating a variety of consumer segments. Communications tools ranging from old-school communications mechanisms -- such as discussions with customer service representatives over the telephone, print and telephony/cable advertising, and promotional brochures -- to new online communication vehicles such as email, click-to-chat or click-to-email, social networking sites, chat rooms, blogs and twitters are being employed.

In the current competitive communications marketplace where choices of providers and services abound, Qwest re-iterates our opening remarks that a government-fashioned and mandated information disclosure mechanism is unnecessary. Such a mechanism is likely to be too simplistic to be helpful or too difficult for most consumers to use. It would likely contribute to information overload and other heuristic consumer coping mechanisms and fail to achieve its basic objective of providing meaningful information in a meaningful way. This is particularly true with respect to a Schumer-type box approach, as advocated by some commentors. Simply

stated, there are far more variables -- with far more elements “of interest” to particular consumers -- than is involved in quoting calorie information or an APR rate.

As argued in our opening comments, and supported by other responding parties, before the Commission promulgates any proposed rules regarding communications-information disclosures, it should convene a broadly-based Task Force or Working Group with representatives from across industry, consumer advocates and regulators. This broad range of participants would assure a diverse range of contributions to the collaborative exercise.

The Task Group could assess whether there are gaps in existing information disclosures, whether those gaps are associated with specific customer segments, and discuss and debate the best way to fill those gaps. Ideally (from Qwest’s perspective), such a Group would recommend a self-regulatory approach to information disclosures. Among the self-regulatory tools the Group might investigate are best-practices guidelines or codes of conduct or consumer-guarantee principles. There are a number of forms that might be suitable.

To be sure, the process of vetting self-regulatory proposals, and agreeing on any final language, will take some time. But while such a process might delay an immediate release of a *Notice of Proposed Rulemaking*, it would be time well taken.

Whatever the ultimate self-regulatory mechanism that might be determined, it could then be coupled with more aggressive consumer education and outreach by the Commission, other regulators, and consumer advocacy groups.

In these comments, Qwest also takes issue with the need for any further government intervention in the area of third-party billing. Contrary to the claims of some, the number of complaints in this area does not shock the conscience or raise to the level where broad-based industry prohibitions are warranted. In Qwest’s case, we believe we have a solid process in

place that provides satisfaction to our customers who seek it while still providing a billing vehicle for businesses that otherwise would find it difficult to bill individuals in a cost-effective manner. We see no reason for additional regulation in this area, including a mandated “bill block” option.

Finally, we address proposals by a variety of parties for government-mandated speech in our bills or other communication mechanisms. While the suggestions may seem uncontroversial or easy enough to accommodate (involving oftentimes proposals for the inclusion of regulatory-contact information), the Commission should not consider them without acknowledging that *any* speech mandate of the types proposed by the commentors raise First Amendment issues. In making this claim, Qwest does not wish to trivialize the First Amendment issues raised in the *NOI* or by the commenting parties, particularly when many would consider the proposals to involve a *de minimis* information mandate. Nevertheless, the principle at stake is a larger one and the Commission should address it in that context.

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**REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.**

**I. INFORMATION ABOUT COMMUNICATIONS PROVIDERS
AND SERVICES ABOUND.**

A. Substantial Provider/First-Party Information Is Available.

The responses to the *Notice of Inquiry (NOI)*¹ demonstrate that information about communications providers and services is broadly available; and that the volume of information is extensive. A wide range of communications service providers -- landline, wireless, broadband, cable and satellite -- recite the detailed information they make available at all phases of the purchasing process from preliminary investigation to customer care activities post-purchase.

Not only are service providers communicating significant amounts of information, but the media used to communicate the information is increasingly varied, accommodating a number of consumer segments. The communications tools being used range from old-school communications mechanisms -- such as discussions with customer service representatives over the telephone, print and telephony/cable advertising, and promotional brochures -- to new online

¹ *In the Matter of Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 09-170, and WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380 (2009).

communication vehicles such as email, click-to-chat or click-to-email, social networking sites, chat rooms, blogs and twitters. Any or all of these communications tools, alone or in conjunction with each other, could be used to address consumers questions, to work with them on determining the right communications plan, to address customer service or billing questions, and to continuously test and assess the levels of customer satisfaction.

The *NOI* responses make clear that ever-increasing competitive market forces drive these extensive communication efforts, and the associated personalization of services, to meet consumers' needs.² Service providers that fail to communicate well and with desired content will be punished in the marketplace. In such a rich communicating marketplace, there is no need for government intervention.

B. Comparative Provider and Product Information Is Also Plentiful.

In addition to the significant amount of information communications service providers make available to consumers (*i.e.*, current and potential customers), comparative tools are plentiful. As Comcast observes, “consumers . . . have access to resources from third parties that provide tools allowing consumers to compare services and pricing. . . . The websites typically include pricing information for individual services and service bundles, as well as educational information regarding factors that customers should consider when shopping for video, data, and voice services.”³ Some providers themselves make available comparative materials.⁴ And at least one

² See, e.g., AT&T at 1-3, 5, 8-9, 10-11, 41-42; CTIA at 1-4, 26, 54; Comcast at 2-3, 5, 7; ITTA at 2-5; NCTA at 4, 6, 11, 13-14; Sprint at 1-2, 9; USTelecom at 2.

³ Comcast at 23 and n. 33. See also AT&T at 25-27, 28-29; DISH at 5 (noting that there are a number of third-party information sources regarding multi-channel video programming distributors); Qwest at 6-11; VZ/VZW at 3 and nn. 4-8.

⁴ See, e.g., Direct TV at 4 and n. 9; Time Warner at 7 and n. 4 (some of its divisions publish comparative guides); VZ/VZW at 25 (in order to show how Verizon's Internet services “stack up against the competition, [it] includes current results of third-party studies . . . in its advertisements”).

provider indicates that it will “soon include links to third party expert product reviews to accompany customer ratings and reviews.”⁵ To build on the value of these existing tools, and increase consumer awareness of them, Qwest agrees with Comcast that the “Commission should consider using its consumer information website to point consumers toward these [existing] resources.”⁶

Moreover, and not inconsequential with regard to the disclosure of comparative information about communications providers and their products, is personal, word-of-mouth communications. As well stated by MetroPCS, “consumers are able to receive a wealth of information by discussing comparative offerings with their many friends and colleagues who are served by a variety of carriers.”⁷ It continues:

Given the extremely high percentage of adults who carry wireless devices, virtually every consumer is in touch with a variety of people who can act as sources of information regarding the options that are available, the comparative quality of different carriers and cost. MetroPCS finds that a significant percentage of its new customers learn of its service and service offerings by word of mouth.⁸

While MetroPCS’ remarks reference word-of-mouth recommendations within the wireless industry segment, its general observations is in line with the OECD Report (referencing a survey in the United Kingdom) that word-of-mouth information was considered *the most trusted* and *easiest to understand* of all information sources within the landline consumer segment.⁹

⁵ Sprint at 10.

⁶ Comcast at 23.

⁷ MetroPCS at iii. *And see id.* at 12 (referencing “word of mouth recommendations”).

⁸ *Id.* at 17.

⁹ OECD Report at 41. *Note* that the fixed landline provider websites were considered to be *the most informative* source in that market. *Id. Compare* CTIA at 25 (the third most cited reason for wireless customers to choose a particular provider “was that family/friends subscribe to the service.” (citation omitted)).

There are sufficient information resources available to consumers at this time such that no government intervention is necessary, either to increase the overall amount of information or to format the information in a particular way.

II. THE COMMUNICATIONS MARKETPLACE DOES NOT NEED BOX-TYPE COMPARATIVE TOOLS, BUT IF THEY ARE TO BE CRAFTED IN ANY MEANINGFUL WAY, THE IMAGINATION AND INSIGHT OF PROVIDERS IS REQUIRED. A TASK GROUP COULD FACILITATE THE INITIATIVE.

Despite the broad availability of communications provider and service information, and the number of comparative tools available to parse that information, at least four commentors argue that the Commission should mandate a “Schumer-type” mechanism.¹⁰ In such event, of course, the Commission would have to compel service providers *either* to provide information to the Commission (in order to populate such a mechanism) or require providers to populate such mechanism themselves in an individualized fashion.¹¹

Qwest re-iterates our opening remarks that a Schumer-type box is both unnecessary and too simplistic a comparative information tool to be of any meaningful aid to consumers. It does not lend itself to comparing the current variety of providers, with their multiplicity of services, much of which is provided through service bundles. Simply stated, there are far more variables -

¹⁰ CFA, *et al.* at 25-26; DC PSC at 6 and note 16 and note 18; Illinois Citizens Utility Board (Illinois CUB)) at fourth and fifth pages (unnumbered); NASUCA at 33. NASUCA’s endorsement of this information-disclosure model is odd given that just pages earlier it notes that given the various providers and plans it “makes it difficult – if not impossible – to craft ‘one-size fits all’ disclosure requirements.” *Id.* at 30.

¹¹ Compare the Schumer-type box exhibit to CFA, *et al.*’s filing at Attachment C. See New America Foundation, Open Technology Initiative, Broadband Truth-in-Labeling, filed Sept. 24, 2009 in CG Docket No. 09-158 and GN Docket No. 09-51.

The Attachment is framed in the manner of a single Internet provider populating fields with regard to a single service, *i.e.*, its broadband Internet service, without regard to whether pricing for such service would be less if bundled or what a bundle “Schumer-type” document might look like.

- with far more elements “of interest” to particular consumers -- than is involved in quoting calorie information or an APR rate.¹²

A review of the CFA Attachment is instructive. As a preliminary flaw, the document does not specify its service group¹³ or its intended audience. Nor does it take into consideration the differences among consumers. As Qwest noted in our Opening Comments, one segment of the population (the passives and inactives) are unlikely to even understand some of the categories in the Attachment, such as Minimum Speed at Border Router, Minimum Reliability/Uptime, Maximum Roundtrip Latency (Delay) to Border Router.¹⁴ Yet it would seem that these are the consumer segments in most need of easy-to-access and understand information. On the other hand, the information discussed above might be meaningful to an educated engaged or active consumer.¹⁵ But those are the consumers most likely to know where to go among a variety of sources for such information today. As noted by one commentor, “ironically, adoption of [the CDT’s proposal] “would focus consumer disclosures in a way that would likely keep consumers from receiving information about network performance that would be far more valuable to them

¹² See, e.g., CTIA at 4 (bundled service offerings, multiple providers, and pricing dynamics make it difficult to fit information “squarely into a static comparison chart[.]”), 39-52; Comcast at 29 (“In contrast to products or industries where . . . information, like the ingredients in a box of cereal or the interest rate on a credit card, is static and lends itself to easy comparison, it is not clear that standardized disclosures would benefit consumers in the communications marketplace, where new products, services, and pricing arrangements are being introduced at a rapid pace.”); ITTA at 4-5 (“Food products, fuel and energy efficiency, and rates and fees are measurable by common units: the nutritional value of food can be measured on a per-ounce basis, and fuel and energy efficiency can be measured in distance, thermal units, or watts per unit of fuel. By contrast, although communications could be measured on a per-minute or distance basis, the current communications marketplace trend toward flat rates and bundled services obviates most of the value that might be informed by incremental unit-based values.”); VZ/VZW at 63-65.

¹³ CTIA at 41 (noting that the document does not identify the service being addressed, although a “savvy consumer would realize that” there are references indicating a cable modem standard).

¹⁴ Qwest at 17-18, 21-22 and nn. 35, 47.

¹⁵ See, e.g., *id.* at 21, 25.

[than what would be reported on the form], such as information that reflects the type of network performance they are likely to get much of the time.”¹⁶ Hence, there is no apparent consumer benefit to the kind of reporting mechanism proposed by CDT.

Nor would there be any competitive benefit. Indeed, the use of a Schumer-type communications mechanism could act to depress competition, or at least the rich communications currently found in the marketplace. This has not only constitutional significance (as discussed below), but public welfare ones as well. As pointed out by SouthernLINC Wireless, “the imposition of mandatory information, display, and formatting requirements would likely serve to *discourage* the development of any new service or any new pricing plan that cannot be fit neatly into a mandatory information disclosure “box.”¹⁷ As SouthernLINC correctly concludes, service providers would likely find themselves spending as much -- if not more -- time assessing whether their communications could fit easily within the box as they would whether their new service ideas might respond to consumer needs.¹⁸ CTIA makes a similar point.¹⁹

In Qwest’s opinion, soon after the formulation of any type of Schumer-type communication mechanism, its value to consumers would be negligible. Information would

¹⁶ WCAI at 6-7. *But see* that WCAI expressed no opinion on the applicability of the CDT-proffered form in a wireline context. *Id.* at 4. For similar statements that the presentation of information should be driven to the practical application of the information, *see* Time Warner at 8-9; VZ/VZW at 24, 27.

¹⁷ SouthernLINC Wireless at 8.

¹⁸ *Id.* *And see* Time Warner at 18-19 noting that similar concerns were expressed about the filing of tariffs, *i.e.*, that they hindered competitive responsiveness.

¹⁹ CTIA at 40 (“In fact, the likely result of the imposition of a ‘Schumer Box’ would be a reduction in innovative service offerings and bundles. Carriers will bundle services in ways that may ‘look better’ in the box structure, but will result in little innovation that doesn’t fit within predefined categories, and, as a result, fewer options.”).

have to be changed constantly and those providers without sorting technology of the right sort²⁰ would incur substantial reporting and updating costs. And different sales models would require that qualifying or disclaiming speech would be necessary simply to approximate accurate reporting. In such an environment, this model has no demonstrable benefit. Indeed, as noted in Qwest's opening comments, such an unwanted proliferation of data could likely introduce a variety of factors that would likely render the information delivered ineffectual.²¹

While Qwest remains highly skeptical that a Schumer-type standardized information disclosure mechanism could reasonably (or constitutionally) accommodate the myriad types of communications providers and messages acknowledged in the *NOI*, we are certain that such a format cannot be created without the imagination and ingenuity of providers whose information might be subject to such a format. Accordingly, vetting this issue before any further *Notice of Proposed Rulemaking* is pursued is imperative. A broad-based working group or task force is the place to start.

III. SELF-REGULATION REGARDING INFORMATION DISCLOSURES IS PREFERABLE TO GOVERNMENT COMPULSION.

As noted in our opening comments,²² and as advocated by a variety of commenting parties,²³ prior to the promulgation of any government prescriptions regarding communications-

²⁰ See, e.g., BillShrink.com, *passim*, and at second page unnumbered (founder realized comparative analysis “was best solved with technology [so he] created a number of complex algorithms, designed to cull, organize, and analyze data”); Time Warner at 13 (noting the “fundamental role” that technology plays in comparative assessments).

²¹ See Qwest at 23-25. One of the authors cited in the *NOI* has also warned that “informational remedies may fail[]” because “the provision of information can be expensive[]” and “the provision of information is sometimes ineffectual or even counterproductive[,]” due to information processing limits, error-producing heuristics, information overload, and other factors. Cass R. Sunstein, “Essay: Informing America: Risk, Disclosure, and the First Amendment,” 20 Fla. St. U.L. Rev. 653, 655, 666-69 (1993).

²² Qwest at 51-53.

information disclosures, a Task Force or Working Group should be engaged. The Group should have representatives from across industry, consumer advocates and regulators, assuring a broad range of contributions to the collaborative exercise. As part of its charge, such Group can inventory currently-available information (from both providers and third parties), assess whether there are gaps in existing information disclosures, whether those gaps are associated with specific customer segments, and discuss and debate the best way to fill those gaps. Ideally (from Qwest's perspective), such a Group would recommend a self-regulatory approach to information disclosures (that may or may not incorporate a Schumer-type box), coupled with more aggressive consumer education and outreach by the Commission, other regulators, and consumer advocacy groups.

As Qwest noted in our Opening Comments and as mentioned by a variety of commentors,²⁴ there exist self-regulatory models that can be investigated as starting points for any self-regulatory initiative here (specifically the Carrier Cramming Guidelines and the CTIA's Code of Conduct).²⁵ Other models would need to be reviewed as well. This would include proposals such as that raised by AT&T in its Opening Comments²⁶ and some providers' service

²³ AT&T at 33-34, 36-44; Comcast at 4-5; NCTA at 3, 12; Time Warner at ii, 4-5, 14-20; VZ/VZW at 63-65.

²⁴ Qwest at 51-52. *And see, e.g.*, CTIA at 19-24; AT&T at 11-13; SouthernLINC at 2-3.

²⁵ While criticized by NASUCA (at 35) as not being pervasively supported by industry, in fact the signatories to the CTIA Code provide service to over 94% of the wireless customers in the United States. *See* RCA at 8 (referencing CTIA Standards). That is a pretty pervasive self-regulation. Given that NASUCA believes voluntary codes to be "meaningless" (at 33), their opposition to the CTIA Code is not surprising.

²⁶ AT&T at 3, 36-39, 41 (referencing other possible models).

guarantees.²⁷ Like the existing models, these proposals/models should provide fodder for discussion and analysis.

As noted above, any Task Force or Working Group would need to investigate whether a Schumer-type box format for the disclosure of communications provider or service information can be made meaningful, or whether presentation of information in this format would actually be more confusing and potentially misleading to consumers than helpful to them. Analysis of the fundamental question would require an assessment of information already available by providers and their willingness to continue to make that information generally available in a variety of media and formats. From that discussion, then, would follow a discussion of a Code/Best Practices that might incorporate providers' commitments to information disclosure principles at different stages of the purchasing process.

To be sure, the process of vetting self-regulatory proposals, and agreeing on any final language, will take some time. And while such a process might forestall the immediate issuance of a *Notice of Proposed Rulemaking* or the ultimate promulgation of rules, it will be time well taken.

IV. NO GOVERNMENT ACTION NEEDS TO BE TAKEN REGARDING THIRD-PARTY BILLING.

A. Third-Party Bill Blocking Options Should Not Be Mandated.

Some parties urge the Commission to mandate a "bill-block option" with respect to third-party bill pages that might occur on some service providers' bills.²⁸ Qwest opposes government

²⁷ Comcast at 3, 12, and Attachment A; Time Warner at 11; VZ/VZW at 31. According to one author referenced in the *NOI*, "To some extent, contractual terms such as warranties or money-back guarantees may substitute for presale information and alleviate these problems. In effect, they (partially) indemnify the buyer against the possibility that his lack of information will have led him to make a wrong choice[.]" Howard Beales, Richard Craswell, and Steven Salop, "The Efficient Regulation of Consumer Information," 24 *J.L. & Econ.* 491, 511 (1981) (Beales, *Efficient Regulation*).

regulation in this area. While the comments assert that cramming complaints are substantial in number or on the rise,²⁹ such complaints are not significant with respect to the volume of third-party billing done throughout the country by service providers.³⁰

At the most extreme, one party advocates that the Commission should just abolish third-party billing.³¹ Others seek to accomplish the same result but through a more indirect means. They want the Commission to establish an opt-in approach to third-party billing,³² which would inevitably lead to the elimination of this service provider option and its associated revenue stream. There is no evidence in the record (and Qwest believes none could be provided) that could substantiate a cramming problem so severe that this radical governmental intervention would be the right answer.

But even an opt-out model should not be mandated, despite the fact that some service providers currently extend this option to their customers.³³ The fact that some providers have

²⁸ CPUC at 5; Joint Attorneys General at 10; MN AG at 6-7; Illinois CUB at 4-5.

²⁹ Massachusetts Department of Telecommunications and Cable at 2, n. 6 (MDTC) (without providing specific information, stating that their complaint trends show continuing consumer confusion regarding service options and charges), 8-9 (complaint trends support regulatory intervention and the vast majority of complaints pertain to billing matters), 11; Joint Attorneys General at 9, citing to complaints from Illinois that -- in real or statistical terms -- are not significant. *See* note immediately below. This is likely true even for the volume of complaints cited by the CPUC at 6.

³⁰ *See* BCI at 3-4 (stating that it sends “approximately 25 million records per month [to carriers for billing,] and had an average monthly inquiry rate of 1.8 percent.”). *And compare* MetroPCS at 5-6; Sprint at 4-6; USTelecom at 5-8; VZ/VZW at 2, 6-9 (all pointing out the doubtful value, in the instant case, of citing to informal complaint evidence in support of significant governmental intervention).

³¹ VSCC Staff at 4.

³² Joint Attorneys General at 10. *And compare* that some commentators contend their proposals are for an opt-out model, but a close reading of their description indicates they in fact espouse an opt-in model. MN AG at 6-7; Illinois CUB at 4-5.

³³ VZ/VZW at 48; MN AG at 7. *Compare* Joint Attorneys General at 10 (indicating that this option would be better than none).

decided to adopt such an option as a business matter does not mean that the Commission should mandate it across the board. There are a variety of ways that consumers can be accommodated should they object to third-party charges on their bills; and the means proposed by some commentors represents the most costly of any of those options.

Take Qwest as an example. We currently do not generally offer an opt-out from third-party billed services. And to change our systems to accommodate such a model would be expensive and time-consuming. But we believe we satisfy our customers in the event they have a problem with third-party charges appearing on their bills. We begin the process by advising our customers that:

The charges on this portion of your bill are for non-telecommunications services and products. You have the right to dispute these charges, if you feel they are not legitimate. Neither local nor long distance services can be disconnected for nonpayment of these charges. The service providers that bill these types of charges may employ other agencies to collect these charges, even if Qwest has previously adjusted them from your bill.

If one of our customers complains about a non-recurring third-party charge on their bill, we take it off. If they dispute a *recurring* charge of a specific service provider, we take it off our bill and advise the billing aggregator that it should not submit charges from that service provider in the future. We have had no ongoing complaints that our current approach is unsatisfactory to our customers; and we are unaware of any systemic problem that needs to be solved through adopting a different (and more expensive) approach.

We believe that our method works because we have instituted stringent provisions in our billing contracts and policies to safeguard and protect our customers. In addition to providing customer satisfaction when a complaint occurs, we have provisions in place with our billing aggregators to assure that no systemic problems develop. We have a monthly

service provider review process that monitors alleged cramming complaints and other third-party billing inquiries; and we take action as appropriate.

Remedial action is taken with those third-party service providers whose alleged cramming complaints and billing inquiries exceed Qwest's thresholds. Where a service provider's alleged cramming complaints and billing inquiries exceed Qwest's thresholds, we may: 1) require them to take steps to reduce their alleged cramming complaints/inquiries below the threshold within a defined period of time; or 2) we may terminate the service provider from billing in Qwest's territory completely.

Different service providers undoubtedly have different issues associated with third-party billing. They should not be required to treat these issues all in the same way, or through some government-prescribed approach. To the extent a particular LEC, billing aggregator, or underlying service provider acts in a manner inconsistent with existing legislative or regulatory consumer protections, the better course is to proceed with either private or public, targeted enforcement action.³⁴

While the Commission might encourage service providers to investigate (and maybe even adopt) bill-blocking options, it should not require them to do so.

B. No Government Action Regarding The Formatting Of Third-Party Pages Is Necessary.

A number of commentors address the matter of identification of particular service providers, rather than the billing aggregator, on the third-party bill pages. Those comments are

³⁴ See, e.g., Comcast at 7 and notes 10, 11 (noting that providers scrutinize competitor claims and resort to challenges in both commercial and judicial fora); MetroPCS at 14 ("carriers can be sued under existing false advertising and consumer protection laws if their advertising is false, misleading or deceptive. Indeed, there have been prior suits of this kind which have resulted in changes in behavior.") (footnote omitted); VZ/VZW at 5, 50-51. Compare Joint Attorneys General at 9 and nn. 23, 25 (noting that such actions have occurred); CPUC at 2-3 (has brought a number of actions).

addressed below. In its comments, Billing Concepts (a self-described billing aggregator) outlines its “comprehensive due diligence and performance monitoring programming in order to reduce cramming.”³⁵ Qwest believes BCI’s programs are solidly designed and executed. We do, though, object to their suggestions that government intervention might be necessary with respect to the practices of LECs in connection with the presentation of third-party billed pages.

BCI speculates “that consumers may be confused about who their service provider is due to the bill format,” which BCI correctly states is “mandated by each specific LEC.”³⁶ It “strongly recommends that the toll-free customer service number of each service provider [be] added next to each charge.”³⁷ And it advocates that “[e]xpanding [the number of characters it can use] should increase awareness of what service the customer has agreed to.”³⁸ With respect to these proposals, BCI never expressly states that the Commission should mandate its advocated actions but it certainly implies it. Qwest opposes such action.

First of all, the Commission should know that, at least in Qwest’s case, billing aggregators are free to include a service provider’s telephone contact information *so long as* (1) the number is toll-free to the caller; (2) the number is manned by adequate facilities and live personnel to handle the calls during business hours; and (3) the customer service unit of the service provider must be available to customers between the hours of 8AM - 5PM across all

³⁵ BCI at 1.

³⁶ *Id.* at 4. BCI expresses frustration that it might be better able to address some consumers’ concerns if it had more flexibility with regard to bill format in terms of dictating fonts and the number of characters that it might use to identify the service provider; or had the ability to put contact telephone numbers for the specific service providers on the bills.

³⁷ *Id.* A review of a number of credit card statements suggests that credit card companies do not ubiquitously provide this information. Rather contact numbers are associated with some service providers but by no means all.

³⁸ *Id.*

three of Qwest's in-region time zones. We believe this is appropriate due diligence with regard to the publication of this kind of information.

Qwest also has the capability to print a service provider's website URL in addition to its toll-free number. This gives customers the option of contacting a service provider *via* the Internet. Again, this is optional and at the discretion of the billing aggregator and service provider.³⁹ This is a model Qwest supports.

As for fonts and character limitations, our billing aggregators are not impacted by these constraints anymore than any other charge on our bills are. What fonts should be used in our bills and what kind of character limitations might be associated with our service or product descriptions are matters of overall, general bill design. These matters are determined by internal billing design subject matter experts in consultation with other experts and consumer input.⁴⁰

There is no need for a Commission mandate in this area beyond existing Truth-in-Billing rules.

V. SOME PROPOSALS IMPLICATE THE FIRST AMENDMENT AND SHOULD NOT BE ADOPTED.

Qwest provided substantial analysis in our Opening Comments regarding the constitutional implications of government's compelling speech in general and in requiring providers to use particular formats for their customer communications. We do not repeat those

³⁹ The CPUC advocates that not only should a service provider's phone number be provided but its address also. CPUC at 5. To provide an address would require significant revisions to Qwest's billing systems. We do not see that providing an address is superior to providing a web URL. In fact, today, the latter is probably more likely to be helpful to a consumer than the former.

⁴⁰ Qwest at 29-30. *And see, e.g.*, Comcast at 12, 29-30; NCTA at 7 ("Changes to billing formats and other customer service practices are often prompted by feedback received directly from subscribers during service calls, from the results of customer surveys, and from convening and studying focus groups[.]. . . as well as outside consultants."), 16 ("standardized formats and display information . . . could have unintended consequences, such as limiting the variety of options available to consumers"); OPASTCO at 2, 6.

arguments here. But we note that other commentors raised the First Amendment implications of the *NOI*,⁴¹ even if the issue was not always analyzed in depth.

Some commentors argued that the First Amendment poses no impediment to their government-mandated information disclosure advocacy. These commentors suggest, for example, that service providers should make contact information for state or federal regulatory agencies available so that consumers would know where to go in the event they wanted to lodge a complaint.⁴² Other proposed mandated disclosures (suggested by Illinois CUB include: a requirement that service providers notify customers (through the bill, in the context of an existing relationship) three times a year of the total rental fees for service equipment versus the cost of purchasing and that a customer was not required to pre-subscribe to an IXC⁴³ (even in those situations where the service provider is the existing IXC); and a requirement to notify customers two times a year about the statistics on inside wire maintenance and the likelihood of needing customer premises equipment insurance.⁴⁴

While the suggestions may seem uncontroversial or easy enough to accommodate, the Commission should not consider them without acknowledging that *any* speech mandate of the types proposed by the commentors raise First Amendment issues. In making this claim, Qwest does not wish to trivialize the First Amendment issues raised by the *NOI* or the commenting

⁴¹ See, e.g., Comcast at 29-31; MetroPCS at 9-11; NCTA at 16-17; Time Warner at 19-20; VZ/VZW at 54, 59-63.

⁴² MDTC at 14; NASUCA at 9; Utility Consumers' Action Network at 14. Compare MN AG at 6 (arguing that this information should be placed on any third-party bill page); DC PSC at 4 (stating that the new Consumer Bill of Rights they have mandated includes a requirement that contact information for the Commission *and* the People's Counsel be provided).

⁴³ Illinois CUB at 5. As addressed below, CUB can no longer compel that service providers include the kinds of messages it discusses in its comments. Consequently, it seeks government aid in accomplishing the delivery of its desired content.

⁴⁴ *Id.* at 6-7.

parties, particularly when many would consider the compelled provision of regulatory-contact information to involve a *de minimis* information mandate.⁴⁵ Nevertheless, the principle at stake is a larger one.

It is entirely possible that service providers could, as a component of a self-regulatory regime, volunteer to provide this (or other) information. But especially as competition continues to thrive and information becomes increasingly available in the marketplace,⁴⁶ regulatory authorities and other constituents addressing information mandates issues in the communications field must become more sensitive to the First Amendment limitations on compulsory disclosures.

A regulatory mandate requiring disclosure of the contact information for governmental agencies raises constitutional questions, absent a showing that it is necessary to prevent consumer deception or injury. This is true even if the information is not lengthy, and is factual and noncontroversial.⁴⁷

⁴⁵ Indeed, in some states, Qwest currently provides this type of information without challenge. And the comments indicate that other service providers currently recite contact information for regulatory authorities of various types. *See* Comcast at 26 and n. 46; NCTA at 13 and n. 49, 16 and n. 56; Time Warner at 19-20.

⁴⁶ There are many business and political reasons why service providers might carry government-mandated information disclosures, especially if they are not lengthy. This would be particularly true in a monopoly environment, for example, where the costs of such disclosures could be recovered; and there would not necessarily be “secondary” costs to competitive positioning or revenue protection associated with the disclosure. This all changes in a competitive marketplace.

⁴⁷ If the law were different, and if the First Amendment allowed the government to compel private actors to deliver factually accurate, non-misleading information (in particular information about the government itself), one has to wonder where that grant of access would end. What if the agencies wanted their hours of operation listed? the floors they occupy? their Chairman or their Bureau Chiefs? The First Amendment implications for the private party carrying that speech are obvious.

The Commission is free, of course, to disseminate such information through its own educational programs.⁴⁸ However, a governmental desire to supply information to consumers, by itself, is not an adequate basis to compel private speakers to disclose the government's message, even where the message is a noncontroversial, factual statement.⁴⁹ "The First Amendment does not permit a remedy broader than that which is necessary to prevent deception, . . . or correct the effects of past deception[.]"⁵⁰

Further, the specific language of any particular mandate could raise further constitutional questions, particularly if consumers would be likely to attribute the message to the communications provider, if the mandate interfered with the provider's own speech or editorial discretion (for example, by crowding out "white space" and making the bill more difficult to understand,⁵¹ or interfering with the "look and feel" of communications designed to appeal to

⁴⁸ It can do so through its own website or announcements paid for by the government; it could collaborate with other agencies so that agencies provide contact information regarding other agencies; it could collaborate with consumer groups that might happily provide such information.

⁴⁹ See, e.g., *Ibanez v. Florida Dept. of Business and Professional Regulation, Bd. of Accountancy*, 512 U.S. 136, 145-49 (1994) (state may not force Certified Financial Planners (CFP) to make factually accurate disclosure that CFP status was conferred by unofficial private organization); *Riley v. National Federation of the Blind*, 487 U.S. 781, 796-98 (1988) (state may not force professional fundraisers to make factually accurate disclosure of information concerning the percentage of contributions actually passed on to charities, notwithstanding the fact that prospective donors might find the truthful information relevant and persuasive); *International Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 73-74 (2d Cir. 1996) (state may not force dairies to disclose to consumers information regarding cows treated with growth hormones, despite consumer interest on the subject).

⁵⁰ *National Commission on Egg Nutrition v. FTC*, 570 F.2d 157, 164 (7th Cir. 1977) (citing *Beneficial Corp. v. FTC*, 542 F.2d 611, 619-20 (1976), *cert. denied*, 430 U.S. 983 (1977); *Warner-Lambert Co. v. FTC*, 562 F.2d 749, 760, *reh'g denied*, 562 F.2d 749 at 768 (D.C. Cir. 1977) and *cert. denied*, 435 U.S. 950 (1978)).

⁵¹ See CTIA at 26-27; VZ/VZW at 2, 46, 54-55 (mentioning that their reformatted bill has considerable white space, which their customers have indicated they like). Qwest at 26, n.62 (citing to Beales, *Efficient Regulation*, 24 J.L. & Econ. at 528, n. 101 ("Even if the disclosure replaces only empty space, . . . that empty space was there to facilitate effective communication

consumers;⁵² or by causing the provider to avoid speech,⁵³ or by creating a need for a provider to speak twice or disclaim speech),⁵⁴ if the mandated content created an impression that the

of the [service provider's] message. [Service providers] do not typically pay for blank space unless they think it serves a useful purpose." *Id.* at note 101 (replacing the words "advertiser" with "service provider").

⁵² See NCTA arguing (not in the context of the First Amendment) that "a critical part of the competitive equation for all providers is the distinct 'look and feel' of bills and other consumer information" (at 15); and that the limited space in a bill is "valuable real estate" where every character has meaning (at 15-16); ITTA, not specifically mentioning the First Amendment, at 6 (any new rules that would "prescribe a consistent format could deny a carrier the opportunity to employ creative text or graphical arrangements to emphasize a particular aspect of its service offering; carriers seeking to emphasize particular offerings could be forced to print duplicative statements, one in a standardized format to meet requirements, and one in a manner reflecting professional advertising or other judgments.").

⁵³ Compare SouthernLINC Wireless, not specifically mentioning the First Amendment, at 8 ("In an environment heavily burdened with the types of requirements the Commission appears to be contemplating, the primary questions carriers will be compelled to ask themselves when considering new potential service offerings . . . will become 'does it easily fit within the information display, disclosure, and formatting regulations' and 'how much will it cost for the changes needed to make it fit within these regulations' -- not 'will consumers want this service' or 'how quickly can it reach consumers.'"). In Qwest's opinion, not only will providers conform their product development to "fitting in the box," but their speech as well. Such would result, as VZ/VZW observes in "restrain[ing] innovation, differentiation and competition." VZ/VZW at 58.

⁵⁴ Qwest at 5, 14.

consumer should contact the government rather than first contacting the provider,⁵⁵ or if the mandate carried the implication that the provider's service was somehow worthy of complaints.⁵⁶

Moreover, it would be inappropriate for the Commission to mandate that service providers include information in their bills information about matters of interest to private parties (CUB) that those parties cannot get into the bills themselves. In the matter of the CUB-proposed disclosures, for example, it is clear that they are precluded from requiring access to a provider's bill.⁵⁷ The Commission should not substitute itself as the speaker in such a constitutionally-suspect endeavor. But beyond the First Amendment implications of the Commission's making CUB's desired speech that of the Commission's, sound public policy requires that the Commission not lend aid to a circumvention of a constitutional holding adverse to an advocate.⁵⁸

⁵⁵ See Utility Consumers' Action Network at 13 (the Commission should "require service providers to place a paragraph on a consumers' [sic] bill explaining that consumers may file a complaint with the FCC and include the web address for filing complaints and the Commission's informational phone number. In including the information on the bill, consumers would be reminded every month it may file disputes with the Commission and have a readily available source containing the contact information for the Commission."). Compare RCA at 10-11 and n. 31 (arguing that it "would [not] be wise for the Commission to require service providers to include on their monthly bills information about how to contact the agency to file a complaint . . . [because] requiring a listing of Commission contact information on service providers' monthly bills could have the inadvertent effect of short-circuiting the service providers' informal dispute resolution processes. Such a result could make it more, not less, cumbersome and time-consuming for customers to obtain resolution of their complaints.").

⁵⁶ See, generally, *United States v. United Foods*, 533 U.S. 405 (2001).

⁵⁷ *Central Illinois Light Company, et. al. v. Citizens Utility Board*, 827 F.2d 1169 (7th Cir. 1987) (stating that *Pacific Gas & Electric* found compelled access to a service provider's bill was not content neutral).

⁵⁸ Illinois CUB's comments are the most radical in terms of ignoring First Amendment interests or law. Without analysis, it argues that the Commission should prohibit service providers' representatives from discussing the sale of products on calls. Illinois CUB at 7. For constitutional, economic and policy reasons, its proposal should be rejected outright.

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October 28, 2009

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. to be: 1) filed
with the FCC via its Electronic Comment Filing System in CG Docket No. 09-158, CC Docket
No. 98-170 and WC Docket No. 04-36; 2) served via email on the FCC's duplicating contractor,
Best Copy and Printing, Inc. at fcc@bcpiweb.com; and 3) served via first class U.S. Mail,
postage prepaid, on the parties listed on the attached service list.

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