

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
INQUIRY CONCERNING THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHION AND POSSIBLE STEPS TO ACCELERATE SUCH DEPLOYMENT PURSUANT TO SECTION 706 OF THE TELECOMMUNICATIONS ACT OF 1996, AS AMENDED BY THE BROADBAND DATA IMPROVEMENT ACT)	GN Docket 09-137
)	
A NATIONAL BROADBAND PLAN FOR OUR FUTURE)	GN Docket 09-51
)	
INTERNATIONAL COMPARISON AND SURVEY REQUIREMENTS IN THE BROADBAND DATA IMPROVEMENT ACT)	GN Docket 09-47
)	

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE
PN NBP #24 (DA 09-2474)**

To the Commission:

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits these comments in response to the Commission’s “National Broadband Plan Public Notice #24.”¹ ITTA is an alliance of mid-size telephone companies that collectively serve approximately 30 million access lines in 44 states, and offer

¹ “Comment Sought on Broadband Measurement and Consumer Transparency of Fixed Residential and Small Business Services in the United States,” Public Notice DA 09-2474, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Nov. 24, 2009) (Public Notice).

subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. The Public Notice is part of the Commission's on-going efforts to submit to Congress "a report containing a national broadband plan," pursuant to the American Recovery and Reinvestment Act of 2009;² the report is intended to play an integral role in the process of "ensur[ing] that all people of the United States have access to broadband capability."³ The Commission now seeks comments on "transparency" in providers' communications with customers.

II. DISCUSSION

A. REGULATORY PARITY

At the outset, the Public Notice bewilderingly limits the instant inquiry to "fixed services." In the instant matter, the focus of the Commission's attention is consumer protection. While ITTA eschews additional requirements for broadband providers, it strongly supports the proposition that to the extent any obligations are imposed, *all* providers offering a broadband service should be subject to the same obligations. To do otherwise would be patently unreasonable and fly in the face of the Commission's goal of "ensur[ing] regulatory parity among providers of similar services" in a manner that "will minimize marketplace distortions arising from regulatory advantage."⁴ The consumer-

² American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat. 115, 42 U.S.C. sec. 6001(k)(1) (2009) (ARRA).

³ *A National Broadband Plan for our Future: Notice of Inquiry*, Docket No. 09-51, FCC 09-31, at para. 9, citing ARRA sec. 6001(k)(2) (2009).

⁴ *Telephone Number Requirements for IP-Enabled Service Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization: Report and Order, Declaratory Ruling, Order on Remand, and Notice of*

oriented goals invoked by the Commission are relevant whether applied to fixed or mobile services. It is inconceivable that the Commission should seek to ensure the welfare of consumers who use fixed services while leaving mobile users subject to whatever harms the Commission may envision as justifying regulation in the first place. As a threshold matter the Commission must correct this glaring discrepancy by bringing mobile broadband providers into the instant inquiry.

B. CONSUMER TRANSPARENCY

The Commission asks how the framework discussed in the recent “Truth in Billing” *Notice of Inquiry*⁵ should factor into an NBP. ITTA supports the proposition that consumers should receive clear and accurate information about the services they purchase. ITTA notes, however, that the successful broadband market has emerged in a lightly-regulated environment. So, while ITTA supports efforts intended to ensure consumer protection, ITTA urges that regulatory intervention occur only where necessary. Accordingly, the Commission should refrain from including broadband service providers within the ambit of truth-in-billing-type regulations.⁶ Absent existing, significant problems – as could be demonstrated by valid consumer complaints and specific evidence of communications providers’ practices – the Commission should refrain from micromanaging carrier practices: the marketplace will best determine the

Proposed Rulemaking, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 96-115, 99-200, FCC 07-188, at para. 1 (2007).

⁵ *2009 Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services: Notice of Inquiry*, CG Docket No. 09-158, CC Docket No. 98-870; WC Docket No. 04-36, FCC 09-68 (2009).

⁶ In the interest of regulatory parity, ITTA supports application of existing truth-in-billing regulations to all VoIP providers.

course carriers take to ensure that subscribers (both current and potential) obtain complete and accurate information regarding provider offerings. The Commission should not endeavor to craft a cure for non-existent ills.

The breadth of inquiry in the instant Public Notice evinces an alarming potential for government management of practices best left to providers. For example, the Commission asks how information provided to consumers will vary by format when presented “television vs. online,” and “[a]t what level will the information and data be comparable for consumers?” The Commission should not presume to consider regulations to address the type or format of information that might be useful to various types of consumer. Consumers seek different characteristics when selecting service providers: some consumers may be most interested in service capabilities, irrespective of rates, while others may be most interested in rates, or the terms of service. The highly subjective nature of what is useful or of interest to any individual consumer dilutes the supposed usefulness of any proposal to regulate the form, manner, or content of communications beyond truthful disclosures pertaining to offerings. Such overreaching requirements would interfere with providers’ abilities to match effectively their communications to consumer needs. Moreover, such measures would condemn the Commission to the Sisyphean task of regulating provider descriptions of new services and technologies as they arise in a rapidly evolving marketplace. The ultimate destination would be both costly and unnecessary, and should be summarily avoided.

The Commission recognized previously the value in not micromanaging presentation of billing information. Currently, bills of carriers subject to existing “”Truth-in-Billing” regulations are required to be clearly organized, with descriptions of

billed charges, and “clear and conspicuous disclosure of inquiry contacts” in a manner that would be “apparent to the reasonable consumer.”⁷ The absence of detailed requirements relating to composition or the manner in which information must be presented ensures that carriers have the necessary flexibility to design and organize billing statements to best meet the needs of their customers.⁸ The Commission should not impose regulatory constraints on carriers’ lawful efforts to deliver information to consumers. It would be poor public policy to attempt to create a one-size-fits-all prescription for providers in a market highlighted by varied offerings and multiple technologies. Rather, the Commission should enable and encourage innovation and differentiation as providers develop new ways to reach and communicate with consumers.

In a thriving marketplace, carriers interested in fostering customer loyalty and trust have adequate incentives to ensure that their communications with consumers are accurate and presented fairly; providers would be ill-advised to alienate customers with obscure or misleading practices. The Commission’s inquiries into the manner and form of information that would be beneficial to consumers are misplaced: those determinations are best left to providers whose product marketing expertise will act as natural mechanisms to ensure that the best information reaches target audiences.

⁷ See, 47 CFR § 64.2401. The rule also addresses “deniable” and “non-deniable” charges, an issue not relevant to the current inquiry.

⁸ See, e.g., *Truth-in-Billing Format; National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing: Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, CG Docket No. 04-208, FCC 05-55, at para. 5 (2005).

B. MEASUREMENT OF FIXED SERVICES

The Commission asks, “Going forward, how should fixed services be measured?”⁹ At the outset, ITTA reiterates that to the extent any such inquiry is conducted, it must apply equally to providers of mobile broadband services. The notion that mobile providers get a “pass” on service quality obligations is an anathema to the goals of regulatory parity, and must be corrected.

The measurement aspect of the Commission’s inquiry contemplates a highly-technical process that is best resolved through an investigatory process involving technical subject matter experts (SMEs) who can develop a protocol that can be executed in an efficient and uniform manner among providers. From a policy perspective, technical verification of carrier networks should rely upon broadband provider testing at facilities internal to the provider’s network. Such testing may be supported by self-certification. Broadband provider certifications will provide sufficient assurance that the reported results are complete and accurate. Carrier testing ensures that equipment that may be available for testing is tuned specifically to the provider’s network and thereby results in reports that depict accurately the nature of service provided on that network. Additionally, testing conducted by the Commission or third parties would likely implicate proprietary data that may be generated by or otherwise emerge in such testing. As noted above, these and other issues are best left to thorough examination and consideration by qualified SMEs who can provide policy-makers with the appropriate technical information necessary to formulate reasonable policies. Accordingly, ITTA recommends examination of these issues within a separate “Working Group” type effort.

⁹ Public Notice at 2.

III. **CONCLUSION**

For the reasons stated above and herein, ITTA urges the Commission to refrain from imposing unnecessary additional obligations on providers, but to ensure that any obligations that may be implemented are applied equitably and equally upon all providers of similar services.

Respectfully submitted,



Joshua Sordemann
Vice President, Regulatory Affairs
Independent Telephone & Telecommunications Alliance
1101 Vermont Avenue, NW, Suite 501
Washington, DC 20005
202-898-1520
www.itta.us

DATED: December 14, 2009