



December 8, 2009

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte Notice

In the Matter of Consumer Information and Disclosure, CG Docket No. 09-158

In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170

In the Matter of IP-Enabled Services, WC Docket No. 04-36, FCC 09-68

Dear Ms. Dortch:

On Monday, December 7, 2009, Karlen Reed, Regulatory Counsel with the National Telecommunications Cooperative Association (NTCA), met with Mark Stone, Erica McMahon, Michael Jacobs, and Richard Smith (by phone) of the FCC's Consumer & Governmental Affairs Bureau.

We discussed issues raised in NTCA's October 28, 2009 reply comments regarding the Commission's August 28, 2009 Notice of Inquiry (NOI) on consumer information disclosures for wireline, wireless, VoIP and other communication service providers. NTCA distributed copies of its reply comments, a copy of which is attached to this filing. NTCA recommended that the Commission should first examine the record created by the NOI to determine if there is a need for any additional guidelines or rules. We discussed the impact that the Regulatory Flexibility Act (RFA) has on crafting rules for small business entities such as NTCA's membership. NTCA noted that the record appears to support consideration of opt-in guidelines or rules against cramming by third-party providers on wireless bills.

NTCA also encouraged the Commission to enhance its own education, federal investigation and enforcement actions regarding consumer complaints at the federal level. NTCA referenced the new NTCA 2009 Broadband/Internet Availability Survey Report and attached a copy of the report per Mr. Stone's request.

NTCA noted that in the absence of additional federal guidelines, state public service commissions and state consumer protection law enforcement agencies have stepped in. We

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discussed briefly the 2004 33-state attorneys general Assurance of Voluntary Compliance (AVC) referenced in our reply comments and the impact that national regulations may have on the AVC's negotiated provisions. A copy of the AVC discussed was distributed and is attached to this ex parte filing. NTCA asserted that the Commission should ensure that any new federal enforcement or regulatory action does not preempt state efforts to protect consumers.

The discussions were consistent with NTCA's positions in previously filed comments and pleadings in the above-referenced dockets. Copies of the above-referenced comments, pleadings and filings are attached for convenience.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2146.

Sincerely,

/s/ Karlen Reed

Karlen Reed

Regulatory Counsel, Legal and Industry

KR: rhb

Enclosures

cc: Mark Stone
Erica McMahon
Michael Jacobs
Richard Smith

**Before the
Federal Communications Commission
Washington, D.C. 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
)	FCC 09-68



REPLY COMMENTS

The National Telecommunications Cooperative Association (NTCA)¹ responds to the October 13, 2009 Initial Comments filed regarding the August 28, 2009 Federal Communications Commission (Commission or FCC) Notice of Inquiry (NOI).² In the NOI, the Commission seeks comment on information that consumers need to: 1) choose a provider of communications services, 2) choose a service plan, 3) manage and use the service plan, and 4) choose whether and when to switch providers.³ The Commission also seeks comment on

¹ NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 585 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Consumer Information and Disclosure, Truth-in-Billing Format, IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry (rel. Aug. 28, 2009) (NOI). Silence on any positions raised by parties in these proceedings connotes neither NTCA's agreement nor disagreement with their positions or proposals.

³ *Id.* ¶ 4.

formatting and displays of consumer information, available technological tools, resolving disputes, disabilities issues, and consumer education efforts.⁴

The Commission should first examine the record created by the NOI to determine if there is a need for any additional guidelines or rules. Several commenters reasonably urge consideration of opt-in guidelines or rules against cramming by third-party providers on wireless bills. The Commission should enhance its own education, federal investigation and enforcement actions regarding consumer complaints at the federal level. In the absence of additional federal guidelines, states have stepped in; consequently, the Commission should ensure that any new federal enforcement or regulatory action does not preempt state efforts to protect consumers.

I. EXAMINE THE RECORD FOR DATA DEMONSTRATING A NEED FOR GUIDANCE BEFORE CREATING GUIDELINES OR RULES.

The Commission seeks comment on what additional information communications providers should give consumers to 1) choose a provider, 2) choose a service plan, 3) manage use of the service plan, and 4) decide whether and when to switch providers.⁵ The Commission's NOI is an apparent first step towards either consumer information principles, akin to the Commission's Internet Principles, or to proposed regulations.

Before creating either guideline principles or regulations regarding advertising and point-of-sale disclosures, the Commission should first determine a need for directive and tailor the directive for the need. USTelecom agrees.⁶ Small rural communications providers, such as NTCA's membership, are striving to provide their customers with complete, accurate and updated disclosures at all phases of sale and service. Additional directives or regulation will impose additional costs on rural ILECs, and rural consumers will bear those costs

⁴ *Id.* ¶¶ 6, 7, 46-60.

⁵ *Id.* ¶ 4.

⁶ USTelecom Comment, p. 5.

disproportionately to urban counterparts because of the small consumer base. OPASTCO agrees.⁷

The Regulatory Flexibility Act, 5 U.S.C. § 604, (RFA) requires the Commission to consider less economically burdensome alternatives as part of any rulemaking proceeding. The United States Court of Appeals for the District of Columbia has held:

The Regulatory Flexibility Act requires that agencies issuing rules under the Administrative Procedure Act publish a final regulatory flexibility analysis. *See* 5 U.S.C. § 604. Such an analysis must meet certain statutory requirements. It must state the purpose of the relevant rule and the estimated number of small businesses that the rule will affect, if such an estimate is available. In addition, each analysis must summarize comments filed in response to the agency's initial regulatory flexibility analysis, along with the agency's assessment of those comments. Finally, each analysis must include "a description of the steps the agency has taken to minimize the significant economic impact" that its rule will have on small businesses, "including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected." § 604(a)(5).

National Telephone Cooperative Association v. FCC, 563 F.3d 536 (D.C. Cir. 2009) (No. 08-1071, decided April 28, 2009).⁸ Any rules ultimately adopted as a result of this NOI should reflect RFA consideration and should minimize the economic impact on small rural communications providers.

Several commenters contend that any guidelines or rules should be drafted so they can apply equally to interconnected VoIP providers and all other communication service providers.⁹ NTCA agrees. Technology-neutral consumer information directives will provide consumers with the most comparable format for information. Furthermore, industry-negotiated guidelines like the CTIA Code of Conduct for wireless providers may be more cost-effective than

⁷ OPASTCO Comment, p. 2.

⁸ This court opinion by the D. C. Circuit Court of Appeals is publicly available at:

<http://pacer.cadc.uscourts.gov/docs/common/opinions/200904/08-1071-1177914.pdf>, accessed Oct. 28, 2009.

⁹ Massachusetts Department of Telecommunications and Cable (MA DTC) Comment, p. 2; NASUCA Comment, p. 15.

regulations because industry directives are created with consumer advocacy in mind.¹⁰ The CTIA Code and similar efforts are designed to stave off state and federal regulatory action, state consumer protection law enforcement, and class action lawsuits. The Commission should not create new consumer information guidelines or rules absent a demonstrated need, and any new rules should reflect consideration of the Regulatory Flexibility Act for small rural communications providers.

II. THE RECORD CONTAINS SUFFICIENT INFORMATION TO SUPPORT CONSIDERATION OF OPT-IN GUIDELINES OR RULES AGAINST CRAMMING ON WIRELESS BILLS BY THIRD PARTY PROVIDERS.

Several commenters submitted data and urge consideration of opt-in rules to regulate cramming on wireless bills by third party providers.¹¹ Twenty-four state attorneys general plus the attorney general from American Samoa jointly urged the Commission to require providers to receive “opt-in” consent from their subscribers before third-party charges can be placed on their bills, or else to require providers to allow their subscribers to selectively block third parties from placing charges on the subscribers’ bills.¹² These state law enforcement officers cite growing consumer complaints in Illinois, Oregon and elsewhere about the deceptive practices of third party billing agents who surreptitiously obtain uninformed consumer consent to place monthly, recurring charges on telephone bills.

The Commission’s Consumer and Governmental Affairs Bureau (CGAB) reports over 1,000 cramming complaints were filed with the FCC in the First Quarter (January – March)

¹⁰ NOI, ¶ 11; USTelecom Comment, p. 9; OPASTCO Comment, p. 2.

¹¹ *See, e.g.*, NASUCA Comment, pp. 44-46.

¹² Attorneys General from the States of 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 and American Samoa (Attorneys General) Joint Comments, pp. 9-10.

2009.¹³ The Minnesota Attorney General cites a specific example plaguing subscribers in Minnesota and elsewhere in which consumers have unwittingly provided their telephone numbers in response to a prompt for an “IQ Quiz.” The consumers do not realize, however, that by providing their phone numbers, they have agreed to allow a monthly premium text messaging fee to appear on their telephone bill.¹⁴ The Illinois CUB supports the use of bill blockers to thwart cramming.¹⁵ The California Public Utilities Commission (CA PUC) provided cramming data and agreed that customers should be allowed to block third party billing.¹⁶ The CA PUC furthermore suggests that third party billing agents should be required to disclose their contact information, an approach that also is reasonable and will help reduce cramming complaints.¹⁷

Unsuspecting consumers have been duped into paying premium text messaging fees, according to the Minnesota Attorney General, so consumers need more information and better tools to deal with third party subscriptions. NTCA recognizes the legitimate concerns of these consumer advocates. Being able to unsubscribe to cramming charge subscriptions via a secured web page and obtaining information available about third-parties, as the Minnesota Attorney General suggests, will give consumers the necessary information to directly contact the third party and remove the unwanted cramming charges. The Commission should review the cramming data and evidence in the context of possible regulation of third-party billing and disclosure of third-party billing contact information through consumer opt-in provisions.

¹³ *Quarterly Report on Informal Consumer Inquiries and Complaints Released, First Quarter 2009*, FCC Consumer and Governmental Affairs Bureau (rel. Sep. 8, 2009), p. 8.

¹⁴ Minnesota Attorney General (MN AG) Comment, pp. 1-2.

¹⁵ Illinois Citizens Utility Board (IL CUB) Comment, p. 5.

¹⁶ CA PUC Comment, pp. 4-5.

¹⁷ *Ibid.*

III. THE COMMISSION SHOULD DEDICATE MORE RESOURCES TOWARD ENHANCING FEDERAL EDUCATION, INVESTIGATION OF CONSUMER COMPLAINTS AND ENFORCMENT OF EXISTING CONSUMER PROTECTION MEASURES.

The Commission, in the NOI, “seeks comment on the general state of consumer awareness about the purchase of communications services and opportunities to improve consumer welfare.”¹⁸ The Commission’s core functions include educating consumers about their telecommunications bills, investigating consumer complaints, and prosecuting violations of federal telecommunications consumer protection laws. The FCC Consumer and Governmental Affairs Bureau (CGAB)’s mission includes serving “as the public face of the Commission through outreach and education, as well as through our Consumer Center, which is responsible for responding to consumer inquiries and complaints.”¹⁹ The CGAB tracks consumer inquiries and complaints by quarter and by segment.²⁰ Consumer complaints to the FCC alone have skyrocketed in 2008.²¹ Statistics on successful resolution of those complaints, however, are not so readily apparent.

NASUCA notes that consumers do not know whom to contact with complaints and encourages the Commission to enhance its enforcement measures.²² While some consumers know that they can contact the companies directly (if contact information is provided), these same consumers may not realize that other consumer advocate resources exist at the federal level -- the Commission and the Federal Trade Commission.²³ Additional resources exist at the state and local level -- state public service commissions, state attorneys general, local consumer advocacy programs, regional consumer protection groups and national consumer advocates like AARP, Consumers Union and the Better Business Bureau. By opening

¹⁸ NOI, ¶ 56.

¹⁹ FCC CGAB Website, http://www.fcc.gov/cgb/cgb_offices.html#CGB, accessed Oct. 26, 2009.

²⁰ *Quarterly Report on Informal Consumer Inquiries and Complaints Released, First Quarter 2009*, FCC Consumer and Governmental Affairs Bureau (rel. Sep. 8, 2009), p. 1.

²¹ *Quarterly Report on Informal Consumer Inquiries and Complaints Released, Fourth Quarter 2008*, FCC Consumer and Governmental Affairs Bureau (rel. May 6, 2009), p. 2.

²² NASUCA Comment, p. 26.

²³ The Federal Trade Commission (FTC) protects consumers from fraudulent, deceptive and unfair business practices. 15 U.S.C. § 45 (Section 5 of the Federal Trade Commissions Act). The FTC’s jurisdiction does not include common carriers. 15 U.S.C. § 45(a)(2).

this NOI the Commission has created a portal for those consumer advocates to identify themselves. More, however, is needed. The Commission should dedicate additional resources into collecting and responding to consumer complaints and alerting consumers of different, additional avenues for dispute resolution. USTelecom and others concur.²⁴

IV. FEDERAL EFFORTS SHOULD NOT PREEMPT STATE EFFORTS TO PROTECT CONSUMERS.

In lieu of federal regulations, state PUCs, state legislatures, and state attorneys general have stepped in to protect consumers using state consumer protection laws.²⁵ For example, several commenters have referenced three Assurances of Voluntary Compliance (AVCs) executed in 2004 by Verizon Wireless, Cingular Wireless (now AT&T) and Sprint PCS (now SprintNextel).²⁶ These AVCs are settlement agreements, resulting from three years of intensive investigations and negotiations between 33 state attorneys general and the three wireless providers pursuant to state consumer protection statutes. The attorneys general investigation was prompted in part by consumer complaints about the wireless providers' inadequate point-of-sale disclosures, early termination fees, and coverage maps.

NTCA recognizes the significant role that states perform in protecting their consumers. The Commission must be careful not to preempt the state attorneys general AVCs or other state efforts to protect consumers regarding communications information disclosures. NASUCA and other commenters likewise caution the Commission against preemption of state action, including preemption under 47 U.S.C. § 332(c)(3)(A).²⁷ Of significant note in the AVCs is the conflict of

²⁴ USTelecom Comment, pp. 11-12.

²⁵ Attorneys General Joint Comments, pp. 4-5, 7, 8-9; MN AG Comments, pp. 4, 7, 8; MA DTC Comment, p. 9; CA PUC Comment, p. 2; NASUCA Comment, p. 16.

²⁶ Attorneys General Joint Comments, pp. 4-5; NASUCA Comment, p. 30, fn 57; MA DTC Comment, p. 12, n. 44; Verizon Wireless Comment, pp. 4, 15.

²⁷ 47 U.S.C. § 332(c)(3)(A) provides: "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." See NASUCA

laws paragraph (#67 for the Verizon Wireless AVC) that addresses the AVCs' effectiveness in light of subsequent federal action.²⁸ That paragraph provides:

67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

Verizon Wireless considers the AVC to be enforced and enforceable.²⁹ The efficacy of the three AVCs, which now cover approximately 210 million wireless subscribers,³⁰ could be compromised if the Commission adopts rules that may be construed to preempt state enforcement efforts. States are in a good position to protect consumers, and FCC-inspired federal action should respect those state efforts.

V. CONCLUSION

For these reasons, the Commission should first examine the record created by the NOI to determine if there is a need for any additional guidelines or rules. One area developed in this NOI record supports consideration of opt-in rules against cramming by third-party providers on wireless bills. The Commission should enhance its own federal education, investigation and

Comment, p. 13; CA PUC Comment, p. 2; MA DTC Comment, p. 18.

²⁸ See NASUCA Comment, p. 30, fn. 57. The Verizon Wireless AVC is available on NASUCA's website at:

<http://www.nasuca.org/VERIZON%20WIRELESS%20AVC%20FINAL%20VERSION.pdf>.

²⁹ Verizon Wireless Comment, p. 4.

³⁰ Verizon Wireless has over 89 million wireless customers, according to Verizon Wireless website, <http://aboutus.vzw.com/ataglance.html>, accessed Oct. 27, 2009; AT&T has 77 million wireless customers, according to AT&T SEC Form 10-K (Feb. 25, 2009), available at <http://phx.corporateir.net/phoenix.zhtml?c=113088&p=irol-sec>, accessed Oct. 27, 2009. SprintNextel has over 44 million wireless subscribers, according to SprintNextel SEC annual report ending December 31, 2008, available at <http://investors.sprint.com/phoenix.zhtml?c=127149&p=irol-sec>, accessed Oct. 27, 2009. See also NASUCA Comment, p. 21.

enforcement actions regarding consumer complaints at the federal level. In lieu of additional federal guidance, states have stepped in; consequently, the Commission should ensure that any new federal enforcement or regulatory action does not preempt state efforts to protect consumers.

Respectfully submitted,



By: /s/ Daniel Mitchell
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By: /s/ Karlen Reed
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October 28, 2009

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in GN Docket No. 09-158, CC Docket No. 98-170, & WC Docket No. 04-36, FCC 09-68, was served on this 28th day of October 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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/s/ Adrienne L. Rolls
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NTCA 2009 BROADBAND/INTERNET AVAILABILITY SURVEY REPORT

November 2009

DISCLAIMER: Data from the survey has been presented as reported.

To get more information on this report please contact Rick Schadelbauer at NTCA (703-351-2019, richards@ntca.org) or Scott Reiter at NTCA (703-351-2015, sreiter@ntca.org).

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EXECUTIVE SUMMARY

For the last eleven years, the National Telecommunications Cooperative Association (NTCA) has conducted its annual Broadband/Internet Availability Survey to gauge the deployment rates of advanced services by its member companies.¹ In the late spring and early summer of 2009, NTCA sent an electronic survey form to each of the companies in NTCA's email database; 156 members (31%) responded.

Ninety-eight percent of the 2009 survey respondents offer broadband to some part of their customer base, compared to the 58% of the 2000 survey respondents who offered the then-lower definition of broadband service.² Respondents indicated that they use a variety of technologies to provide broadband to their customers: 98% of those who offer broadband utilize digital subscriber line (DSL), 59% fiber to the home (FTTH) or fiber to the curb (FTTC) (up from 44% last year and 32% the year before that), 25% licensed wireless, 22% unlicensed wireless, 15% satellite and 10% cable modem. Only 29% of 1999 survey respondents offered DSL service, and none offered wireless broadband.

Seventy-eight percent of respondents' customers can receive 200 to 768 kilobits per second (kbps) service, 73% 768 kbps to 1.5 megabits per second (Mbps), 77% 1.5 Mbps to 3 Mbps, 53% 3 Mbps to 6 Mbps, and 39% greater than 6 Mbps. The overall take rate for broadband service is 37%.³ On average, 23% of respondents' customers who can receive 200 kbps to 768 kbps service subscribe, 19% subscribe to 768 kbps to 1.5 Mbps service, 21% to 1.5 Mbps to 3 Mbps, 22% to 3 Mbps to 6 Mbps offerings, and 10% to greater than 6 Mbps service.

The typical respondent is 103 miles from their primary Internet connection. Eighty-five percent of those who recently changed backbone providers did so for price reasons. Seventy-two percent of respondents indicated they are generally satisfied with their current backbone access provider, while 20% are generally dissatisfied.

Eighty-nine percent of survey respondents indicated they face competition in the provision of advanced services from at least one other service provider in some portion of their service area. By comparison, only 66% of respondents to the 2003 survey indicated

¹ Following the completion of the 2001 survey in December 2001, it was decided that subsequent Broadband/Internet Availability Surveys would be conducted in the first half of the year in order to capture year-end data. Consequently, no survey was conducted and no survey report published in calendar year 2002.

² For the purpose of this survey, broadband is defined as throughput of at least 768 kbps in one direction. Previously, the Commission had defined broadband as service of at least 200 kbps in one direction.

³ Actual rural broadband subscription rates are likely significantly higher than the numbers shown here, as survey respondents are joined by a variety of competitors in the provision of broadband services within their service area.

they faced competition and only 43% in the 1999 survey. Current competitors include national Internet service providers (ISPs), cable companies and wireless Internet service providers (WISPs). Respondents are taking numerous marketing steps to increase broadband take rates, including free customer premise equipment installation, bundling of services, price promotions, free hardware, free introductory service and free software.

More than three-quarters of respondents find it difficult to compete with price promotions offered by competitors. Overall, 37% of survey respondents consider their company's marketing efforts to be "very successful."

Seventy-three percent of those respondents with a fiber deployment strategy plan to offer fiber to the node to more than 75% of their customers by year-end 2011, while 55% plan to offer fiber to the home to at least 50% of their customers over the same time frame, up from 26% last year. Deployment cost remains the most significant barrier to wide deployment of fiber, followed by regulatory uncertainty, long loops, low customer demand, and obtaining cost-effective equipment. Throughout the history of the survey, deployment cost has been respondents' most significant concern.

Ten percent of respondents currently offer voice over Internet protocol (VoIP) service, up slightly from 6% last year. Fifty-four percent of respondents have plans to offer VoIP in the foreseeable future, up from 44%. Seventy-five percent of respondents offer video service to their customers, up from 68% last year.

INTRODUCTION

In the summer of 2009, NTCA surveyed its members on their activities in the areas of providing broadband services and Internet availability to their members/customers. NTCA is a national association of more than 580 local exchange carriers in 44 states that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996 ("Act"). Only four NTCA member companies serve 50,000 lines or more; the largest serves just over 90,000. Population density in most member service areas is in the 1 to 5 customers per square mile range. Approximately half of NTCA's members are organized as cooperatives and the other half are commercial companies.

This latest broadband survey is a follow-up to similar surveys conducted in recent years by NTCA, and seeks to build upon the results of those surveys.⁴ This year's survey asked about technologies used to provide broadband service, broadband availability and subscription rates, prices charged, quantity and type of competition, broadband marketing

⁴ Copies of this and previous NTCA survey reports may be downloaded from the NTCA Web site, www.ntca.org.

efforts, fiber deployment, emerging technologies, Internet backbone connections, finance and availability of capital. The survey also provided an opportunity for respondents to provide any specific comments they wished to share.

OVERVIEW OF SURVEY

The 2009 NTCA Broadband/Internet Availability Survey was conducted online. The survey was broken up into two separate segments, each sent out about three weeks apart. Member companies were provided with a URL through which they could access each portion of the survey. Every effort was made to minimize the reporting burden on the survey respondents.

The first part of the survey was comprised of general questions about the respondent's current operations, competition/marketing and current and planned fiber deployment. The second part dealt with the Internet backbone, voice over Internet protocol (VoIP) and video. The first part also contained an opportunity for respondents to offer any miscellaneous thoughts.

SURVEY RESULTS

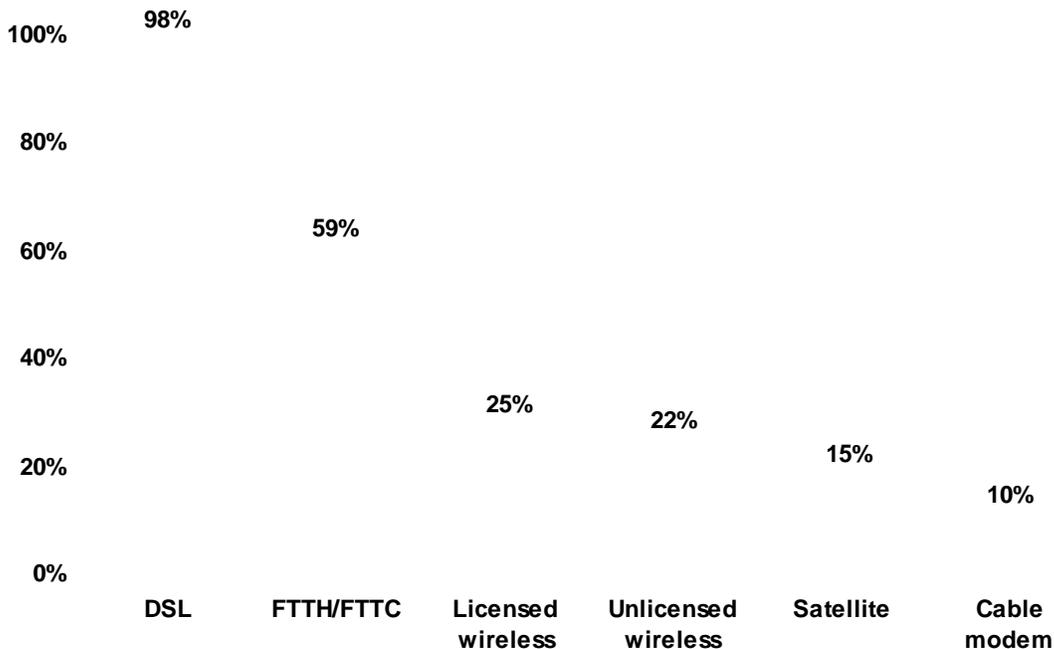
The survey URL for each part of the survey was distributed via e-mail to all member companies in NTCA's email database. The message contained instructions for online access to the survey. Responses were received from 156 member companies, a 31% response rate.⁵

Fifty-six percent of survey respondents' service areas are 500 square miles or larger; 27% are at least 2000 square miles. Two-thirds—67%—have customer densities in their service area of 10 residential customers per square mile or less. Nearly one-third—31%—have customer densities of 2 residential customers per square mile or less.

⁵ Based on the sample size, results of this survey can be assumed to be accurate to within $\pm 6.5\%$ at the 95% confidence level.

The average survey respondent serves 5,375 residential and 1,655 business lines; a few larger companies skew these numbers upward, hence the median respondent serves 3,020 residential and 700 business lines. Ninety-eight percent of survey respondents offer broadband⁶ service to some part of their customer base. Respondents indicated that they use a variety of technologies to serve their customers: 98% utilize digital subscriber line (DSL), 59% fiber to the home (FTTH) or fiber to the curb (FTTC), 25% licensed wireless, 22% unlicensed wireless, 15% satellite, and 10% cable modem.⁷ (See Figure 1.) Fiber deployment is up from 44% in the 2008 survey and 32% in 2007.

Fig. 1: TECHNOLOGIES USED TO PROVIDE BROADBAND



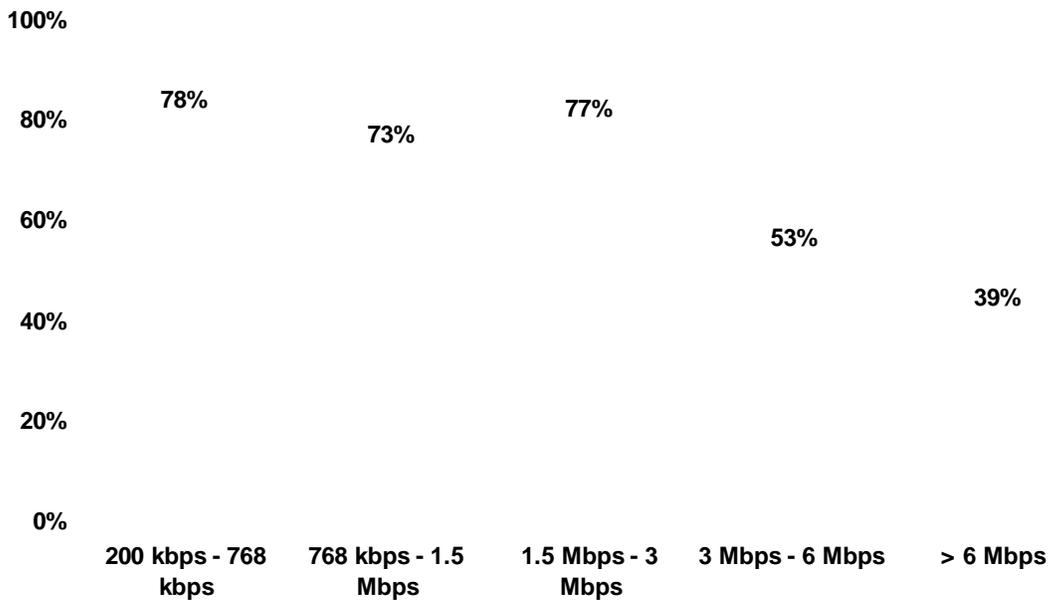
⁶ For the purpose of this survey, broadband is defined as throughput of 768 kbps in at least one direction. This was the definition implemented by the FCC in 2008. According to the Commission, throughput speeds of between 200 kbps and 768 kbps are classified as “first generation data” and throughputs between 768 kbps and 1.5 Mbps are classified as “basic broadband.” This report adopts the FCC’s conventions.

⁷ Percentages sum to greater than 100% as some respondents utilize more than one technology to serve their customers.

A vast majority (82%) of survey respondents are utilizing fiber fed nodes to extend the reach of DSL. Forty-six percent indicated that the average distance from the digital loop carrier (DLC) to the end user was between 15 and 18 thousand feet (kft), 24% between 9 and 15 kft, 22% greater than 18 kft and 8% 9 kft or less.

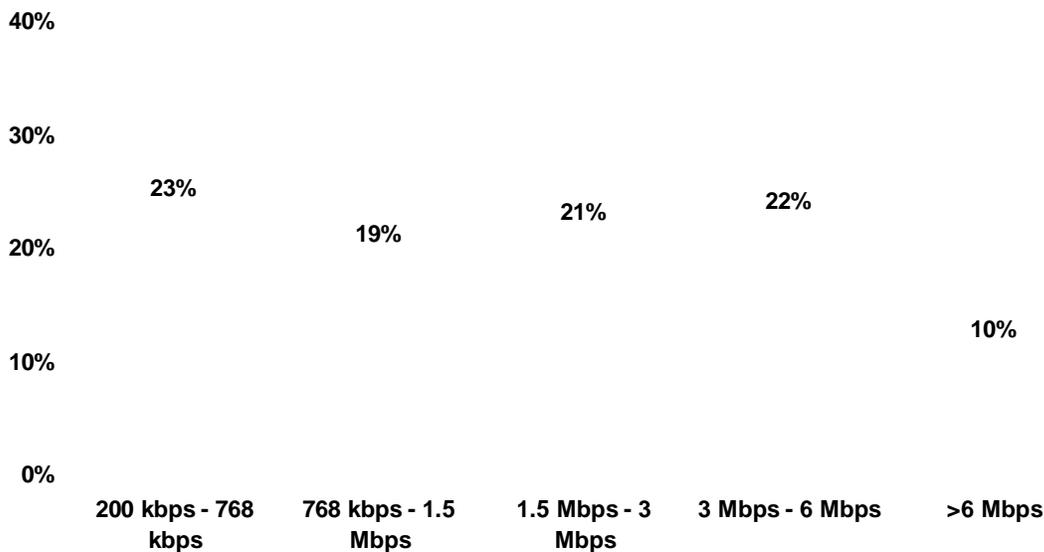
Seventy-eight percent of respondents' customers can subscribe to 200 kbps to 768 kbps service, 73% to 768 kbps to 1.5 megabits per second (Mbps), 77% to 1.5 Mbps to 3 Mbps, 53% to 3 Mbps to 6 Mbps, and 39% to greater than 6 Mbps service. (See Figure 2.)

Fig. 2: AVAILABILITY OF FIRST GENERATION DATA AND BROADBAND SERVICE



Survey results indicate an overall broadband take rate from NTCA member companies of 37%.⁸ Broken down by speed tier, on average, 23% of respondents’ residential customers who can receive 200 kbps to 768 kbps service subscribe, 19% subscribes to 768 kbps to 1.5 Mbps service, 21% to 1.5 Mbps to 3 Mbps service, 22% to 3 Mbps to 6 Mbps service, and approximately 10% to greater than 6 Mbps service. (See Figure 3.) Typical prices charged range from \$34.95 to \$44.95 for cable modem service, \$39.95 to \$44.95 per month for DSL service, \$39.95 to \$44.95 for wireless broadband service, and \$44.95 to \$49.95 for fiber service.

Fig. 3: RESIDENTIAL FIRST GENERATION DATA AND BROADBAND TAKE RATES
(Service taken from survey respondents only)



Forty-two percent of survey respondents indicated they offer their customers so-called “naked DSL”—DSL service without a voice component. Take rates for naked DSL service are extremely low, with 56% percent of respondents offering naked DSL reporting take rates of 1% or less.

Half of all respondents estimate that they could bring all of their customers currently receiving service between 200 and 768 kbps up to at least 768 kbps for \$1 million or less.

⁸ Keep in mind that the take rates provided here are for customers taking service from NTCA member companies only. Actual rural broadband subscription rates are likely significantly higher, as survey respondents are joined by a variety of competitors in the provision of broadband services within their service area.

An additional 24% could do so for between \$1 and \$5 million, 11% at a cost of between \$5 and \$10 million, 8% between \$10 and \$50 million, and 8% estimate the total cost would exceed \$50 million.

Internet Backbone

The typical respondent is 103 miles from their primary Internet connection. Eighty-five percent of those respondents who have recently switched Internet backbone access providers did so for price reasons, while 23% switched due to quality of service concerns and 46% for other reasons, such as reducing transport costs or obtaining diverse routing.⁹ Seventy-two percent of respondents indicated they are generally satisfied with their current backbone access provider, while 20% are generally dissatisfied.

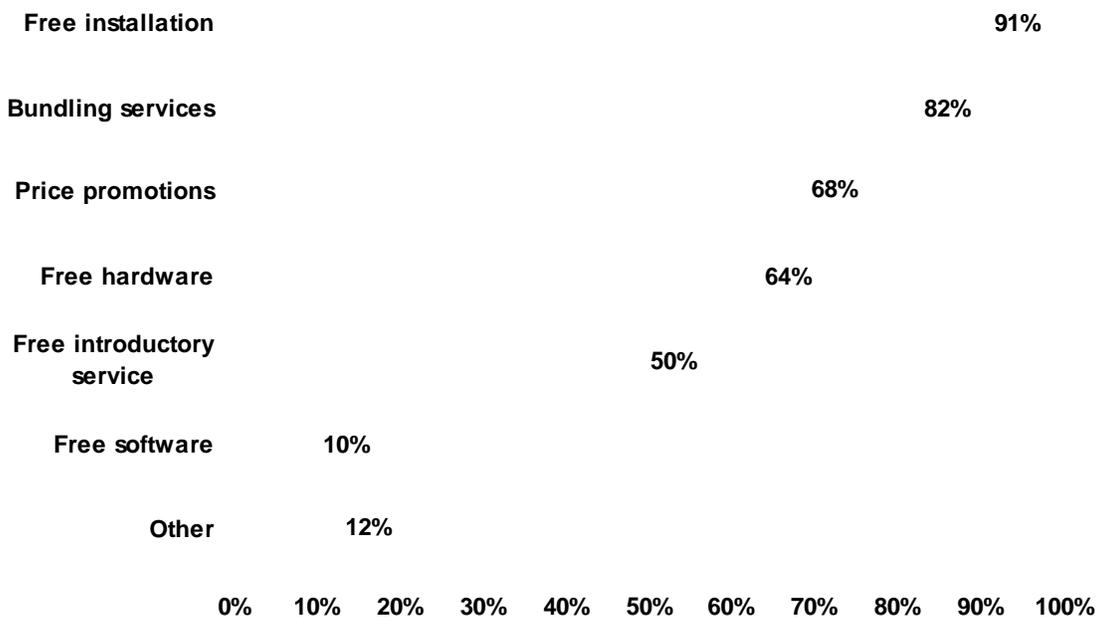
Competition/Marketing

Competition in broadband is becoming more prevalent and more varied: 89% of survey respondents indicated that they face competition from at least one other service provider in some portion of their service area. The typical respondent competes with one national ISP, two wireless Internet service providers (WISPs) and one cable company. Other competitors mentioned include electric utilities, local ISPs and neighboring cooperatives. Fifty-three percent of those respondents facing competition indicated that their competitors were serving only the cities and towns in their service areas, while 47% said that competitors were serving customers throughout their service area.

⁹ Totals exceed 100% as respondents were allowed to select more than one reason for switching providers.

Rural ILECs are taking numerous steps in the marketing arena to increase broadband take rates. Ninety-one percent are offering free installation, 82% are bundling services, 68% are offering price promotions, 64% are offering free hardware, 50% offer free service for an introductory time period (such as 30 days), 10% offer free software and 12% are offering other promotions, such as payment options, direct mail marketing, or Internet training.¹⁰ (See Figure 4.) Eighty-one percent of respondents find it difficult to compete with price promotions offered by competitors, while 52% struggle to match competitors' service bundling. Overall, 37% rate their company's marketing efforts as very successful, while 56% rate them as moderately successful.

Fig. 4: BROADBAND MARKETING PROMOTIONS



Fiber Deployment

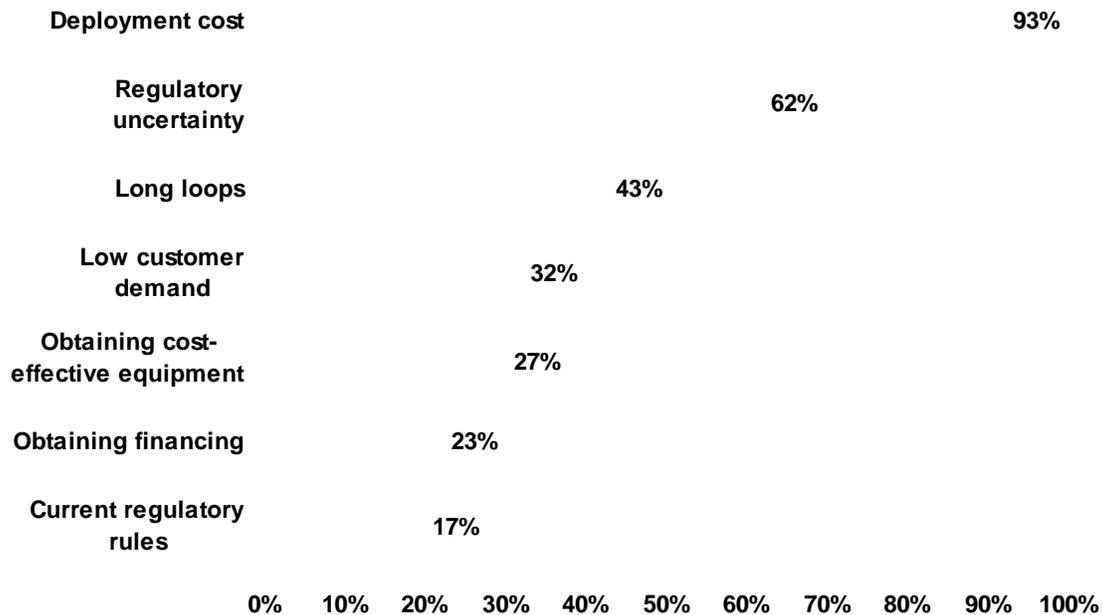
Survey respondents described their companies' plans to deploy fiber to the curb (FTTC) and fiber to the home (FTTH) to their customers. Seventy-three percent of those survey respondents with a fiber deployment strategy expect to offer fiber to the node to more than 75% of their customers by the end of 2011. Twenty-two percent of respondents expect to be able to provide fiber to the curb (FTTC) to at least half of their customers by

¹⁰ Totals exceed 100% as respondents' companies may be offering more than one marketing promotion.

year-end 2011 (up from 11% last year); 55% expect to be able to offer fiber to the home (FTTH) to the same percentage (up from 26%).)

Ninety-three percent of survey respondents identified the cost of fiber deployment as a significant barrier to widespread deployment. Regulatory uncertainty was the number two barrier (62%), followed by long loops (43%), low customer demand (32%) and obtaining cost-effective equipment (27%).¹¹ (See Figure 5.)

Fig. 5: BARRIERS TO BROADBAND DEPLOYMENT



VoIP

Ten percent of survey respondents currently offer voice over Internet protocol (VoIP) service to their customers, up from 6% one year ago. Fifty-four percent of respondents have plans to offer VoIP service in the foreseeable future, up from 44%. Fifty-four percent of respondents perceive VoIP to pose a significant threat to their current operations (up from 31% last year), while 29% perceive VoIP as a moderate threat (up from 22%).)

¹¹ Totals exceed 100% as respondents were allowed to select more than one barrier.

Video

Seventy-five percent of survey respondents offer video service to their customers (up from 68% last year.) Ninety-three percent of those offer video under a cable franchise, while none offer video as an Open Video System (OVS) pursuant to Part 76, Subpart S of the Telecommunications Act of 1996.

Of those respondents not currently offering video, 10% (2% of all respondents) plan to do so by year-end 2009, 15% (4% of all respondents) expect to do so by year-end 2011, and 20% (5% of all respondents) sometime beyond 2011. The remaining 55% of those not currently offering video (14% of all respondents) currently have no plans to offer video service. (See Figure 6.) More than nine out of ten (92%) of those planning to offer video in the future intend to offer IPTV service.

Fig. 6: OFFERING VIDEO SERVICE?



Miscellaneous

Survey respondents were asked what specific obstacles they have encountered in their efforts to deploy fiber to their customers, and how conditions would need to change to allow them to successfully overcome those obstacles. Their responses are presented in Appendix A of this report.

CONCLUSIONS

NTCA member companies continue to deploy fiber at an impressive pace. Nearly three-quarters of survey respondents with a fiber deployment strategy intend to offer fiber to the node to more than 75% of their customers, and 55% plan to offer fiber to the home to more than half their customers in that same time frame. This speaks well of these companies' dedication in providing state-of-the-art services to their service areas, particularly in light of the obstacles that must be overcome in deploying fiber in rural areas, namely distance, terrain and low customer density.

Survey respondents are increasing their deployment of broadband at the upper throughput levels. NTCA member companies continue to increase their deployment of high speed broadband service—53% of respondents' customers can now receive broadband service of between 3 and 6 Mbps, compared to 46% last year, and 39% can receive service in excess of 6 Mbps, compared to 25% a year ago. These gains are due in large part to the previously-noted growth in fiber deployment. As a result, survey respondents are seeing take rates in the higher speed tiers growing, as well.

Cost remains the biggest obstacle to NTCA member companies in the widespread deployment of fiber in their networks. Throughout the history of this survey, the cost of fiber deployment has been the number one obstacle facing respondents. This year is no exception—93% of survey respondents cited deployment cost as a significant impediment. This cost is exacerbated in rural areas by the barriers cited above. The continuing availability of reasonably-priced financing will be critical in allowing rural providers to continue to bring fiber, and the myriad services fiber optic cable facilitates, to their customers.

Growth in video deployment continues. Seventy-five percent of survey respondents now have a video offering, up from 68% a year ago, and an additional 11% intend to do so at some point in the future. If these providers are to be able to bring comparable video services to rural America, it will be critical that they are assured of fair treatment in their negotiations to obtain programming content.

APPENDIX A

Q: What specific obstacles have you encountered in your efforts to deploy fiber to your customers, and how would conditions need to change to allow you to successfully overcome those obstacles?

Obtaining financing in this economic downturn and changing regulations.

The obstacle is building a network that would be financially satisfying to the customer and the company.

We are deploying fiber to the home as fast as we can. The biggest problem we have is some of our customers have NO power to the ONT's.

Unreliable equipment

The cost and personal expense is expensive and will need to be done over a number of years.

We have undertaken a FTTH project to cover a radius of anything within three miles of our central office. We need more regulatory certainty that there will be cost recovery before we can extend our FTTH to our more rural areas.

Distance and cost of equipment.

Minor right-of-way issues

Sustainable revenue streams

Cuts in rates by the [state commission]

1. Cost of deployment/low density area 2. Reliance upon support mechanisms for ROI during times of regulatory uncertainty. 3. Cost of obtaining and purchasing video content. 4. No economies of scale to be realized in exchange of 450 subscribers. 5. Cable and satellite competition.

USF for rural broadband would help

178 miles to [...] (where main backbone connection is), middle mile facilities are closer, yet still pricey due to population and per capita income of our customer base. Customer base is not currently requesting more speed, yet continues to maintain price is high. High price is due to having to pay settlements (of course, we do get reimbursed), our Internet wholesaler, and then adding in bandwidth costs we tend to make a little money but

greater expenses would not assist us in making things cheaper or increasing our profit margins. Closest middle mile facility is 16 miles away and requires a river bore. Getting to middle mile facilities is currently being negotiated and explored further, along with fiber to the home within the city of [...].

Cost, customer density—cost per loop

Fiber to the home is very expensive to deploy (avg. cost of \$6,000 per customer). We need regulatory certainty so that we are assured we can recover this investment. We need less expensive costs for fiber deployment.

Adequate and timely funding; national program for broadband USF

Equipment manufacturers unable to provide working equipment in the field.

Power outages and battery back up. Need to create a longer battery back-up solution during power outages.

We are among the first in our state to adopt fiber to the home technology. We have gone through five revisions to remain current and provide new services. We hope things have started to stabilize. The current regulatory climate is very uncertain. We need some assurance we will be able to recover our investment. We cannot do this when we are forced to let others use our broadband pipes without any form of compensation. The greatest example of this is being forced to let VoIP providers use our broadband facilities to provide services in direct competition with us. We make all the investment, they invest nothing, and they use our facilities for free. This makes a very poor business case.

Existing construction, older houses require an electrician to put in an AC outlet. Coordination of construction, doing drops and getting inside house to install battery and CAT 5 for DSL, education on FTTH as to why and the benefits and replacing battery in the future...still in the early stages of FTTH, may have a longer list next year.

Environmental—survey and treatment for American Burying Beetle and the Western Prairie Fringed Orchid.

Need better equipment.

High installation cost per subscriber with regulatory uncertainty. It's impossible to keep the DSL price low and affordable without federal support.

Cost is the main obstacle. We would have to rebuild most of our service area.

Cost is our primary obstacle. Grant funds or some other type of help in funding the project would be necessary for us to implement a widespread fiber deployment.

Return on investment. More demand from customers. Rural area, more customers per route mile.

As we move out from towns, much greater loop distances for much fewer customers.

Current deployment—access to customer premises, product issues—standards on equipment needed. Future deployment—cost of deploying to all rural areas/remote areas—universal service for broadband?

Need cost reimbursement mechanism to provide a business case for deployment

Obtaining financing in this economic downturn, and changing regulations.

Need to know that money will be there, such as USF

Cost is an obstacle. Cost recovery mechanisms to overcome this obstacle

Cost

Sustainable/predictable settlements in the regulated arena as access revenue declines. We can't invest if there is no return in sight!

Cost is the largest obstacle. Now that we have 40% of our customers on fiber, we will look closely at ways to cut costs on staking, engineering and cutover.

Time

Broadband support

Finalize USF reform so a company can know what to expect for its revenue stream.

Rocky terrain is very expensive to navigate.

ROI

Return on investment

We have constructed by approx. 7000 subs and have approximately 2000 customers working on FTTP. Being an early adopter we encountered interoperability issues but have resolved them and everything is working fine now.

Cost of implementing versus the profit made from the project.

High cost to deploy

Cost of deployment per customer. Need guaranteed cost recovery.

IN THE MATTER OF)
CELLCO PARTNERSHIP)
d/b/a VERIZON WIRELESS)

ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance¹ (“Assurance”) is entered into by the Attorneys General² (collectively, “Attorneys General”) of the States of Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming (collectively, “Participating States”), and Respondent Verizon Wireless.

2. Cellco Partnership is a general partnership formed under the laws of the State of Delaware, with its principal place of business at 180 Washington Valley Road, Bedminster, New Jersey 07921 (“Carrier”). “Verizon Wireless” is the doing business as name by which the Carrier does business in the Participating States.

¹ This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

² Of the states listed, Georgia is represented by the Administrator of the Fair Business Practices Act, who is statutorily authorized to undertake consumer protection functions for the State of Georgia, including acceptance of Assurances of Voluntary Compliance. Hawaii is not represented by its Attorney General. Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. Tennessee is represented by the Attorney General, but the Tennessee Attorney General’s Office enters into this Assurance in conjunction with the Tennessee Division of Consumer Affairs. For simplicity purposes, the entire group will be referred to as the “Attorneys General.”

BACKGROUND

3. This Assurance follows an inquiry by the Attorneys General and communications between the Attorneys General and Carrier as to whether representations by Carrier in certain of its consumer advertising materials, including but not limited to, television advertising, print advertising, radio advertising, Internet websites, brochures and other consumer handouts, and billboards regarding its wireless voice service and associated data communications services violate the consumer protection and trade practice statutes listed herein at footnote 3 and/or the regulations promulgated pursuant to the same (collectively, “Consumer Statutes”).³

4. Carrier provides wireless voice and data communications services and is licensed by the

³ Alabama Deceptive Trade Practices Act, Alabama Code 1975 § 8-19-1, *et seq.*; Arkansas Code Ann. § 4-88-101 *et seq.*; Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2003); 6 Delaware Code § 2511 *et. seq.*; Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; Hawaii Rev. Stat. § 480-2 and § 487-5(6); Idaho Code § 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Illinois Uniform Deceptive Trade Practices Act, § 815 ILCS 510/1, *et seq.*; Iowa Consumer Fraud Act, Iowa Code §714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; Massachusetts Consumer Protection Act M.G.L. c. 93A §§1-11; Michigan Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418 (1) *et seq.* (1994); Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1 (Rev. 2000); Montana MCA 30-14-101 *et seq.*; Nebraska Consumer Protection Act, Neb. Rev. Stat. §§59-1601 *et seq.* and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§87-301 *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Hampshire Rev. Stat. Ann. 358-A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; New Mexico Unfair Trade Practices Act, NMSA §57-12-1 *et seq.*, (1978); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. §75-1.1, *et. seq.*; North Dakota Century Code (NDCC) Sections 51-15-01, *et seq.*; Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 15 O.S. §§751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*; Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*, (West 1993); The Virginia Consumer Protection Act, Va. Code Section 59.1-196 *et seq.*; Wisconsin Statutes §§100.18(1) and 100.207; and Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 *et. seq.* (2003).

Federal Communications Commission (“FCC”) to provide wireless telephone service. Carrier supplements its FCC licensed areas with contractual roaming agreements that it has entered into with third party wireless companies.

5. Carrier runs advertising for its wireless voice and data communications services in different media in many states. Certain of its advertising materials promote different wireless service pricing plans offered in different parts of the country.

6. Carrier distributes advertising materials to Consumers in retail outlets in many states. These materials explain the company's wireless service pricing plans and wireless voice and data communications services.

7. Carrier believes that it is, and at all times has been, in compliance with the Consumer Statutes. Carrier further believes that its advertising materials always have been accurate and complete and always have disclosed all necessary material information, including all material limitations in Carrier's wireless service and all material rate information, clearly and conspicuously. As a matter of corporate policy, Carrier believes it always has adhered, and continues to adhere, to pro-individual consumer and pro-business consumer business practices and follows the highest ethical standards, which constitute best practices in the wireless industry.

8. Carrier believes it has cooperated fully with the Attorneys General throughout their inquiry. Although Carrier denies it has engaged in unlawful or otherwise inappropriate business practices, Carrier agrees to this Assurance so that this matter may be resolved amicably, without further cost or inconvenience to the Participating States, their citizens or Carrier, and to avoid the cost and inconvenience to Carrier that will result if the Participating States subject Carrier to different advertising and business requirements in each Participating State.

TERMS OF ASSURANCE

A. Definitions

For purposes of this Assurance, the following definitions shall apply:

9. A statement is “clear and conspicuous” if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:

- a. A radio disclosure must be delivered in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- b. A television disclosure must (i) appear in video in a type size, shade and location, and remain on the screen for a sufficient duration, for a consumer to read and comprehend it, and/or (ii) be delivered in audio in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- c. A print or Internet disclosure must appear in a type size, contrast and location sufficient for a consumer to read and comprehend it.

10. “Wireless Service” means any basic voice wireless service offered by a commercial mobile radio service provider.

11. “Enhanced Feature” means any communications service associated with Wireless Service, including without limitation paging, voice mail, wireless Internet, text messaging and

personal information services.

12. “Consumer” means an individual or business, as defined by and in accordance with a Participating State's Consumer Statute, residing in a Participating State.

13. “Sales Transaction” means a transaction in which (i) a Consumer who is not a current customer of Carrier purchases and enters in a contract for Wireless Service from Carrier, or (ii) a Consumer who is a current customer of Carrier renews or extends his or her contract for a fixed term, or changes Wireless Service rate plans, without regard to whether the rate plan change results in a new fixed term. For purposes of this Assurance, “fixed term” refers to a Wireless Service contract with a term of greater than one month.

14. “Telephone Sales Representative” means anyone who makes any representations to any Consumer via a telephone conversation regarding Carrier's Wireless Service for the purpose of inducing the Consumer to enter into a Sales Transaction with Carrier, without regard to whether the telephone conversation originally began as a customer service or billing inquiry.

15. “Agent” means one or more persons, a corporation, a partnership, or other entity as the case may be, who enters into or has a relationship with Carrier where it sells Carrier's services on behalf of Carrier, and any sub-contractor, employee, servant, Affiliate or agent of said party.

16. “Affiliate” means a person, association, partnership, corporation or joint-stock company, trust, or other business entity that is controlled by Carrier by virtue of its ownership or voting interest.

B. Disclosure of Material Rates and Terms During a Sales Transaction

17. Carrier shall during a Sales Transaction or sale of an Enhanced Feature disclose clearly and conspicuously to Consumers all material terms and conditions of the offer to be purchased.

18. Carrier will implement procedures to provide to Consumers during a Sales Transaction clear and conspicuous disclosures of, at a minimum, the following rates and terms of its Wireless Service rate plans and any Enhanced Features to be purchased, if applicable:

- a. rate plan area;
- b. recurring monthly service charges;
- c. number of peak and off-peak minutes;
- d. hours when peak and off-peak minutes apply;
- e. charge for overtime or excess minutes above allowance;
- f. charge for long distance minutes;
- g. charge for off-network or roaming minutes;
- h. minimum contract term;
- i. early termination fee;
- j. activation and/or other mandatory service initiation fees;
- k. material terms of its cancellation and return policy and any applicable charges;
- l. the fact that monthly taxes, surcharges, and other fees apply, including a listing of the name or type and amount (or, if applicable, a percentage formula as of a stated effective date) of any monthly discretionary charges that are generally assessed by Carrier on Consumers in a uniform dollar amount or percentage without regard to locale. For additional monthly discretionary charges that are assessed by Carrier on Consumers with regard to locale, Carrier shall clearly and conspicuously disclose that additional monthly fees will apply, depending on the

customer's locale, and disclose the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of such additional monthly discretionary charges.

m. for a promotional price, the disclosures required by paragraph 34 of this Assurance; and

n. for a free to pay conversion, the disclosures required by paragraph 23 of this Assurance.

19. Where a Sales Transaction occurs at Carrier's retail location, Carrier will implement procedures to provide Consumers with printed materials that Consumers may take and that contain clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

20. Where a Sales Transaction occurs via Carrier's website, Carrier will provide to Consumers clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, including, but not limited to, a clear and conspicuous disclosure of such information before any click-through or other mechanism of acceptance required for a

Consumer to accept Carrier's contract terms and conditions. These disclosures shall be in electronic format that Consumers may print.

21. During a Sales Transaction that occurs during a telephone conversation between Carrier and a Consumer, and such sales technique is not prohibited under state law, Carrier shall instruct its Telephone Sales Representatives to make the disclosures required by paragraph 18 of this Assurance clearly and conspicuously and orally.

22. Where a Sales Transaction occurs during a telephone conversation between Carrier and a Consumer, Carrier will implement procedures to send within five (5) business days following the telephone conversation with a Consumer who does not have an existing relationship with Carrier and who purchases and enters into a contract for Wireless Service from Carrier, and within ten (10) business days following the telephone conversation with a Consumer who is an existing customer of Carrier and who renews or extends his or her Wireless Service contract for a fixed term, or changes Wireless Service rate plans, resulting in a new fixed term, written materials containing clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

23. A “free to pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a Consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if the Consumer does not take affirmative action to cancel before the end of the initial period. If Carrier offers any part of its Wireless Service or any Enhanced Service as a free to pay conversion, Carrier shall disclose, before the Consumer is bound by a contract with Carrier, the material terms and conditions of the free to pay conversion clearly and conspicuously, including, if applicable:
- a. The fact that the Consumer must cancel the free to pay conversion in order to avoid being charged;
 - b. The date or deadline and method by which the Consumer must cancel to avoid being charged; and
 - c. The cost of the good or service after the expiration of the free to pay conversion.

C. Coverage

24. Carrier shall not misrepresent in its marketing and advertising materials that there is greater geographic service coverage available for its Wireless Service than actually exists.

25. When representing in its advertising and/or marketing materials that its coverage is “nationwide,” “national,” “coast-to-coast,” or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously the following conditions and limitations on such term:

- a. whether the advertised rate requires the Consumer to be on a particular wireless carrier's network or networks; and

b. that coverage may not be available in all areas.

26. In addition to the disclosures required by Paragraph 25, for a period of at least three years following the Compliance Date, when representing in its advertising and/or marketing materials that its coverage is “nationwide,” “national,” “coast-to-coast,” or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously in those advertising and marketing materials the basis for use of the term, which may include the population number covered by the plan, the number of major metropolitan areas covered by the plan, or a referral to the applicable coverage map and to the location where that coverage map is available. Carrier's obligation to clearly and conspicuously disclose the basis of such claim in its advertising and marketing materials shall continue thereafter if there is any material limitation to such coverage representation.

27. When advertising the availability of any Enhanced Feature, if such Enhanced Feature is not available in all areas where Carrier's Wireless Service is available, then Carrier shall disclose that fact clearly and conspicuously.

28. Carrier shall implement procedures to provide during a Sales Transaction at its retail locations, and provide on its website, maps depicting approximate Wireless Service coverage applicable to the Wireless Service rate plan(s) being sold. The maps will be at Carrier's retail locations in printed materials that Consumers may take with them and on Carrier's website as electronic documents that Consumers may print out. The maps will be generated using predictive modeling and mapping techniques commonly used by radio frequency engineers in the wireless service industry to depict approximate outdoor coverage, based on then-appropriate signal strength for the applicable wireless technology and signal strength confidence levels under

normal operating conditions on Carrier's network, factoring in topographical conditions, and subject to variables that impact radio service generally. All such maps will include a clear and conspicuous disclosure of material limitations in Wireless Service coverage depiction and Wireless Service availability. To assist Consumers in making comparisons among carriers, Carrier will make available to Consumers separate such maps depicting approximate Wireless Service coverage on a nationwide and regionwide basis as applicable to its Wireless Service rate plans that are currently offered to Consumers.

29. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

30. Carrier will request to exchange coverage maps based upon the above criteria with its roaming partners, so as to allow the roaming partners to incorporate the same into their own maps as necessary. To the extent Carrier is unable to obtain such maps from a roaming partner, Carrier may rely upon publicly or commercially available coverage information in creating its own maps.

D. Cancellation Period for New Wireless Service

31. When a Consumer initiates service with Carrier:

- a. The Consumer will be informed of and given a period of not less than 14

days after activation to try out the service. Carrier will not impose any early termination fee if the Consumer cancels service within the 14-day period, and will refund any activation or other non-usage based fee charged to the Consumer if the Consumer cancels service within three days (not including national holidays) after activation, provided in each case that the Consumer complies in full with applicable return and/or exchange policies. If the Consumer will be responsible for any charges or fees for use of the service during the 14-day period, Carrier will clearly and conspicuously disclose this fact during the Sales Transaction. Any charge for airtime and charges based on usage must be based on actual usage (which may, if applicable, be calculated by prorating, either based on portion of month or billing cycle or based on the amount of minutes used in the applicable “bucket” of minutes). If any fees were waived during the Sales Transaction or at any time prior to cancellation, these fees may not be charged when the Consumer cancels during the 14-day period.

b. The Carrier's obligations under paragraph 31(a) shall expire in a Participating State 3 years after the Compliance Date, provided that Carrier has not been adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in the Participating State to be in material violation of this Assurance. If prior to 3 years after the Compliance Date, Carrier is adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in a Participating State to have materially violated this Assurance, Carrier shall continue to be subject to the obligations under paragraph 31(a) in the

Participating State until the later of December 31, 2009 or three years from the date of the last adjudication of a violation unless the operative adjudication is reversed by the highest appellate court that addresses the matter. This paragraph is in addition to all other remedies available to any Participating State in law and equity.

c. If Carrier changes its return policy, it shall provide advance notice with a description of the changes to the Attorney General of Tennessee and it shall clearly and conspicuously disclose its new return policy to Consumers prior to having Consumers enter into a Sales Transaction.

E. Advertising

32. Carrier shall not misrepresent, expressly or by implication, any term or condition of any of its products or services, including, but not limited to, cost.

33. In advertising materials stating prices for Wireless Service and/or Wireless Service devices, Carrier will disclose clearly and conspicuously all material terms and conditions associated with the stated price, pursuant to applicable law.

34. When advertising a promotional price or free offer for its Wireless Service or Enhanced Features, Carrier will clearly and conspicuously disclose material terms and conditions related to the promotional price, including, as applicable and in close proximity to the promotional price or free offer, any minimum term of service required to obtain that promotional price or free offer and the price after the promotional price or free offer expires within the minimum term.

35. When advertising a “free” Wireless Service device, Carrier will clearly and conspicuously disclose, in close proximity to the word “free,” any material limitation on the

word “free,” including, if applicable: (a) the price of any Wireless Service device required to be purchased to obtain the “free” Wireless Service device; and (b) any minimum term of Wireless Service required to obtain the “free” Wireless Service device.

F. Disclosures of Taxes and Surcharges on Consumer Bills

36. On Consumers' bills, Carrier will
- a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
 - b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.

G. Consumer Inquiries and Complaints

37. Carrier will provide information about how Consumers can contact Carrier in writing, by toll-free telephone number or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to Consumer inquiries and on Carrier's website. Carrier will also make such contact information available, upon request, to any Consumer calling Carrier's customer service department.
38. Carrier shall respond within a reasonable time and in good faith to all consumer

complaints or requests for adjustments received by Carrier with respect to the matters set forth in this Assurance on an individual basis.

H. Compliance Procedures

39. Carrier shall develop and implement compliance procedures reasonably designed to ensure compliance by Carrier with the obligations contained in this Assurance. With respect to its Agents, Carrier shall (a) notify its Agents of the relevant provisions of this Assurance; (b) ensure that all advertisements provided by Carrier to its Agents for their use in the marketing and sale of Carrier's Wireless Service are in conformity with the terms of this Assurance; and (c) not direct its Agents to take any action or implement any practice that is in contravention of this Assurance.

I. General Provisions

40. Carrier agrees to pay a total of \$1,666,667.00 to the Attorneys General no later than fifteen (15) days after the effective date of this Assurance for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each Participating State's law at the discretion of each Participating State's Attorney General.⁴

41. All court costs associated with this Assurance and its entry and approval shall be borne

⁴ With respect to Arkansas, the funds shall be deposited in the consumer education and enforcement fund maintained by the Attorney General and shall be held in trust for uses directly related to the Attorney General's consumer protection efforts. With respect to Colorado, such funds, including interest thereon, shall be held by the Colorado Attorney General in trust to be used, first, for actual costs and attorney fees incurred by the Colorado Attorney General in this matter and, second, for consumer education and for consumer fraud and/or antitrust enforcement efforts. In Massachusetts, \$100,000 of the funds shall be used to reimburse the Commonwealth of Massachusetts for fees and costs and the remainder shall be shall be deposited into the Local Consumer Aid Fund pursuant to M.G.L.c. 12, § 11G.

by Carrier and are included within the payment outlined in paragraph 40 of this Assurance. No costs shall be imposed on any Participating State. Further, no discretionary costs shall be imposed on any Participating State.

42. Carrier is entering into this Assurance solely for the purposes of settlement. Nothing contained in this Assurance may be taken as or construed to be an admission by Carrier or as evidence supporting any of the allegations raised by the Attorneys General, any matter of fact or law, any violation of state or federal law, or any other liability or wrongdoing whatsoever, including without limitation an admission by Carrier that any of its business practices are or have been unfair or deceptive, or violate or have violated any of the Consumer Statutes of any of the Participating States, all of which Carrier expressly denies.

43. Further, to the extent that any changes in Carrier's business, advertising materials, and/or advertising practices are made to achieve or facilitate conformance to the terms of this Assurance, such changes shall not constitute any form of evidence or admission by Carrier, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute or regulation or the common law.

44. There is no private right of action, explicit or implicit, created by this Assurance to enforce its terms; however, nothing in this Assurance shall be construed as a waiver of any Consumer's claims.

45. The subject matter of this Assurance is the issues covered by paragraphs 9 through 39 of this Assurance and Carrier's advertising materials and billing practices for its Wireless Service and Enhanced Features related to the issues covered by paragraphs 9 through 39 of this Assurance. The Attorneys General acknowledge that execution of this Assurance constitutes a

complete settlement and release by the Participating States of all civil claims, causes of action, damages, fines, costs, and penalties that were asserted or could have been asserted by the Attorneys General, either individually or collectively, on or prior to the effective date of this Assurance against Carrier, and/or any of its Affiliates, successors, employees, shareholders, officers, directors, Agents (but solely as to said Agents' actions at the direction of Carrier), and/or assigns relating to or based on the subject matter of this Assurance, pursuant to any consumer protection statutes or regulations reasonably construed to address marketing, sales or billing practices that the Attorneys General are authorized to enforce, including without limitation the Consumer Statutes set forth in footnote 3 of this Assurance and the regulations promulgated pursuant to such Consumer Statutes, but not including any statutes or regulations not reasonably construed to address marketing, sales or billing practices (including without limitation consumer credit codes, debt collection, antitrust laws, environmental laws and tax laws).

46. This Assurance shall be governed by the laws of the Participating States and is subject to court approval in those Participating States whose procedures require court approval. By entering into this Assurance, Carrier and the Attorneys General agree to all such court approvals, provided that there are no modifications to the terms of this Assurance without the express written consent of Carrier and the Attorneys General. This Assurance does not constitute an admission by Carrier of any Participating State's jurisdiction over it other than with respect to this Assurance, and does not alter any Participating State's jurisdiction over it.

47. Carrier represents that it has fully read and understood this Assurance, that it understands the legal consequences involved in signing this Assurance, and that there are no other

representations or agreements between Carrier and the Attorneys General not stated in writing herein.

48. Carrier represents and warrants that it is represented by legal counsel, that it is fully advised of its legal rights in this matter and that the person signing below is fully authorized to act on its behalf.

49. This Assurance shall bind Carrier and shall be binding on any and all of its Affiliates, successors, employees, shareholders, officers, directors, and assigns.

50. Carrier shall provide a copy of this Assurance and an accurate summary of the material terms of this Assurance to its senior executive officers who have managerial responsibility for the matters subject to this Assurance.

51. This Assurance shall be effective on July 21, 2004 (the "Effective Date"), but only so long as it has been signed by an authorized representative of Carrier and by authorized representatives of every Participating State, unless such condition expressly has been waived in whole or in part by Carrier. Unless provided otherwise in this Assurance, Carrier shall comply with the terms of this Assurance beginning one hundred twenty (120) days following the Effective Date (but one hundred eighty (180) days with respect to paragraphs 20, 22 and 36), or such later date or dates as Carrier and the Attorneys General otherwise may agree (the "Compliance Date"). In the event Carrier acquires or merges with another wireless carrier that is not subject to the terms of an assurance of voluntary compliance that is substantially similar to this Assurance, the Compliance Date shall be not less than nine months from the date of the closing of such merger or acquisition to bring the acquired operations into compliance with the terms hereof, provided, however, that (a) Carrier shall not unduly delay effecting compliance

with any provisions of this Assurance that can reasonably be completed prior to the end of such period; and (b) if Carrier makes a good faith showing that it is not commercially feasible to complete such compliance within such period, and requests an extension thereto, the Attorneys General shall not unreasonably withhold consent to such an extension of such period, provided that, and so long as, Carrier continues to work diligently toward completion of such efforts.

52. This Assurance contains the entire agreement between Carrier and the Attorneys General. Except as otherwise provided herein, this Assurance shall be modified as to any Participating State and/or Carrier only by a written instrument signed by or on behalf of the Attorney General of that Participating State and signed by or on behalf of Carrier. Carrier understands that in some Participating States court approval of any modification will be necessary. Carrier and the Attorneys General for such Participating States agree to use their best efforts to obtain such court approval.

53. Neither Carrier nor anyone acting on its behalf shall state or imply or cause to be stated or implied that a Participating State, an Attorney General, or any governmental unit of a Participating State has approved, sanctioned, or authorized any practice, act, advertising material, or conduct of Carrier.

54. Nothing in this Assurance shall be construed as a waiver of or limitation on Carrier's right to defend itself from or to make agreements in any private individual or class action, state, or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Assurance.

55. Nothing contained in this Assurance shall be construed to deprive any Consumer or other person or entity of any private right under the law.

56. The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by Carrier or the Attorneys General to lend meaning to the actual terms of this Assurance.

57. This Assurance shall not be construed against the “drafter” because both Carrier and the Attorneys General participated in the drafting of this Assurance.

58. Nothing in this Assurance shall limit an Attorney General's right to obtain information, documents, or testimony from Carrier pursuant to any state or federal law or regulation.

59. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

60. Carrier will not participate directly or indirectly in the formation of a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or that would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

61. Nothing in this Assurance shall be construed to waive any claims of sovereign immunity that a Participating State may have in any action or proceeding.

62. Nothing in this Assurance shall be construed as relieving Carrier of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Assurance be deemed to grant Carrier permission to engage in any acts or practices prohibited by such laws and regulations.

63. As consideration for the relief agreed to herein, if the Attorney General of a Participating

State determines that Carrier has failed to comply with any of the terms of this Assurance, and if in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the Participating State, the Attorney General will notify Carrier in writing of such failure to comply and Carrier shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination. The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why Carrier believes it is in full compliance with the Assurance; or
- b. A detailed explanation of how the alleged violation(s) occurred; and
 - i. A statement that the alleged breach has been cured and how; or
 - ii. A statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (1) Carrier has begun to take corrective action to cure the alleged breach; (2) Carrier is pursuing such corrective action with reasonable and due diligence; and (3) Carrier has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

64. Nothing herein shall prevent the Attorney General from agreeing in writing to provide Carrier with additional time beyond the ten (10) business day period to respond to the notice.

65. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this subsection shall be construed to limit the authority of the

Attorney General to protect the interests of the Participating State or the people of the Participating State.

66. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard for fairness.

67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

68. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by a Participating State such that the statute or regulation is in conflict with any provision of this Assurance and such that Carrier cannot comply with both the statute or regulation and the provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to both the Attorney General of Tennessee and the Attorney General of the Participating State, of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 68, and of the counterpart provision of this Assurance which is in conflict with the

statute or regulation.

J. Modification of Certain Operational Provisions

69. To seek a modification of this Assurance for any reason other than that provided for in paragraphs 67 or 68 of this Assurance, Carrier shall send a written request for modification to the Attorney General of Tennessee on behalf of the Participating States. The Participating States shall give such petition reasonable consideration and shall respond to Carrier within 30 days of receiving such request. At the conclusion of this 30 day period, Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.

In the Matter of Cellco Partnership, d/b/a Verizon Wireless
ASSURANCE OF VOLUNTARY COMPLIANCE

CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS

By: _____
(Name)
(Title)

Date:

In the Matter of Cellco Partnership, d/b/a Verizon Wireless
ASSURANCE OF VOLUNTARY COMPLIANCE

Dated: June 25, 2004

THOMAS F. REILLY
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