

**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

**COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®**

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**COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®**

CTIA-The Wireless Association® (“CTIA”)<sup>1</sup> submits these comments in response to the Commission’s Notice of Inquiry regarding consumer information and disclosures in billing and other aspects of the carrier-customer relationship.<sup>2</sup>

**INTRODUCTION AND SUMMARY**

Competition in today’s wireless market is more vibrant and varied than ever. The success of the mobile wireless industry is evidenced by the innovation and investment that occur in the sector on a daily basis, and in the ongoing attention given to developing new products and services, enhancing network capabilities, and meeting consumer expectations in creative and effective ways. Perhaps the greatest illustration of that innovation is the evolution of the customer-carrier relationship over the last two years. From the pro-ration of early termination

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<sup>1</sup> CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, Notice of Inquiry, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, FCC 09-68 (rel. Aug. 28, 2009) (“*Notice of Inquiry*” or “*NOI*”).

fees (“ETFs”), to the ability to change contract terms without extending the contract or incurring a fee, to extended trial periods, each is unique to wireless. Additionally, driven by the intense amount of information that is available, from pre-paid, to post-paid, to family plans, calling circles, all-inclusive plans, subsidized phones, un-subsidized phones, unlocked phones, and more, carriers are constantly upgrading the information available and provided to consumers – through in-store information, advertising and online tools – in an effort to win, and keep, customers in this competitive industry. CTIA believes that the wireless industry is one of the country’s greatest examples of how to serve customers through differentiated offerings and approaches designed to meet individual consumers’ needs. Going forward, CTIA hopes that any Commission action in this area will facilitate, rather than limit, the amount of evolution that continues to take place in the wireless customer relationship.

In this competitive environment, carriers’ billing and other consumer practices must be responsive to consumers’ immediate needs. Just as competition has spurred greater network reliability, coverage, and capacity, so too has competition made carriers’ ability to address customer service matters a paramount focus of industry leaders large and small. Because of this inherent market competition and the long-track record the mobile wireless industry has in ensuring that consumers are well-informed of their options at all stages of the carrier-customer relationship, expansion of federal regulation of carriers’ billing practices is not necessary. To do so needlessly would disrupt the equilibrium that exists at present which has led to record high customer satisfaction levels<sup>3</sup> as well as freeze in time the ability of wireless providers to innovate in service provision.

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<sup>3</sup> See *infra*, Part II.B. See, e.g., ACSI Quarterly Scores, Q1 2009 and Historical ACSI Scores, Wireless Telephone Service, available at [http://www.theacsi.org/index.php?option=com\\_content&task=view&id=147&Itemid=155&i=Wireless+Telephone+Service](http://www.theacsi.org/index.php?option=com_content&task=view&id=147&Itemid=155&i=Wireless+Telephone+Service) (last visited Oct. 4, 2009) (finding a record high 69% of wireless users were satisfied with their wireless telephone service in the first quarter

Because increased government regulation will serve only to inhibit carrier flexibility to respond to market forces, the Commission should not expend its valuable time and resources on injecting uncertainty into an industry model that already naturally evolves and self-regulates and that enjoys high approval from the purchasing public. Moreover, standardized billing will tend to homogenize offerings, interfering with carriers' attempts to distinguish themselves – a hallmark of any robustly competitive system – by creating more innovative and diverse service and feature options. Increased regulation would simply be an expensively redundant and unnecessarily duplicative measure, as many of the practices the Commission would likely seek to introduce across multiple technology platforms are already undertaken by wireless providers themselves, either through their own service offerings, commitments to consumer best practices or through voluntary participation with clearly defined stringent industry-wide standards.

Wireless providers are constantly innovating to bring U.S. consumers more of the wireless services that they want. This is demonstrated in the proliferation of voice and data service plans (and non-plan, pre-paid options) that now abound within the mobile wireless ecosystem. Other examples – which are detailed below – include the evolution of early termination fees, the availability of comparative coverage maps, and the ability of consumers to change plans without contract extensions.

CTIA's nationally recognized Consumer Code is another evolving standard for the wireless industry to ensure consumers are informed about their wireless service options, fees, and choices. CTIA's Consumer Code, to which all of the wireless industry's leaders adhere, already addresses many of the issues raised in the *Notice of Inquiry*. The Code ensures that consumers have straightforward access to easily understandable information needed to choose a

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of 2009).

provider, choose a service plan, or switch to another such provider or plan. Although the relationship between the customer and the many companies that contribute to their wireless experience has changed as wireless services have gotten more and more personal, CTIA's Consumer Code continues to ensure that wireless consumers first contact with the wireless ecosystem – when choosing a provider – is characterized as an informed decision.

Because of steps already taken by carriers responding to the expressed desires of customers, carrier bills are becoming easier to understand and contain all relevant information. Competitive pressures have led carriers to go to great lengths to ensure that billing is clear and non-misleading. Moreover, the wireless ecosystem provides consumers a myriad of options to obtain additional information, through third-party websites that allow for wireless plan and carrier comparisons.

It is critical to note in the context of considering a “Schumer Box” for broadband services that wireless broadband is substantially different than wired broadband, and because of this many issues militate against an apples-to-apples comparison between wired and wireless broadband products. Direct comparisons between the two regarding such factors as transmission speed are complicated because of the need to consider the unique attributes of mobility. Additionally, bundled service offerings, bringing consumers discounts for choosing to receive multiple services from one provider, including voice, SMS, MMS, and data services, have become extremely popular with consumers and will not fit squarely into a static comparison chart. As CTIA has stated before in the Commission's proceeding on a National Broadband Plan, it would be a mistake to attempt to shoehorn the modern, vibrant and technologically dynamic mobile wireless broadband ecosystem into wireline definitions crafted for a fixed world.<sup>4</sup>

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<sup>4</sup> See Comments of CTIA – The Wireless Association, National Broadband Plan Public Notice No. 1, GN Docket No. 09-51 (filed June 8, 2009).

Considering the substantial costs of regulation and the complex nature of the wireless broadband market the Commission should continue to trust (but verify) that competitive market forces will ensure that wireless consumers remain informed and continue to receive the benefits of constant wireless market investment and innovation. Consumer regulation of wireless has succeeded to this point. The flexibility and creativity with which wireless carriers collectively and individually can meet the needs of customers is unmatched by any source, including costly external governmental regulation.

**I. U.S. WIRELESS PROVIDERS ARE CONSTANTLY INNOVATING TO MEET EVOLVING CUSTOMER DEMANDS FOR WIRELESS SERVICES AND TO CREATE NEW WIRELESS PRODUCTS, SERVICES, AND TECHNOLOGIES**

The U.S. wireless industry constantly evolves customer offerings to ensure that consumers remain excited about and fully satisfied with their service. Enabled by the Commission’s practice of allowing “competitive market forces to govern rate and rate structures for wireless services,”<sup>5</sup> wireless carriers have been free to develop and introduce a diverse array of rate options that constantly respond to consumers’ needs in light of the increase in the amount and way they use their wireless service.

The wireless voice subscriber, for example, has seen an evolution from the original pay-per-minute subscription of the mid-1990’s to today’s “bucket” plans and a host of new service offerings designed to meet U.S. consumers’ high level of demand for wireless. Creative pricing plans that have emerged include free nights and weekends, rollover minutes, free in-network calling, circle calling plans, unlimited use plans, and many others. Table 1 below illustrates the many different pricing plans that carriers have introduced over time in response to changes in consumer demand and competitive pressures – from, AT&T Wireless’s revolutionary

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<sup>5</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd. 15817, 15831 ¶ 35 (2007).

introduction in May 1998 of its Digital One Rate plan,<sup>6</sup> which allowed customers to purchase a bucket of minutes to use on a nationwide basis for a single flat rate, without any roaming and long-distance charges,<sup>7</sup> to the introduction in 2003 of new “family plans” that permitted subscribers to sign up for multiple lines, with all lines sharing the available minutes on the plan jointly,<sup>8</sup> to the unlimited calling service plans designed to compete directly with wireline local telephone service.<sup>9</sup> Carriers introduced these pricing approaches in order to attract and retain customers.

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<sup>6</sup> See *Twelfth CMRS Competition Report*, 23 FCC Rcd. at 2291-92.

<sup>7</sup> See Press Release, AT&T Launches First National One-Rate Wireless Service Plan (May 7, 1998), available at <http://www.allbusiness.com/media-telecommunications/telecommunications/6876757-1.html> (last visited Oct. 9, 2009).

<sup>8</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd. at 15908, 15946 (2005) (“*Tenth CMRS Competition Report*”) (citing Family Plans Reflect Slowing Cell Growth, Reuters, Mar. 27, 2005).

<sup>9</sup> See *Twelfth CMRS Competition Report*, 23 FCC Rcd at 2342. Some plans offer subscribers the ability to make unlimited calls within a particular metropolitan area or region. Leap, under its “Cricket” brand, and MetroPCS offer such service plans on a pre-pay basis. *Id.*

# Wireless Has Provided Plan & Pricing Innovation Over Time

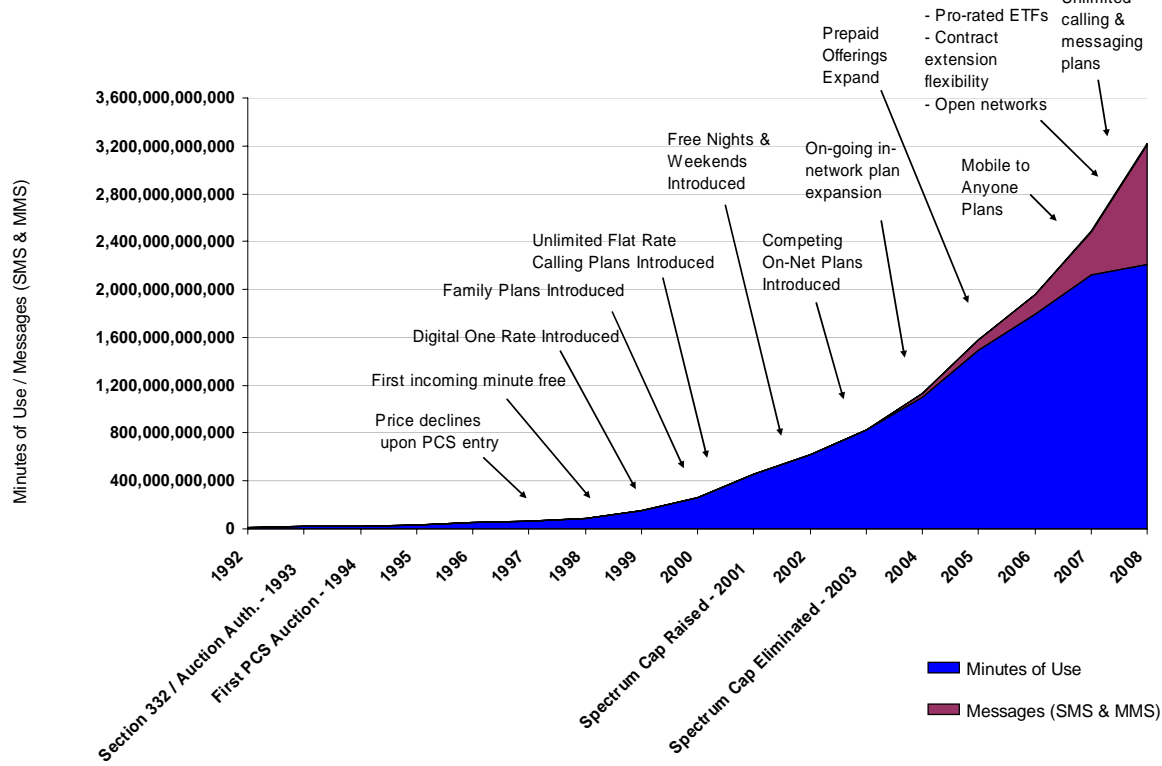


Table 1. A Timeline of Plan and Pricing Innovation (in Annual Terms)  
Source: CTIA Research

This evolution in the voice market is constantly ongoing and has expanded through bundled service offerings to include wireless broadband data. Just in the last 1-1/2 years, new pricing options and service bundles have been made available to consumers to meet their growing demand for mobile wireless services. In February 2008, Verizon Wireless, followed by AT&T and T-Mobile, began offering an unlimited nationwide flat-rate calling plan for voice services.<sup>10</sup> Later the same month, Sprint announced its “Simply Everything” plan that permitted

<sup>10</sup> “Verizon Wireless Introduces New Unlimited Plans That Are As Worry Free As The Guarantee,” Verizon Wireless Press release (Feb. 19, 2008), available at <http://news.vzw.com/news/2008/02/pr2008-02-19.html>; see also *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, ¶ 112 (2009) (“*Thirteenth CMRS Competition Report*”).

unlimited voice and data use from phones operating over its CDMA and iDEN networks for \$99.99 per month.<sup>11</sup> In February 2009, Sprint introduced a variant of this plan that included 5 GB of Internet access from laptops for \$149.99 per month.<sup>12</sup> Later, Sprint announced a \$70 “Everything Data With Any Mobile, Anytime” Plan, which provides Sprint’s unlimited data service and unlimited mobile-to-mobile wireless calling.<sup>13</sup> The evolution of service offerings is not limited to the post-paid market, pre-paid service providers are also responding to the needs of customers in both the voice and data markets. For example, Leap Wireless’s Cricket brand offers unlimited voice service for \$30 per month<sup>14</sup> and unlimited broadband for \$40 per month.<sup>15</sup>

Unlimited data packages are an increasingly important component of the growing wireless industry. U.S. wireless data revenues rose 31% year-to-year to more than \$19.4 billion in the first half of this year, and they now account for more than one-quarter of carriers’ total revenues.<sup>16</sup> Fifty percent of data users say that they prefer to have an unlimited data package, although only 14 percent of U.S. wireless subscribers had such a package in 2008.<sup>17</sup> American use of text messaging has continued to grow steadily, as U.S. carriers delivered more than 740

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<sup>11</sup> See Press Release, Sprint, Sprint Launches Revolutionary \$99.99 “Simply Everything(SM)” Plan (Feb. 28. 2008), *available at* [http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irolnewsArticle\\_newsroom&ID=1113525](http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irolnewsArticle_newsroom&ID=1113525) (last visited Oct. 7, 2009).

<sup>12</sup> See Press Release, Sprint, Sprint Brings Even More Value to Customers with New Simply Everything Plan + Mobile Broadband (Feb. 16. 2009), *available at* [http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle\\_newsroom&ID=1256741&highlight=Sprint%20Brings%20Even%20More%20Value%20to%20Customers%20with%20New%20Simply%20Everything%20Plan%20+%20Mobile%20Broadband](http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1256741&highlight=Sprint%20Brings%20Even%20More%20Value%20to%20Customers%20with%20New%20Simply%20Everything%20Plan%20+%20Mobile%20Broadband) (last visited Oct. 7, 2009).

<sup>13</sup> See David Coursey, Sprint Launches \$70 Unlimited Calling Plan (Sept. 10, 2009), *available at* [http://www.pcworld.com/businesscenter/article/171738/sprint\\_launches\\_70\\_unlimited\\_mobile\\_calling\\_plan.html](http://www.pcworld.com/businesscenter/article/171738/sprint_launches_70_unlimited_mobile_calling_plan.html) (last visited Oct. 4, 2009).

<sup>14</sup> See Wireless Cell Phone Plan, Cricket Wireless *available at* <http://www.mycricket.com/cricketplans/details/30plan> (last accessed Oct. 13, 2009).

<sup>15</sup> See Cricket Broadband *available at* [http://www.mycricket.com/cricketplans/details/broadband\\_rbt](http://www.mycricket.com/cricketplans/details/broadband_rbt) (last accessed Oct. 13, 2009).

<sup>16</sup> Paul Kirby, *Wireless Data Revenue Jumps 31%, 25% of All Revenues Now Non-Voice*, TR DAILY, Oct. 7, 2009.

billion text messages during the first half of 2009 – nearly double the 385 billion carried during the first half of 2008.<sup>18</sup> The typical U.S. mobile user now sends and receives more text messages than telephone calls.<sup>19</sup> Notably, the vast majority of text messages sent by U.S. consumers are sent by consumers who purchase a text messaging plan. According to AT&T and Verizon Wireless, a mere 1% of text messages sent on their networks are sent a la carte.<sup>20</sup> Picture and MMS (multimedia service) messages are also becoming more popular; more than 10.3 billion were sent in the first half of this year, compared with 4.7 billion during the first six months of 2008.<sup>21</sup> During the second quarter of 2008, a typical U.S. mobile subscriber placed or received 204 telephone calls per month.<sup>22</sup> In comparison, the average mobile customer sent or received 357 text messages per month – a 450% increase over the number of text messages circulated monthly during the same period in 2006.<sup>23</sup> As shown in Table 2, Americans are tremendous mobile users – consuming trillions of MOUs and text messages and billions of MMS annually.

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<sup>17</sup> *Id.*

<sup>18</sup> *See Kirby, supra* note 16.

<sup>19</sup> *In U.S., SMS Text Messaging Tops Mobile Phone Calling*, NIELSEN WIRE, Sept. 22, 2008.

<sup>20</sup> *See* Testimony of Randal S. Milch, Executive Vice President and General Counsel, Verizon Communications *and* Testimony of Wayne Watts, Senior Executive Vice President and General Counsel, AT&T, Inc., Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, 111<sup>th</sup> Cong. (June 16, 2009).

<sup>21</sup> *See Kirby, supra* note 16.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

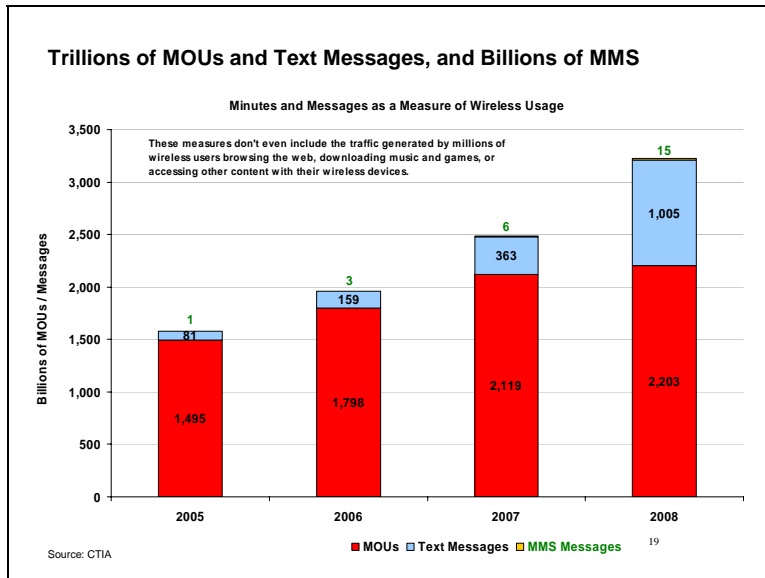


Table 2. Trillions of MOUs and Text Messages, and Billions of MMS Annually

Significantly, consumer demand and network investment show no signs of decreasing. In fact, the pace of deployment actually may increase as demand for connectivity continues to increase and carriers undertake significant network investments to deploy in the AWS and 700 MHz spectrum and upgrade their networks to 4G technologies.

## II. THE WIRELESS CARRIER-CUSTOMER RELATIONSHIP IS ALSO CONSTANTLY EVOLVING TO MEET CONSUMER EXPECTATIONS AND REFLECT WIRELESS INNOVATION

Not only have the last several years witnessed an explosion in wireless service applications, pricing plans, and technologies, but competition has driven service providers to constantly innovate in their provision of service, the effect of which has been to increase the availability of wireless service plan options for consumers and to create better customer service, as reflected in independent surveys and fewer FCC complaints. One theme in the wireless carrier-customer relationship has been constant evolution to meet consumer concerns. Rather than statically waiting for costly and time-consuming governmental intervention, wireless service providers have dynamically met the challenges that have arisen with technological

developments, understanding and catering to the needs of their valued customers in the process. The result has been the most satisfied customers in the communications industry.

**A. The Carrier-Customer Relationship Evolves With Consumer Demands.**

The past decade ushered in a proliferation of new wireless services and, as described above, creative innovation in pricing plans and service bundles. These developments are the result of a competitive and innovative industry with service providers responding to consumer needs and wants in a variety of ways. In addition to pricing plans that gave customers the ability to better tailor their rate to the way they use the service, the mobile wireless ecosystem has also evolved in the amount of flexibility it permits consumers that wish to change service plans or carriers, and in the amount and nature of consumer information that is provided at the point of sale and throughout the life of the customer relationship.

While the details of these flexible practices and disclosures will be discussed below, what is notable is that U.S. wireless carriers are constantly adapting their consumer practices to the needs, demands and interests of their customer base. Rather than stubbornly adhering to policies that consumers dislike or market forces proven to be unpopular, wireless providers excel at monitoring and responding to changing preferences. The chart below, also attached at Attachment B, summarizes some of the changes the evolution of this relationship has produced in the last two years.

	ETF policies	Trial period	Point of sale information/documentation	Online, street-level coverage maps	Ability to change plan w/o contract extension	Ability to purchase service w/o a contract (prepaid)	Ability to bring your own phone	Ability to pay full price for a handset and take service w/o a contract	Military Personnel Benefits	
									Suspension	Termination
<b>A T&amp;T</b>	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline by \$5 each completed month of the contract <sup>1</sup>	30-day <sup>2</sup>	Follows CTIA Consumer Code <sup>3</sup>	Yes <sup>4</sup>	Yes <sup>5</sup>	Yes <sup>6</sup>	Yes <sup>7</sup>	Yes <sup>8</sup>	Yes <sup>9</sup>	No ETF <sup>10</sup>
<b>Sprint Nextel</b>	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline by \$10 per month, beginning with the 5th month of the contract until reaching \$50 for the remaining 5 months of the contract. <sup>11</sup>	30-day <sup>12</sup>	Follows CTIA Consumer Code <sup>13</sup>	Yes <sup>14</sup>	Yes <sup>15</sup>	Yes <sup>16</sup>	Yes <sup>17</sup>	Yes <sup>18</sup>	Yes <sup>19</sup>	No ETF <sup>20</sup>
<b>T-Mobile USA</b>	Prorates new and renewed 1 and 2 year consumer contracts. \$100 with < 180 days left, \$50 with < 90 days left, and the lesser of \$50 or the customer's standard monthly charge with < 30 days left <sup>21</sup>	14-day (30 days in CA) <sup>22</sup>	Follows CTIA Consumer Code <sup>23</sup>	Yes <sup>24</sup>	Yes <sup>25</sup>	Yes <sup>26</sup>	Yes <sup>27</sup>	Yes <sup>28</sup>	Yes <sup>29</sup>	No ETF <sup>30</sup>
<b>U.S. Cellular</b>	Starting in the 5 <sup>th</sup> month, the ETF will be reduced by \$7.50/month (24 month contract) or \$18.50/month (12 month contract) <sup>31</sup>	30-day <sup>32</sup>	Follows CTIA Consumer Code <sup>33</sup>	No, State-level only <sup>34</sup>	Yes <sup>35</sup>	Yes <sup>36</sup>	Yes <sup>37</sup>	Yes <sup>38</sup>	Yes <sup>39</sup>	No ETF
<b>Verizon Wireless</b>	Prorates new and renewed contracts. Fees decline by \$5 per month <sup>40</sup>	30-day <sup>41</sup>	Follows CTIA Consumer Code <sup>42</sup>	Yes <sup>43</sup>	Yes <sup>44</sup>	Yes <sup>45</sup>	Yes <sup>46</sup>	Yes <sup>47</sup>	Yes <sup>48</sup>	No ETF <sup>49</sup>

Information Current as of June 3, 2009

Table 3. U.S. Wireless Consumer Carrier Practices. Source: CTIA Research

**ETFs.** An excellent example of this evolution is the change by carriers to the structure of ETFs. While such fees were originally imposed as flat amounts in recognition of the heavy discounts that customers receive and the loss to the company if service is terminated before that discount is recovered, ETFs proved to be a great source of concern in the market. In reaction, nearly all carriers have changed their practices. Since May of last year, AT&T has pro-rated new and renewed one and two year consumer contracts,<sup>24</sup> with fees declining by \$5 each completed

<sup>24</sup> See Press Release, AT&T, *AT&T Implements New Approach to Early-Termination Fees* (May 23, 2008), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25892> (last visited Oct. 2, 2009).

month of the contract instead of the previously applicable \$175 flat termination fee.<sup>25</sup> Verizon Wireless also reduces the ETF on new and renewed contract by \$5 per month.<sup>26</sup> Employing a slightly different approach, starting in the fifth month of the service agreement U.S. Cellular reduces the ETF by \$7.50/month for 24 month contracts or \$18.50/month for 12 month contracts.<sup>27</sup> T-Mobile applies a \$100 fee if termination occurs between 91 to 180 days before the term's end, a \$50 fee if termination occurs with 31 to 91 days of the term's end, and the lesser of \$50 or the customer's monthly recurring charges if termination occurs during the last 30 days of the contract.<sup>28</sup> Sprint's revised ETF policy decreases the ETF by \$10 for each month after the customer has been with Sprint for five months, until the ETF reaches \$50, where it remains for the length of the contract.<sup>29</sup>

**Coverage Maps.** Similarly, carrier practices have evolved with regard to the availability of coverage data. Responding to customers' desire to learn about voice and data coverage as well as roaming, wireless companies (as required in the CTIA Consumer Code, discussed *infra* at Section III) have begun providing consumers with online coverage maps. T-Mobile USA, for instance, provides a zoomable map that allows potential subscribers to see street level coverage

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<sup>25</sup> See Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA-The Wireless Association to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-51, *et al.*, at Attachment - *U.S. Wireless Carrier Consumer Practices* (filed Aug. 14, 2009) ("CTIA Letter - Aug. 14, 2009").

<sup>26</sup> See <http://news.vzw.com/news/2006/11/pr2006-11-16e.html>; see also <http://www.techdirt.com/articles/20061117/115842.shtml> (Last accessed May 29, 2009).

<sup>27</sup> See U.S. Cellular Customer Service Agreement, available at [http://www.uscellular.com/uscellular/SilverStream/Pages/x\\_page.html?p=legal\\_csa](http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=legal_csa) (last visited Oct. 6, 2009).

<sup>28</sup> See T-Mobile Terms & Conditions, available at [http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr\\_Ftr\\_TermsAndConditions&print=true&WT.srch=2&Result\\_Inq=answer&InqSource=TMO](http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO) (last visited Oct. 6, 2009).

<sup>29</sup> See [http://nextelonline.nextel.com/en/services/termination\\_fee/early\\_termination\\_fee.shtml?id9=vanity:etf](http://nextelonline.nextel.com/en/services/termination_fee/early_termination_fee.shtml?id9=vanity:etf) (last accessed June 3, 2009).

details for the areas in which they work, live, and travel.<sup>30</sup>

***Contract Changes.*** The ability of consumers to change plans without contract extensions has also changed in recent times. In the last two years, AT&T, Sprint, T-Mobile USA, U.S. Cellular and Verizon Wireless have all begun offering the ability for consumers to change plans without incurring a contract extension, giving consumers more flexibility within their wireless providers options to ensure their service plan meets their needs.<sup>31</sup>

***Non-Contract Options.*** The last two years have additionally seen a rise in traditional wireless carriers providing customers with the ability to purchase service without a contract. Flexibly responding to some consumers' desire to obtain service without having to agree to a longer-term service contract, companies such as U.S. Cellular who have traditionally provided post-paid service now offer wireless service to consumers on their own terms, without contracts, credit checks, or monthly bills.<sup>32</sup> Some companies, like Leap Wireless' Cricket brand, are entirely based on this business model. Similarly, all major wireless carriers now allow customers to bring their own technically-compatible phone for wireless service, as well offer consumers the choice to pay full price for a handset and obtain post-paid rate plans without a contract.<sup>33</sup> Taken in total, there are plans to meet the needs of wireless consumers from the most to the least prolific users of wireless services.

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<sup>30</sup> See *T-Mobile Personal Coverage Check*, available at <http://www.t-mobile.com/coverage/pcc.aspx> (last visited Oct. 4, 2009).

<sup>31</sup> See Attachment B.

<sup>32</sup> See U.S. Cellular, *Prepaid Wireless*, available at [http://www.uscellular.com/uscellular/SilverStream/Pages/x\\_page.html?p=b\\_prepaid](http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=b_prepaid) (last visited Oct. 2, 2009). T-Mobile's FlexPay option similarly allows consumers to forgo entering into a contract and obtaining a credit check, while retaining the ability to take advantage of most of T-Mobile rate plans. <http://www.t-mobile.com/shop/plans/Cell-Phone-Plans.aspx?catgroup=Flexpay-cell-phone-plan>.

<sup>33</sup> See CTIA Letter - Aug. 14, 2009, at Attachment: U.S. Wireless Carrier Consumer Practices.

Looking ahead, especially in light of the even greater increase in wireless penetration that will accompany upcoming Wi-Fi advancements and the Commission's development of a National Broadband Plan, it is critical that the industry retain the ability to quickly adapt to customer preferences and market demands as they emerge. Given the changes from just the last few years, it is evident that the constant progression of wireless service offerings necessitates a nimble, evolving, and innovative approach to consumer relations. The Commission should strive to preserve this ability for wireless carriers.

**B. Customers Are Extremely Satisfied With Their Wireless Service.**

Counter to the environment painted by the Commission in the NOI, the fact is that when measured by third parties, or when the FCC complaint data is reviewed, consumers are happier with their service and filing fewer complaints. That the wireless industry is successfully responding to what consumers want is confirmed by the numerous studies that demonstrate that subscribers are satisfied with their wireless service experience and believe it is constantly improving.

A January 2009 survey by Consumer Reports found that a clear majority of the nearly 52,000 surveyed said they were "completely or very satisfied with their service," and that this was "a substantial improvement over 2007."<sup>34</sup> The report found that "overall, cell-phone service has become significantly better...contract terms are less onerous, and there [a]re fewer problems with call quality."<sup>35</sup> The stark improvement in wireless customer satisfaction was largely a result of carriers' efforts to increase call quality and reduce connectivity issues, and their decisions to end the policy of extending contracts when subscribers make changes to their plans

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<sup>34</sup> See Press Release, "Best Cell Phone Service," *available at* <http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/phones/cell-phone-service-providers/cell-phone-service/overview/cell-phone-service-ov.htm> (last visited Oct. 4, 2009).

and pro-rate ETFs.<sup>36</sup> And this satisfaction has only increased since – the American Customer Satisfaction Index (“ACSI”) found that a record high 69% of wireless users were satisfied with their wireless telephone service in the first quarter of 2009.<sup>37</sup>

Data from other third party groups also confirms that the majority of wireless consumers are satisfied with their service, and that satisfaction continues to increase. J.D. Power and Associates semi-annually rates wireless customer care, providing a score card based on how well wireless providers service their customers in three point-of-contact methods: telephone calls with a service representative and/or automated response system (“ARS”); visits to a retail wireless store; and on the Web. Their survey released in August 2009 found that “overall wireless customer care performance has improved considerably as customers report shorter hold times and improved rates of problem resolution on the first contact, compared with six months ago.”<sup>38</sup>

Improving even from the February 2009 results, the most recent J.D. Power and Associates survey revealed that “satisfaction improves across all methods of contact, as a result of increased first-contact problem resolution and shorter wait times. More than three-fourths (76%) of calls to customer service are resolved on the first contact, compared with just 66 percent six months ago.”<sup>39</sup> In addition, hold times have decreased over a minute even since

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See ACSI Quarterly Scores, Q1 2009 and Historical ACSI Scores, Wireless Telephone Service, available at [http://www.theacsi.org/index.php?option=com\\_content&task=view&id=147&Itemid=155&i=Wireless+Telephone+Service](http://www.theacsi.org/index.php?option=com_content&task=view&id=147&Itemid=155&i=Wireless+Telephone+Service) (last visited Oct. 4, 2009).

<sup>38</sup> See Press Release, “Increased First-Contact Problem Resolution and Shortened Hold Times Drive Improvements in Wireless Customer Care Performance” (Aug. 13, 2009), available at <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2009148> (last visited Oct. 4, 2009).

<sup>39</sup> *Id.*

February 2009.<sup>40</sup> A separate study by mywireless.org in 2009 found that an “overwhelming 83% [of respondents] agree that ‘companies competing for wireless customers give consumers enough choices so they can pick the wireless device, plan, options and content that best fits their needs.’”<sup>41</sup>

These surveys also demonstrate that different carriers have adopted different focuses for best serving their customers. Alltel was found to perform particularly well when contacts are resolved through customer visits to the retail store and ARS.<sup>42</sup> T-Mobile’s strength was identified as prompt decisions to transfer customers from an automated response system to a live service representative.<sup>43</sup> Verizon Wireless was determined to perform well with regard to identifying customer problems quickly and resolving them efficiently with service representatives.<sup>44</sup> That three carriers scored highest based on differing but equally effective approaches to customer service elucidates the fact that flexible, innovative approaches to consumer relations on the part of wireless industry leaders have made tremendous strides in improving the overall wireless customer-carrier relationship.

The increasing effectiveness of the wireless industry in addressing customers’ issues is also demonstrated by the decrease in complaints received by the FCC. Counter to what the NOI details, complaints are actually down from the same period last year. As one measure, there were 2,822 fewer total wireless telecommunications complaints received by the Consumer and

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<sup>40</sup> *Id.*

<sup>41</sup> MyWireless.org 2009 Consumer Survey, “America’s Wireless Consumers are Overwhelmingly Satisfied with their Service - Remain Opposed to Higher Wireless Taxes, Adding New Regulations” (Apr. 3, 2009), at <http://www.mywireless.org/media/mywireless-2009-national-consumer-survey> (last visited Oct. 8, 2009).

<sup>42</sup> *See* [http://www.jdpower.com/Telecom/ratings/Wireless-Customer-Care-Ratings-\(Volume-2\)](http://www.jdpower.com/Telecom/ratings/Wireless-Customer-Care-Ratings-(Volume-2)).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

Governmental Affairs Bureau (“CGB”)<sup>45</sup> in the first quarter of 2009 (“Q1 2009”) (16,142 total) than there were in the first quarter of 2008 (“Q1 2008”) (18,964 total). The complaint statistics are even more favorable when Telephone Consumer Protection Act complaints, reported telemarketing violations which are largely beyond wireless carriers’ control but nonetheless comprised 73% of the complaints in the quarterly report released on September 8, 2009,<sup>46</sup> are omitted. Under that scenario, the total wireless complaints for the Q1 2008 and Q1 2009 were 6,125 and 4,299, respectively, a drop of nearly 30 percent. Moreover, in January of Q1 2009, the CGB received only 73 complaints relating to carrier marketing and advertising, 144 complaints relating to contracts/early termination, and 173 service related issues – far less than the results from one year earlier, in which there were complaints in the same categories registering at 216, 158, and 1,718, respectively.<sup>47</sup> The only category that saw a slight increase was complaints related to billing and rates, however, when rationalized against the number of wireless subscribers this area too is seeing a decrease in complaints. Given the 270 million wireless customers in the United States, these statistics show that only a tiny fraction of subscribers have complaints about their service. As the chart below shows, annually, only 40 billing and rate related complaints were received per one million subscribers to wireless – half the number of just four years earlier.

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<sup>45</sup> See FCC Consumer & Governmental Affairs Bureau, *Quarterly Inquiries and Complaints Reports*, available at <http://www.fcc.gov/cgb/quarter/> (listing the informal consumer inquiries and complaints for each quarter from 2002 to the present).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

**Billing & Rates (Complaints per Million Subscribers) - Annual**

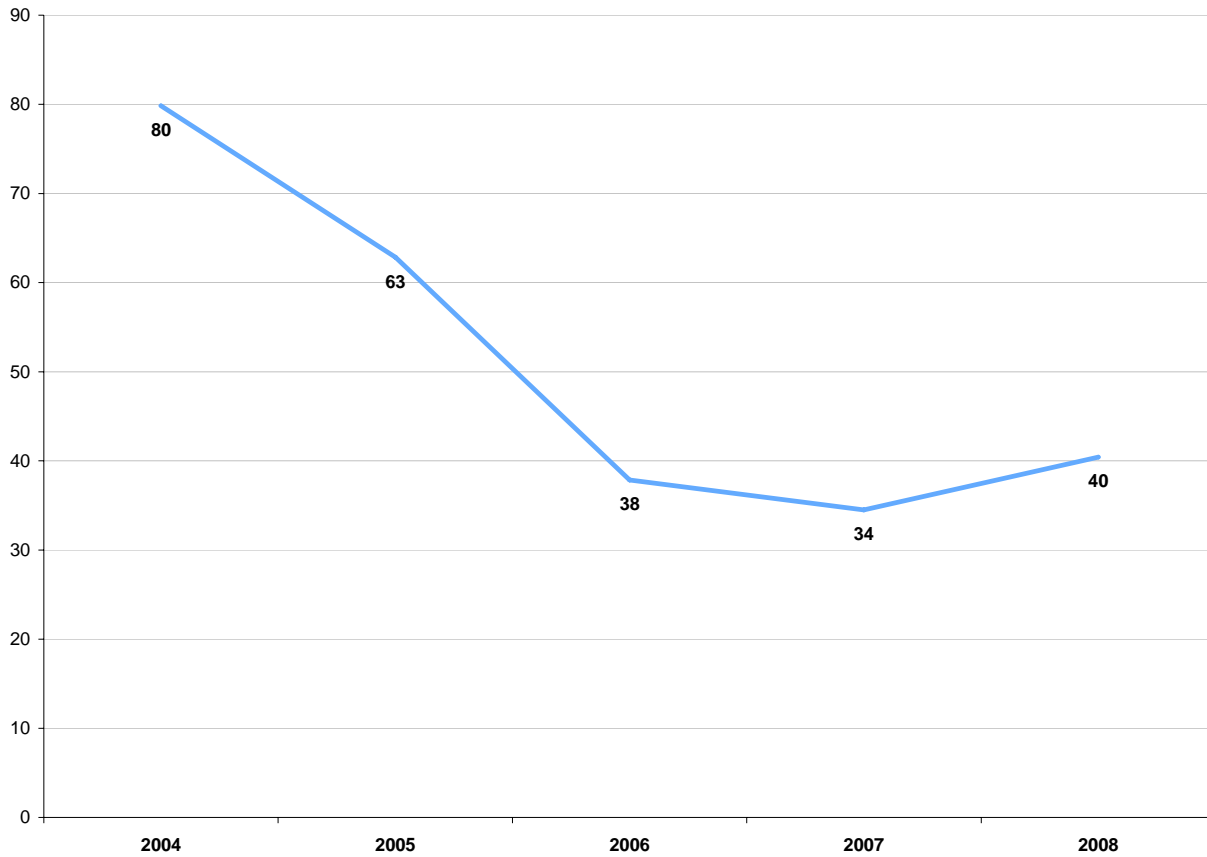


Table 4. Source: FCC Complaint Data 2004 – 2008; CTIA Research

In all, the modifications to the wireless carrier-consumer relationship in the last few years, as well as the marked improvements in customer satisfaction shown by various independent surveys, illustrate that the wireless industry itself is eminently capable of effectively responding to the needs and desires of its customer base. That consumers are increasingly satisfied with the flexibility they are being shown, the retail information with which they are being provided, and the manner in which their complaints are being addressed speaks to the fact that the cost and delay of external intervention is not necessary for the maintenance of a mutually beneficial and responsive carrier-customer relationship. Through attentive internal industry actions and reactions, carriers can most efficiently meet customers' evolving needs.

### **III. CTIA’S CONSUMER CODE IS AN EVOLVING STANDARD FOR THE WIRELESS INDUSTRY TO ENSURE CONSUMERS ARE INFORMED ABOUT THEIR WIRELESS SERVICE OPTIONS, FEES, AND CHOICES**

The *Notice of Inquiry* seeks comment on how to provide consumers with better access to “clear, easily understandable information they need to choose a provider, to choose a service plan, manage use of the service plan, and decide whether and when to switch an existing provider or plan.”<sup>48</sup> In fact, consumers already have readily available, easily understandable access to all such information. CTIA’s members have strongly supported the Commission’s past efforts to increase the availability of consumer information and the wireless industry has taken far-reaching steps in this direction.

As the Commission is aware, in 2003, CTIA and its members developed and voluntarily adopted a “Consumer Code” to facilitate the provision of accurate and complete information to consumers by wireless service providers.<sup>49</sup> The CTIA Consumer Code<sup>50</sup> is now viewed as the industry standard for providing potential customers with information to help them make informed choices when selecting wireless service, and to ensure that consumers understand their wireless service and rate plans. The Consumer Code remains a zero-cost, highly effective method of creating stringent but evolving norms within the wireless industry that benefit consumers and avoid the delay and associated administrative costs of federal governmental intervention.

The Consumer Code sets forth ten principles, disclosures, and practices, to which wireless service provider signatories agree to voluntarily conform their business practices. Every

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<sup>48</sup> *NOI* ¶ 16.

<sup>49</sup> *Id.* ¶ 11.

<sup>50</sup> *See* CTIA - Consumer Code for Wireless Services, Attached as Attachment C (“*Consumer Code*”).

wireless carrier that signs the voluntary Consumer Code is committing to all ten points. Only by adhering to all ten points is a company entitled to display the nationally-recognized Seal of Wireless Quality/Consumer Information in its advertising, store collateral, and publications.

The Consumer Code is widely supported and is self-regulated by the wireless industry. The nation's largest wireless carriers, including AT&T Mobility, Sprint Nextel, T-Mobile USA, Verizon Wireless, and U.S. Cellular are signatories, as are many smaller and rural carriers across the country, such as Bluegrass Cellular, Cincinnati Bell Wireless and SouthernLINC.<sup>51</sup> Wireless carriers must annually re-certify that they are in compliance with the Code, and those not in full compliance are not permitted to display the Seal.

For the wireless industry, the Consumer Code answers many of the questions the Commission poses. For example, the *Notice of Inquiry* asks "how are consumers given information about their contractual commitments to service providers, and the trial periods and termination fees in those contracts?" The Consumer Code requires that for each rate plan offered to new consumers, wireless carriers must make available via disclosures at point of sale and on their websites detailed information about: (1) the calling area of the plan, (2) the access fee or base charge, (3) the charges for excess or additional minutes, (4) per-minute long distance and/or roaming charges, (5) any activation fees, and (6) any early termination fee that applies and the trial period during which no ETF will apply.<sup>52</sup>

Similarly, the Commission's inquiry about "what information helps consumers assess the service quality being offered by each provider...includ[ing] coverage areas for wireless voice

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<sup>51</sup> See CTIA Consumer Code Participants, available at [http://www.ctia.org/consumer\\_info/service/index.cfm/AID/10623](http://www.ctia.org/consumer_info/service/index.cfm/AID/10623) (last visited Oct. 2, 2009).

<sup>52</sup> See CTIA Consumer Code, Section One.

and data services”<sup>53</sup> can be answered for the wireless industry by the Consumer Code. The Consumer Code requires signatories to make available maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. The goal of such maps is to “enable consumers to make comparisons among carriers,” and make consumers aware of “any geographic limitations on the availability of any services included in the rate plan.”<sup>54</sup> As carriers increasingly deploy 3G and 4G networks capable of both voice and broadband data services, voice coverage and data coverage are rapidly becoming synonymous.

In evaluating what information consumers need when choosing a service plan or payment option, the Commission seeks comment on “whether advertised prices generally include all costs and fees.”<sup>55</sup> Again, the wireless industry has addressed this issue. The Consumer Code mandates that its carrier signatories must disclose material charges and conditions related to their advertised prices. To the extent the advertising medium reasonably allows, signatories must disclose in their advertising: (1) activation or initiation fees; (2) any required contract terms; (3) early termination fees; (4) the terms and conditions related to receiving a product or service for “free”; and (5) whether any additional taxes, fees, or surcharges apply.<sup>56</sup> Further, some carriers provide additional information at the point of sale showing what taxes and fees will apply in that customers’ jurisdiction. In addition, when a customer initiates service with a wireless carrier or agrees to a change in service under which the customer is bound to a contract extension, the

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<sup>53</sup> See *NOI* ¶ 26.

<sup>54</sup> See *CTIA Consumer Code*, Section Two.

<sup>55</sup> See *NOI* ¶¶ 28-29.

<sup>56</sup> See *CTIA Consumer Code*, Section Five.

Consumer Code holds that the carrier will provide or confirm the material terms and conditions of service with the subscriber.<sup>57</sup>

The Consumer Code also addresses the Commission’s concern about the adequacy of the information consumers currently receive on their bills, as well as any additional disclosures and “billing information to empower consumers to make better use of service plans.”<sup>58</sup> Many of CTIA’s members already are bound by the traditional Truth-in-Billing rules, and the Consumer Code additionally requires carriers to distinguish on customers’ bills the monthly charges for service, features, and charges retained by the carrier, from taxes, fees, and other charges collected by the carrier and remitted to federal, state, or local governments.<sup>59</sup> This provides more clarity to consumers and ensures that cost recovery fees or charges are not perceived to be taxes.

Wireless customers also are able effectively and in a timely manner to dispute charges on their bills with their service provider.<sup>60</sup> The Consumer Code states that customers must be provided online and on billing statements with a toll-free number to access a carrier’s customer service during normal business hours. Carriers must also provide information about how customers can contact the carrier in writing, by toll-free telephone, via the Internet, and other methods. This information must be included, at a minimum, on all billing statements, in written responses to customer inquiries, and on carriers’ web sites.<sup>61</sup>

The *Notice of Inquiry* seeks comment on whether the most effective way to ensure that consumers are protected is through voluntary industry codes, such as the CTIA Consumer

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<sup>57</sup> See CTIA Consumer Code, Section Three.

<sup>58</sup> See *NOI* ¶ 35.

<sup>59</sup> See CTIA Consumer Code, Section Six.

<sup>60</sup> See *NOI* ¶ 50.

Code.<sup>62</sup> As demonstrated above, the answer is yes. CTIA's Code "is designed to give consumers information, while still permitting the innovation that consumers have come to expect from wireless services."<sup>63</sup> In contrast, government regulators are not capable of being as flexible, immediately responsive, and cost-controlling as a self-regulatory Consumer Code recognized by industry leaders large and small. Although the Consumer Code is clearly defined and nationally recognized, it is dynamic and able to evolve with the times and technological advancements that affect consumers' information about wireless services, fees, and options. The Commission should continue to support codes such as CTIA's, conserving its resources and attention for issues that cannot be resolved by industry-wide standards.

#### **IV. WIRELESS CONSUMERS HAVE EASY ACCESS TO INFORMATION ABOUT THEIR WIRELESS SERVICES**

CTIA applauds the Commission's efforts to ensure that "customers are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace."<sup>64</sup> CTIA and its members recognize that well-informed consumers are best positioned to benefit from a competitive marketplace and have made an enormous amount of information readily available through a multitude of sources, including in their stores, on their websites, in advertisements, and in customer bills. The Commission's suggestion that consumers may be unable to obtain easily comprehensible information they need to understand their bills,

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<sup>61</sup> See CTIA Consumer Code, Section Nine.

<sup>62</sup> See *NOI* ¶ 37.

<sup>63</sup> See CTIA Consumer Code Main Page, available at [http://www.ctia.org/consumer\\_info/service/index.cfm/AID/10352](http://www.ctia.org/consumer_info/service/index.cfm/AID/10352) (last visited Oct. 2, 2009).

<sup>64</sup> *NOI* ¶ 21; see also *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, ¶ 61 (1999).

evaluate their service plans and compare carriers<sup>65</sup> fails to recognize the impact of these information-outreach efforts.

In addition to detailed information related to billing and pricing options, carriers provide *focused* information on the aspects of their service that they believe corresponds to what customers are most interested in when determining how to purchase their services. Despite the fact that different carriers offer a variety of service features and plans, studies show that the vast majority of consumers focus on only a limited number of features – generally, price and coverage – when selecting a carrier and service plan. A 2008 mywireless.org survey found that 65% of respondents preferred “a wireless service contract with a lower price per month, a discount phone and an Early Termination Fee rather than a service contract with a higher price per month, no discount on a phone and no Early Termination Fee (20%).” Another 2008 survey, by comScore Wireless Report, found that price and coverage top consumers’ concerns when selecting a wireless carrier, with 22% of respondents reporting that “better coverage” topped their concerns, while 19% cited lower prices. The third most cited reason, with 17% of respondents, was that family/friends subscribe to the service.<sup>66</sup> As discussed in more detail below, price and coverage information is readily available from multiple sources. CTIA’s Consumer Code, for example, requires disclosure of more than 12 different pieces of information, not only at the point of sale but also on carriers’ web sites, making it far easier for customers to find the information they need to compare carriers than the Commission may acknowledge.

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<sup>65</sup> *NOI* ¶ 23.

<sup>66</sup> Press Release, *comScore Wireless Report Finds Price Is an Increasingly Important Factor for Consumers Selecting a Cellular Phone Carrier*, comScore (Mar. 31, 2008), available at [http://www.comscore.com/Press\\_Events/Press\\_Releases/2008/03/Price\\_Increasingly\\_Important\\_Factor\\_in\\_Cell\\_Phone\\_Carrier](http://www.comscore.com/Press_Events/Press_Releases/2008/03/Price_Increasingly_Important_Factor_in_Cell_Phone_Carrier) (last visited Oct. 8, 2009).

Wireless carriers ensure that their customers are fully informed not in response to regulation, but because they recognize that they must care for and respond to customers' needs in order to retain them in the competitive marketplace. More than 95.5% of Americans have a choice of three or more facilities-based wireless carriers, with each offering a different combination of services and features. In addition, 90.5% of Americans have a choice of four or more facilities-based wireless carriers, while 64.9% have a choice of five or more.<sup>67</sup> Pro-consumer policies such as number portability (wireless carriers have voluntarily adhered to a 2 ½ hour porting interval between wireless carriers),<sup>68</sup> pro-rated early termination fee policies, flexible rate packages, including contract and no-contract, and pre-paid and post-paid plans; and the ability to change plans without penalty, have all made it convenient for subscribers to easily switch providers. Accordingly, wireless carriers are constantly working harder to attract and retain subscribers and subscriber satisfaction in the form of understanding their service plans and charges is an important part of this goal.

**A. Carrier Bills Are Designed To Be Easy To Understand And Contain All Relevant Information.**

Given the competitive pressures that wireless carriers face to ensure customer satisfaction, it is not surprising that carriers have gone to great lengths to ensure that their customer bills are clear and non-misleading. Wireless carriers have gone above and beyond their pledge to abide by the Consumer Code and are continually striving to improve the readability of their bills and continue to make changes to improve the information provided to consumers.

Sprint Nextel, for example, has reconfigured its bills to provide for better readability by

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<sup>67</sup> See, e.g., Comments of CTIA – The Wireless Association, WT Docket No. 09-66, at 3 (filed June 15, 2009).

<sup>68</sup> *Local Number Portability Porting Interval and Validation Requirements*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6084, ¶ 3 (2009).

increasing “white space, graphics throughout the bill, use of colored paper and much larger font size” and customizing bills to reflect “information on products and services that are relevant to each subscriber and their geographic locations.”<sup>69</sup> Sprint even provides subscribers an online “tour” of their bill to explain all notations and charges. T-Mobile offers customers the option of a “summary bill” which provides a simple, “quick and accurate overview” that provides a summary of service charges and the balance that is due.<sup>70</sup> Alternatively, subscribers can still choose a more detailed bill which “itemizes each call and all usage, service charges, taxes, and fees.”<sup>71</sup> Verizon allows every subscriber to receive just one bill for all broadband, wireless and (if available) FiOS TV services.<sup>72</sup> Further, all of the large carriers offer FAQ and “help” sections on their websites dedicated to addressing customer billing questions. And CTIA’s website provides an example bill that educates consumers about the charges that may appear on their wireless bills.<sup>73</sup>

Wireless carriers also make billing and user information available online so that consumers have the convenience of checking their voice minutes, data and text usage from anywhere at anytime. As examples, AT&T, Verizon, and T-Mobile all offer consumers easy

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<sup>69</sup> *Wireless Customers Now Have the Power of Simplicity*, BUSINESSWIRE, April 3, 2007; *see also* Sprint: Reading Your Bill, at [http://www.nextel.com/en/support/billing/first\\_bill\\_consumer.shtml](http://www.nextel.com/en/support/billing/first_bill_consumer.shtml) (last visited Oct. 8, 2009).

<sup>70</sup> *See* T-Mobile Billing Format FAQs, at <http://support.t-mobile.com/doc/tm23555.xml?docid=3211&referring%20topicid=37&A2L.SERVICE=&Referring%20TopicID/DocID%20List%20Index=y&navtypeid=2&pagetypeid=26&prevPageIndex=6>.

<sup>71</sup> *Id.*

<sup>72</sup> *Customers Will Win With New, Friendly Account-Management Features From Verizon Wireless*, Verizon News Release (Feb. 8, 2008) (announcing that customers can “receive just one bill for all multiple wireless and Verizon landline numbers across the country”); *see also* *Verizon Customers Can Now Sign Up for Verizon's Integrated ONE-BILL Option and Make Payments at Verizon Wireless Stores*, Verizon News release (Aug. 13, 2007) (publicizing the availability of “ONE-BILL [which] combines the bill statements for Verizon calling, broadband and entertainment services, and Verizon Wireless service into one monthly statement” and offering consumers monthly savings for combining bills).

<sup>73</sup> CTIA Consumer Info, How To Read Your Wireless Bill, *available at*

ways to manage their accounts online by providing them the opportunity to pay bills, check minutes, change their rate plans and even add new services or lines.<sup>74</sup> Additionally, consumers have a variety of means to track charges they are incurring before a bill is issued including carrier short codes, web portals, call times/usage monitors on their wireless devices and others.<sup>75</sup> Carrier short codes allow a consumer to simply dial \* or # plus a number in order to reach a certain service feature from the carrier. For example, subscribers to Sprint Nextel can dial \*3 to pay their bill or \*4 to check their minutes or account balance.<sup>76</sup> Each carrier offers subscribers an account management tool over its website to check minutes and usage in general.<sup>77</sup> Carriers like Verizon Wireless also offer account viewing tools on wireless devices.<sup>78</sup> A user can easily manage their account from their phone, including checking their minutes usage, text messages, and account balance.

The *NOI* asks whether consumers are confused about the labeling of fees and government-mandated charges on billing statements,<sup>79</sup> noting the Commission's tentative

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[http://www.ctia.org/consumer\\_info/wireless\\_bill/](http://www.ctia.org/consumer_info/wireless_bill/) (last visited Oct. 8, 2009).

<sup>74</sup> See AT&T Online Account Management, available at <https://www.wireless.att.com/olam/loginAction.olamexecute?target=BPS> (offering customers the option to check minutes and data usage, or upgrade to a new phone or change their rate plan); see also My Verizon: Manage Your Account, available at <http://www.verizonwireless.com/b2c/index.html?tab=myaccount&lid=//global//my+Verizon> (allowing subscribers view, print and pay bills, check balances, upgrade or activate phones and change plans at their My Verizon online account); see My T-Mobile, available at [http://www.t-mobile.com/support/support-overview.aspx?WT.z\\_unav=mst\\_support](http://www.t-mobile.com/support/support-overview.aspx?WT.z_unav=mst_support) (allowing subscribers to see and pay their bills, buy downloads and accessories, check minutes and text usage, "and much more").

<sup>75</sup> See, e.g., Sprint Nextel Manage Your Account, available at [http://www.sprint.com/assets/includes/widgets/en/customer\\_service\\_flyer\\_en.pdf](http://www.sprint.com/assets/includes/widgets/en/customer_service_flyer_en.pdf) (providing subscribers the simple \*+one digit number they must press in order to manage different aspects of their account over the phone).

<sup>76</sup> *Id.*

<sup>77</sup> See *infra* at Sec. IV.B.

<sup>78</sup> See How to Use Guide: Accessing My Verizon Handset, at [http://support.vzw.com/how\\_to\\_use/accessing\\_my\\_verizon.html](http://support.vzw.com/how_to_use/accessing_my_verizon.html) (last visited Oct. 8, 2009).

<sup>79</sup> See *NOI* ¶ 38.

conclusion in the *Second FNPRM* on Truth-in-Billing that requiring carriers to separate government-mandated charges from all other charges satisfies the Commission’s policy goals of ensuring that carriers’ descriptions of billed charges are “brief, clear, non-misleading, and in plain language.”<sup>80</sup> CTIA supports the Commission’s efforts to require the straightforward disclosure of government-mandated and non-mandated charges on customers’ bills. Such disclosures benefit consumers by ensuring that they understand the fees their government assesses, and that they can accurately compare fees carriers may voluntarily impose. Additionally, these disclosures promote an open and balanced playing field for CMRS carriers, which are best-positioned to compete on price when all bills clearly describe charges and fees.

As discussed above, the CTIA Consumer Code already requires carriers to separate taxes and other government-mandated charges that are collected from customers and remitted to the government from charges that are not remitted to the government. The Code requires carriers to distinguish “fees and other charges collected by the carrier and remitted to federal state or local governments” from other service charges.<sup>81</sup> Carriers also pledge not to label cost recovery fees or charges as taxes.<sup>82</sup> Thus, the Code strikes an appropriate balance between providing carriers with necessary flexibility to structure their bills in a manner that meets their customer and business needs and ensuring that their billing statements are clear and non-misleading.

***Consumer Disclosure – 911 Fees.*** In light of these efforts made by wireless carriers, CTIA believes that wireless consumers are generally not confused about the labeling of fees and government-mandated charges on their billing statements. In at least one instance, however,

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<sup>80</sup> See NOI ¶ 10, n.23; *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, 20 FCC Rcd 6448, ¶ 52 (2005) (“*Second FNPRM*”).

<sup>81</sup> CTIA Consumer Code, Section Six.

consumers may not be getting accurate information about where those government-mandated fees are spent – but not because wireless carriers are not labeling these fees properly. Rather, some state and local government entities that require carriers to collect fees ostensibly for the support of E911 are routinely diverting these fees to other government purposes wholly unrelated to E911.<sup>83</sup> This has become a widespread and costly practice that has undermined the intention of using E911 funds only to benefit the emergency-calling systems and it misleads consumers.

As states are dealing with budget shortfalls and deficits during difficult economic times, numerous states such as Oregon, Hawaii, and Delaware, have transferred millions of dollars from E911 funds to the state’s general funds.<sup>84</sup> In New Jersey, too, E911 funds are not being used in the manner in which they are supposed to be. In 2009, *none* of the estimated \$137 million collected from New Jersey cell phone users for the Garden State’s “9-1-1 System and Emergency Response” fee will go to local 911 call centers. The state will instead spend the money on several public safety initiatives, with the majority of the funds going towards State Police operations.<sup>85</sup>

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<sup>82</sup> *Id.*

<sup>83</sup> *Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, FEDERAL COMMUNICATIONS COMMISSION, AT 10-12 (July 22, 2009) (The report found that 12 states used E911 fees for purposes other than E911 service, and of those, certain states used the funding for purposes completely unrelated to emergency response. For example, in 2008-2009, New York transferred \$10 million from the balance of the local wireless fund account to the state’s General Fund because it was facing a significant deficit.).

<sup>84/</sup> *See, e.g.*, Donny Jackson, *CTIA, NENA Work to Halt 911 Fund Raids*, URGENT COMMUNICATIONS, May 28, 2009, at [http://urgentcomm.com/policy\\_and\\_law/news/ctia-nea-halth-911-fund-20090528/](http://urgentcomm.com/policy_and_law/news/ctia-nea-halth-911-fund-20090528/) (last visited Oct. 8, 2009); Rosemarie Bernardo, *Funding Loss Slows 911 Upgrades*, HONOLULU STAR-BULLETIN, Aug. 10, 2009, at [http://www.starbulletin.com/news/20090810\\_funding\\_loss\\_slows\\_911\\_upgrades.html](http://www.starbulletin.com/news/20090810_funding_loss_slows_911_upgrades.html) (last visited Oct. 8, 2009).

<sup>85/</sup> Daniel Walsh, *Watchdog Report: New Jersey Siphons Millions from 911 Call Centers*, Press of Atlantic City, Aug. 9, 2009, at [http://www.pressofatlanticcity.com/news/breaking/article\\_90fcc378-849a-11de-a526-001cc4c03286.html](http://www.pressofatlanticcity.com/news/breaking/article_90fcc378-849a-11de-a526-001cc4c03286.html) (noting that New Jersey is one of a dozen states to report taking E911 funds and using the money for other purposes). Of the 12 states, New Jersey spent the most – more than \$100 million last year – on services other than 911. *Id.*

Other examples abound. In New York, only 19 cents of the \$1.20 the state collects monthly from each subscriber goes to emergency calling services. In Wisconsin, the state government decided to divert \$100 million in the next two years to local governments to reduce pressure to raise property taxes. In Arizona, lawmakers funneled \$25 million from the emergency telecommunications fund, halving its size, and cut its monthly 911 cell phone fee to 20 cents. As a result, the fund may be out of money within three years.<sup>86</sup>

Thus, while wireless billing statements inform customers that a fee is being assessed for E911 purposes pursuant to government mandate, in fact the money often is not being used in this way. Actions by some state officials are thus rendering the explanation of the charges misleading to consumers at best, and patently incorrect at worst. Emergency call center services and “next generation” capabilities are supposed to be the priority for E911 fees. The Commission should work with Congress to adopt measures that guarantee the revenue collected at the state and local level from E911 fees is spent appropriately so as to ensure that customers are not misled about the fees’ purpose.

**B. Consumers Have Access To Complete Information At Other Stages Of The Consumer-Carrier Relationship.**

Consumers have access to full information about their carrier, service plan and options at all stages of their relationship with their carrier – when choosing a carrier and service plan, during the life of the contract, and when they seek to switch carriers or service plans. Indeed, more than half of the 10-point CTIA Consumer Code commits carriers to providing adequate information to consumers – whether they are choosing a carrier, switching carriers or in the

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<sup>86</sup> Peter Svensson, *Cash-Strapped States Raid Cell Phone 911 Funds*, ASSOCIATED PRESS, July 23, 2009, at [http://www.msnbc.msn.com/id/32109599/ns/technology\\_and\\_science-wireless/](http://www.msnbc.msn.com/id/32109599/ns/technology_and_science-wireless/) (last visited Oct. 8, 2009) (noting that “Dispatchers say the diversion of money comes at the expense of improvements that would give crime and accident victims more opportunities to reach responders...In some states, the AP

middle of a contract term – in a variety of contexts, including in advertising materials, in stores, in contract materials, on websites, and on an ongoing basis on customer bills.<sup>87</sup>

***In Advertising Materials.*** As noted above, wireless carriers that are signatories to the Consumer Code have pledged to disclose all material charges and conditions related to the advertised prices of services, including if applicable, activation or initiation fees, monthly access fees or base charges, any required contract term, early termination fees, and related terms and conditions, as well as disclosures concerning special promotional plans, geographic scope and other related information. In addition, because carriers use advertising to distinguish their services from those of their competitors, they fully explain the differences in broadband services, rate plans, or geographic reach. For example, AT&T has successfully promoted its “Rollover” minute plans through popular television advertisements.<sup>88</sup> Similarly, Verizon launched an campaign in 2008 about its friends and family plan. These advertisements not only provide memorable slogans, *e.g.*, “Can you hear me now?,” but also provide consumers the first step in understanding the myriad of wireless service offers available.

***In Stores.*** At carrier retail stores, consumers can perform personalized coverage checks (including the capability to “drill-down” to street level coverage data), and can evaluate and compare the myriad of pricing plans and handset options.<sup>89</sup> Store employees are trained to provide helpful and accurate information about the service plans available and the best service

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analysis found, less than half that money is actually going to help emergency dispatches keep pace with the features of smart phones.”).

<sup>87</sup> It is important to note, however, that while CTIA supports the full disclosure of all fees and charges impose, disclosing the exact amount of each such charge is not possible at the point-of-sale. Carriers are subject to a broad array of state and local taxes, which vary by customer. Given these diverse and constantly changing fees, precise disclosures at the point of sale are simply impossible.

<sup>88</sup> Theresa Howard, *AT&T Ads Stick with Family in Love with Rollover Minutes*, USA TODAY (Mar. 29, 2009).

<sup>89</sup> *See, e.g.*, Attachment A, Materials Available at Sprint; Attachment A, Materials Available at T-Mobile.

plan for an individual's needs. Stores also carry explanatory materials that consumers can take with them in order to review information about a carrier's plans.<sup>90</sup> Further, unaffiliated stores also provide information about different carriers and their capabilities. For example, Best Buy's online "Mobile Phone Resource Center," provides content from CNET that educates consumers on all aspects of choosing wireless service and devices, down to the pros and cons of CDMA vs. GSM.<sup>91</sup>

***In Their Contracts.*** Carriers strive to make consumers well aware when signing contracts for service of any important contract terms, including any early termination fees imposed in conjunction with their service and handset packages, and service capabilities and limitations. Each such term is fully disclosed in an easy to understand manner at the stores at the time of purchase<sup>92</sup> or online during ordering.<sup>93</sup> For example, the "Customer Agreement" that is readily available on Verizon Wireless's website clearly and conspicuously discloses its policies about roaming fees, ETFs, and other service-related information.<sup>94</sup> The early termination fee policy is described in bold, capital letters on its website customer agreement."<sup>95</sup> The website

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<sup>90</sup> See, e.g., Attachment A, Materials Available at Verizon; Attachment A, Materials Available at Cricket.

<sup>91</sup> See Best Buy's Mobile Phone Resource Center Educates Consumers on Their Wireless Options Source: Best Buy, at [http://bestbuy-cnet.com.com/4352-13749\\_7-6590054.html](http://bestbuy-cnet.com.com/4352-13749_7-6590054.html).

<sup>92</sup> See Attachment A (examples of Metro DC area carriers materials which illustrate common point of sale disclosures).

<sup>93</sup> See, e.g., T-Mobile Return Policy, [http://www.t-mobile.com/support/SupportSubContent.aspx?PAsset=Hme\\_Sup\\_QuestionMaster&WT.cg\\_s=%20support\\_billing](http://www.t-mobile.com/support/SupportSubContent.aspx?PAsset=Hme_Sup_QuestionMaster&WT.cg_s=%20support_billing); Sprint 30-Day Return Policy, at <http://www.sprint.com/landings/returns/> (last visited Oct. 2, 2009); AT&T Wireless Service Agreement, <http://www.wireless.att.com/learn/articles-resources/wireless-terms.jsp> (last visited Oct. 5, 2009); Alltel Billing Policy, at [https://alltel.custhelp.com/cgi-bin/alltel.cfg/php/enduser/std\\_adp.php?p\\_faaid=8711](https://alltel.custhelp.com/cgi-bin/alltel.cfg/php/enduser/std_adp.php?p_faaid=8711) (last visited Oct. 7, 2009); Sprint Nextel Understanding Your Bill, at [http://pcsinvoicetutorial.sprint.com/tour\\_1.html](http://pcsinvoicetutorial.sprint.com/tour_1.html) (last visited Oct. 7, 2009).

<sup>94</sup> See Customer Agreement, at [http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER\\_AGREEMENT&jspName=footer/customerAgreement.jsp](http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp) (last visited Oct. 2, 2009).

<sup>95</sup> See Verizon Customer Agreement, at <http://www.verizonwireless.com/b2c/>

also provides information about the obligations that the customer undertakes after signing the “Customer Agreement.”<sup>96</sup> All major wireless carriers similarly provide their customer agreements separately on their websites for consumers to access and review as well as at the time of purchase.

***On Their Websites.*** Carrier have easily accessible and understandable information concerning service availability, contract terms, types of service contracts available, device availability, fees imposed, and special promotions. For example, Sprint Nextel’s website provides consumers immediate choices to review their “individual plans,” “Nextel Direct Connect” plans, “family plans,” “mobile broadband plans,” and “Any Mobile Anytime” plans.<sup>97</sup> Each plan description provides the user a detailed review of all of the service’s capabilities as well as the monthly cost.<sup>98</sup> Similarly, Bluegrass Wireless’ website provides consumers with information on their local and nationwide plans as well as pay-as-you-go options and plans for customers eligible for the Universal Service Fund’s low-income Lifeline and Linkup programs.<sup>99</sup> AT&T provides consumers information on device and package deals and lists the cost of the

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globalText?textName=CUSTOMER\_AGREEMENT&jspName=footer/customerAgreement.jsp (last visited Oct. 8, 2009).

<sup>96</sup> *Id.*

<sup>97</sup> See Sprint Nextel, at <http://www.sprint.com/index.html>.

<sup>98</sup> See Sprint Nextel Shop, at [http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/SubmitRegionAction?isUpgradePathForCoverage=false&currZipCode=&upgradeOption=&nextPage=DisplayPlans&equipmentSKUurlPart=%3FcurrentPage%3DratePlanPage&filterStringParamName=filterString%3DIndividual\\_Plans\\_Filter&newZipCode=10028](http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/SubmitRegionAction?isUpgradePathForCoverage=false&currZipCode=&upgradeOption=&nextPage=DisplayPlans&equipmentSKUurlPart=%3FcurrentPage%3DratePlanPage&filterStringParamName=filterString%3DIndividual_Plans_Filter&newZipCode=10028).

<sup>99</sup> See Bluegrass Cellular at <http://www.bluegrasscellular.com/plans> (last accessed Oct. 13, 2009).

device as well as the cost of each service option for easy review and comparison.<sup>100</sup> Most carriers also provide detailed coverage maps on their websites.<sup>101</sup>

Carriers also use their websites to keep subscribers informed about the features of their service plan, and to allow subscribers to change their service plan. AT&T offers consumers easy access via their online “myWireless” accounts to change their voice, picture/video messaging plans, text messaging plans, and data plans.<sup>102</sup> AT&T even allows subscribers to roll over a month’s worth of minutes to a new plan and provides consumers 30 days to try it out.<sup>103</sup> Information about these options is easily accessible on AT&T’s website via the Wireless account tool, the “Explore” page, or even through a plain and simple search of the word “change.” Carriers also provide information about the best wireless plans suited for their particular needs.<sup>104</sup>

Carriers also provide easy-to-understand information to consumers about how they can switch carriers and port numbers. For example, AT&T provides consumers a checklist to refer

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<sup>100</sup> See AT&T Cell Phone Deals and Packages, at <http://www.wireless.att.com/cell-phone-service/packages/prepaid-packages.jsp>.

<sup>101</sup> See generally AT&T Mobility Coverage Viewer, at <http://www.wireless.att.com/coverageviewer/> (last visited Oct. 8, 2009); AT&T - Cities Supporting AT&T 3G/Mobile Broadband, at [http://www.wireless.att.com/coverageviewer/popUp\\_3g.jsp](http://www.wireless.att.com/coverageviewer/popUp_3g.jsp) (last visited Oct. 8, 2009); Sprint Coverage,Tool, at <http://coverage.sprintpcs.com/IMPACT.jsp?PCode=vanity:coverage> (last visited Oct. 8 2009); T-Mobile USA Personal Coverage Check, at <http://www.t-mobile.com/coverage/pcc.aspx> (last visited Oct. 8, 2009); Verizon Wireless Coverage Locator, at <http://www.verizonwireless.com/b2c/CoverageLocatorController> (last accessed Sept. 24, 2009); Cincinnati Bell Wireless Coverage, at <http://www.cincinnati-bell.com/consumer/wireless/coverage/> (last visited Oct. 8, 2009); MetroPCS Wireless Coverage, at <http://www.metropcs.com/coverage/> (last visited Oct. 8, 2009).

<sup>102</sup> See AT&T Answer Center, How can I change a feature?, at <http://www.wireless.att.com/answer-center/main.jsp?solutionId=53575&t=solutionTabHow can I change my MEdia Net plan?>

<sup>103</sup> Shopping Online—Top Questions and Answers, at <http://www.wireless.att.com/learn/basics/shopping-faqs.jsp#01> (last visited Oct. 5, 2009).

<sup>104</sup> See, e.g., AT&T, Shopping Online—Top Questions and Answers, at <http://www.wireless.att.com/learn/basics/shopping-faqs.jsp#01> (discussing and comparing the differences between rate plans and services and also providing customers information about how to switch between

to before they make a porting request.<sup>105</sup>

Independent third parties also assist consumers in their choices. Multiple Web-based sources offer reviews and provide guidance on how to shop for a service provider and choose a mobile device. The site [www.myrateplan.com](http://www.myrateplan.com), for example, allow users to enter in the types of wireless plans that they are interested in, as well as their location, and comparison shop among providers.<sup>106</sup> Other third parties, such as [billshrink.com](http://billshrink.com), provide consumers with tools to compare wireless service offerings.<sup>107</sup> Indeed, a recent ad campaign by T-Mobile highlighted the [billshrink.com](http://billshrink.com) website nationally as a tool for consumers to compare wireless plans. Consumer blog postings and the media in general also contribute to the greater knowledge and understanding of wireless pricing plans and availability. With access to an unprecedented amount of information, consumers can make informed decisions as to the carrier that best meets their needs. In addition, J.D. Power and Associates conducts wireless user surveys that rate providers by customer satisfaction, call quality and customer service.<sup>108</sup> The Commission recently recognized that “numerous” third-party resources such as “publications [like] *Consumer Reports*, trade associations, marketing and consulting firms” are “dedicated to giving consumers an overview and comparison of the mobile telephone services available in their area.”<sup>109</sup>

All of these efforts have resulted in well-informed and highly satisfied customers. In

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plans) (last visited Oct. 8, 2009).

<sup>105</sup> Consumer Number Portability Checklist, at <http://www.wireless.att.com/learn/basics/transfer-number/porting-guide.jsp> (last visited Oct. 8, 2009).

<sup>106</sup> See [Myrateplan.com](http://www.myrateplan.com) (last visited Oct. 5, 2009).

<sup>107</sup> See <http://www.billshrink.com>; see also <http://www.wirelessguide.org/> (providing a cellphone and wireless buying guide) (last visited Oct. 5, 2009).

<sup>108</sup> J.D. Power, 2009 Wireless Call Quality Volume 2, at <http://www.jdpower.com/telecom/articles/2009-Wireless-Call-Quality-Volume-2> (last visited Oct. 4, 2009).

<sup>109</sup> *Thirteenth CMRS Competition Report* ¶ 177; see also *Cell phones: Our tests of 70 standard and smart models show they're sharing many more features*, CONSUMER REPORTS, Jan. 2009 (annual

fact, the Commission’s latest CMRS Competition Report recognized the industry’s efforts to provide detailed and clear information to consumers, finding that “[w]ireless consumers continue to demand information on the availability and quality of mobile telecommunications services” and that the “wireless industry . . . has responded to this demand by launching various initiatives designed to educate consumers and help them make informed choices when purchasing wireless services.”<sup>110</sup>

While wireless providers take seriously input from policymakers on billing and customer practice – and have acted in response to this input – formalizing this process through the adoption of highly detailed regulations would set back all these efforts by impeding the ability of providers to respond quickly to customer and policymaker feedback and by freezing in place the state of the market at the particular moment the rules are written. The Commission is a deliberative body subject to the requirements of the Administrative Procedure Act, and simply cannot act in as swift a fashion as the rapidly moving wireless marketplace demands. The best and most valuable role that regulators play is in bringing potential changes to light so that carriers can promptly and effectively respond to consumer demands and concerns.

**C. The Wireless Ecosystem Has Expanded Beyond the Customer-Carrier Relationship and Provides Consumers A Myriad Of Options To Obtain Information at Every Level.**

Consumers no longer depend wholly on their wireless service provider for information about all the aspects of how to use their wireless service. The wireless marketplace has evolved to represent a complete ecosystem of companies, and consumers interact with each of these entities directly rather than relying on their service provider to act as a middleman.

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review of wireless offerings).

<sup>110</sup> *Thirteenth CMRS Competition Report* ¶¶ 177-78.

In considering whether consumers have all the information they need to make educated choices about how they use their service, therefore, the Commission must look beyond what is provided by carriers and consider how consumers behave in today's wireless world. This would lead to an examination not only of service providers but also of the other "core elements" of the wireless market ecosystem as well. These elements include infrastructure vendors, device manufacturers, operating systems, operating systems developers, application developers, and for the purpose of sales – unaffiliated vendors and stores.

Consumers recognize that each of these elements play an integral role and touch their overall wireless service and therefore seek out information from them. For example, thousands of people turn to Apple for information related to the applications, broadband and mobile service capabilities of their iPhones as well as questions about their voice and data service.<sup>111/</sup> Consumers interested in the various Blackberry models and their various features are much more likely to visit [www.blackberry.com](http://www.blackberry.com) to research that information than to go to the website of the provider that will offer the service over which the Blackberry runs.<sup>112</sup> The proliferation of websites that offer professional reviews of devices, such as [www.cnet.com](http://www.cnet.com) and alternative online retailers such as [amazonwireless.com](http://amazonwireless.com) offer consumers additional guidance.<sup>113</sup>

Given the rapidly changing face of wireless broadband, there is no warrant for regulating this evolving marketplace. Within this marketplace, all of the entities in this wireless ecosystem work together to ensure that customers receive the highest-quality, most innovative service

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<sup>111</sup> See Apple.com, Support, Apple Discussions: Forum : Phone and Messaging, at <http://discussions.apple.com/forum.jspa?forumID=1139> (last visited Oct. 5, 2009).

<sup>112</sup> See Blackberry Support and Services, at <http://na.blackberry.com/eng/support/> (last visited Oct. 5, 2009).

<sup>113</sup> See CNET, Reviews and advice on mobile phones, cell phone accessories, Bluetooth headsets, and more, at <http://reviews.cnet.com/cell-phones/?tag=TOCleftColumn>; [amazonwireless.com](http://amazonwireless.com) (a new website by Amazon.com that offers cell phones and wireless plans) (last visited Oct. 8, 2009).

available. Many of these entities are beyond the FCC's jurisdiction. It would make little sense to adopt regulations directed only at one of the means – via carriers – in which important information reaches consumers. But the more fundamental point is that such regulation is unnecessary for any of the ecosystem participants, and that regulation – particularly asymmetrical regulation – is likely to only result in stifling the self-generated innovation and outreach efforts that characterize the industry today and will create customer confusion to the detriment of the public interest.

## **V. GIVEN THE UNIQUE VALUE OF MOBILITY, A “SCHUMER BOX” FOR WIRELESS BROADBAND WILL NOT PROVIDE MEANINGFUL CONSUMER INFORMATION**

The NOI asks whether information disclosure requirements that govern other industries, such as the “Schumer Box” regulations that apply to credit cards,<sup>114</sup> would be appropriate for communications services companies.<sup>115</sup> In particular, wireless and wireline broadband services have several critical differences that render a direct comparison between them of limited value. Requiring all communications companies to disclose identical information would not only fail to provide consumers the tools they need to understand their services but would likely decrease the broad range of choices that consumers have. Decreasing the number of options available to consumers would be bad from every perspective.

First, as described above, the vast options that wireless services offer to consumers through service bundles have brought consumers great benefits, are extremely popular with

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<sup>114</sup> Senator Schumer (D-NY), then Representative Schumer, authored a provision in the 1988 Truth-in-Lending Act (TILA) that created the “Schumer Box,” which required all credit card solicitations to provide card terms and conditions in a “clear and conspicuous manner,” and in tabular form. Press Release, Senator Charles E. Schumer (D-NY), Federal Reserve Board Approves “Schumer Box” Truth in Lending Regulations (Sept. 28, 2000) *available at* [http://schumer.senate.gov/1-Senator%20Schumer%20Website%20Files/pressroom/press\\_releases/PR00315.html](http://schumer.senate.gov/1-Senator%20Schumer%20Website%20Files/pressroom/press_releases/PR00315.html).

<sup>115</sup> *NOI* ¶ 47.

consumers, and would not fit cleanly within the “box” structure. In fact, the likely result of the imposition of a “Schumer Box” would be a reduction in innovative service offerings and bundles. Carriers will bundle services in ways that may “look better” in the box structure, but will result in little innovation that doesn’t fit within predefined categories, and, as a result, fewer options. In order to maintain wireless providers’ ability to package the services consumers want in ways that meet market demands, the Commission should reject calls for a homogenized information box to describe broadband services.

Second, suggestions that there is a simple way to compare wireless broadband services to wired broadband service ignore the impact of mobility. Wireless broadband is not a third pipe to the home, rather it is broadband to the person, wherever and whenever they want access. There is no way to reflect the value of this unique benefit in a box format.

Finally, wireless and wireline broadband service is not easily compared due to the difference in the two services’ underlying infrastructure, which affects wireless service providers’ ability to predict speed thresholds:

- The capacity of a wireless cell site is shared between all users in that cell. The wireless user must share the available bandwidth with other users in their vicinity.<sup>116</sup>
- The capacity of a cell is shared between all services running over the network. Wireless voice and data use share the finite capacity of the cell.
- Wireless providers cannot “build their way out” of spectrum constraints. Unlike wired services that can add capacity through greater buildout, constraints on expansion of network capacity are a reality for spectrum-based services. In the absence of significant additional spectrum allocations, wireless networks must be managed to maximize the consumer benefit from the network.

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<sup>116</sup> See Opposition of CTIA, RM-11361 (filed Apr. 30, 2007), Attachment C (Jackson Paper) at 3.1.1; see also Marius Schwartz and Federico Mini, *Hanging up on Carterfone: The Economic Case Against Access Regulation in Mobile Wireless* at 19 (May 2, 2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=984240](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=984240) (last visited Sept. 24, 2009).

As Verizon Vice President David Young has observed, “Traffic spikes are more predictable on wireline networks because ISPs know where users are located. Wireless users are mobile and sometimes mass at cell sites that don't usually face high levels of traffic.”<sup>117</sup> Because wireless providers are less able to make such predictions, forcing them to “disclose” such information would be a highly unreliable way of providing consumers information about the service.

The differences between these two broadband technologies, and the pitfalls of attempting to fit wireless broadband into a “Schumer Box” are most evident in the attempts at a consumer disclosure box release by public interest groups in the wake of this NOI. For example, the New America Foundation has released their proposed consumer disclosure box for broadband services.<sup>118</sup> New America’s proposed disclosures succinctly illustrate the fallacy that wired and wireless broadband options can be compared through a simple box of consumer disclosures. Nowhere on New America’s proposal is there any way to tell if the service being offered in a mobile, fixed or nomadic broadband service. Yes, a savvy consumer would realize that DOCSIS is a cable modem standard, but the disclosure box is not intended to educate only savvy broadband customers, but all customers. Another problem with the proposed box is the “service technology” box itself. On wireless networks across the U.S., there are no fewer than seven wireless broadband technologies used throughout wireless broadband networks (EV-DO Rev. 0, EV-DO Rev. A, UMTS, HSPA, HSDPA, HSPA+, and WiMAX) with additional 4G technology deployments announced for next year. As consumers move from area-to-area, as mobility offers, they may find themselves moving from a 4G coverage area, into a 3G coverage area, or even to

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<sup>117/</sup> *Genachowski Takes Wrap Off Planned Net Neutrality Rulemaking*, COMMUNICATIONS DAILY, Sept. 22, 2009.

an area where they will have first generation data service coverage. Unlike in the static cable or landline environment, in the mobile environment, the service being offered varies based on location, technology upgrades, handset capabilities, and more. This distinction isn't recognized by New America and doesn't easily fit into a box for consumer comparison.

The charts below detail some of the voice and data offerings of a sampling of U.S. wireless providers. As seen in the charts, the variety of options that the industry offers consumers, including the bundles and "extras" described below are unlikely to fit into a pre-ordained box of disclosures.

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<sup>118</sup> "Broadband Truth-in-Labeling", New America Foundation *available at* [http://www.newamerica.net/publications/policy/broadband\\_truth\\_labeling](http://www.newamerica.net/publications/policy/broadband_truth_labeling) (last accessed Oct. 13, 2009).

## Voice Only Wireless Mobile Plan Options for Individual Subscribers<sup>119</sup>

	Buckets-of-Minutes	Nights and Weekends	In-Network	Extras
<b>AT&amp;T</b> <sup>120</sup>	<ul style="list-style-type: none"> <li>○ 450</li> <li>○ 900</li> <li>○ 1350</li> <li>○ Unlimited</li> </ul>	Unlimited nights 9pm-6am, and weekends for 900 plan and higher; 5000 minutes for 450 plan. Option to changes nights and weekends to 7pm-7am.	Unlimited.	No roaming charges on any plan; allow customers to rollover unused minutes between months.
<b>Cellular South</b> <sup>121</sup>	<ul style="list-style-type: none"> <li>○ 700</li> <li>○ 1400</li> <li>○ Unlimited regional, 750 national</li> </ul>	Unlimited nights and weekends (M-F 7pm-6:59am; 7pm Fri-6:59am Mon.). Free nights and weekends only for regional calls for 750 plan.	Free nationwide for 700 and 1400, regional for 750.	No activation fee.
<b>Cincinnati Bell</b> <sup>122</sup>	<ul style="list-style-type: none"> <li>○ 200</li> <li>○ 500</li> <li>○ 1000</li> <li>○ 2000</li> </ul>	1000 minutes for 200 plan; unlimited for remaining plans; nights are M-F, 9pm-6am; Weekends all day Sat. and Sun.	Free local-to-local calling for all plans except 200.	No contract. No early termination fees.
<b>Cricket</b> <sup>123</sup>	<ul style="list-style-type: none"> <li>○ One voice-only plan, includes unlimited local minutes.</li> </ul>	N/A	N/A	No contract.

<sup>119</sup> Information gathered from each carrier's website between 9/28/09 and 10/02/03. When a zip code was required, 20554 was used, unless noted otherwise. All plans are monthly. Plans that were bundled with any messaging or data services were excluded; this matrix is exclusively voice-only plans.

<sup>120</sup> <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/individual-cell-phone-plans.jsp>

<sup>121</sup> [https://www.cellularsouth.com/cscommerce/products/plans/category\\_plan\\_list\\_individual.jsp?id=cat320003](https://www.cellularsouth.com/cscommerce/products/plans/category_plan_list_individual.jsp?id=cat320003)

<sup>122</sup> [http://www.cincinnati-bell.com/consumer/wireless/rate\\_plans/](http://www.cincinnati-bell.com/consumer/wireless/rate_plans/)

<sup>123</sup> <http://www.mycricket.com/cricketplans/washingtondc>. Note: caller ID, voice mail, and call waiting available for additional fee.

	<b>Buckets-of-Minutes</b>	<b>Nights and Weekends</b>	<b>In-Network</b>	<b>Extras</b>
<b>MetroPCS<sup>124</sup></b>	<ul style="list-style-type: none"> <li>o One voice-only plan, includes unlimited local and nationwide long-distance.</li> </ul>	N/A	N/A	No contract or activation fee. First month free. Flat rate billing.
<b>Sprint<sup>125</sup></b>	<ul style="list-style-type: none"> <li>o 200</li> <li>o 200 month-to-month</li> <li>o 450</li> <li>o 900</li> </ul>	Unlimited nights and weekends starting at 9pm for 200 minute plan (for additional fee, can start as early as 7pm). Unlimited nights and weekends starting at 7pm for 450 and 900 minute plans (for additional fee, can start at 6 pm).	Unlimited for 450 and 900 minute plans.	No roaming charges for all plans but month-to-month plan. As a bundle with data plan, offer Any Mobile, Anytime, which allows unlimited calling to any mobile phone on any network.
<b>T-Mobile<sup>126</sup></b>	<ul style="list-style-type: none"> <li>o “myFaves” <ul style="list-style-type: none"> <li>o 300</li> <li>o 600</li> <li>o 1000</li> <li>o 1500</li> </ul> </li> <li>o “Individual” <ul style="list-style-type: none"> <li>o 300</li> <li>o 600</li> <li>o 1000</li> <li>o 1000+</li> <li>o 1500</li> <li>o 3000 local</li> </ul> </li> </ul>	Unlimited nights and weekends for all plans excluding 1000 Individual and 3000 local plans. Unlimited weekends for Individual 300 plan. Nights are M-F 9:00pm-6:59am; weekends are Midnight Fri-Midnight Sun.	Unlimited for 600, 1000, or 1500 plans in myFaves. Unlimited for 1000+, 1500, and 3000 local plans in Individual.	myFaves allows unlimited calling to any 5 numbers, out-of-network and landlines included. No domestic digital roaming charges.  Offer FlexPay contracts for most plans, which allows consumers to purchase any phone at retail, and avoid overages, deposits, and activation fees. Option for placing unlimited voice calls over Wi-Fi.

<sup>124</sup> <http://www.metropcs.com/plans/>. Note: plans based on 75201 zip code.

<sup>125</sup> [http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/SubmitRegionAction?isUpgradePathForCoverage=false&currZipCode=&upgradeOption=&nextPage=DisplayPlans&equipmentSKUurlPart=%3FcurrentPage%3DratePlanPage&filterStringParamName=filterString%3DIndividual\\_Plans\\_Filter&newZipCode=20554](http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/SubmitRegionAction?isUpgradePathForCoverage=false&currZipCode=&upgradeOption=&nextPage=DisplayPlans&equipmentSKUurlPart=%3FcurrentPage%3DratePlanPage&filterStringParamName=filterString%3DIndividual_Plans_Filter&newZipCode=20554)

<sup>126</sup> [http://www.t-mobile.com/shop/plans/Cell-Phone-Plans.aspx?catgroup=Individual-cell-phone-plan&WT.mc\\_n=Individual\\_PlanFirstTile1&WT.mc\\_t=OnsiteAd](http://www.t-mobile.com/shop/plans/Cell-Phone-Plans.aspx?catgroup=Individual-cell-phone-plan&WT.mc_n=Individual_PlanFirstTile1&WT.mc_t=OnsiteAd)

<b>U.S. Cellular</b> <sup>127</sup>	<ul style="list-style-type: none"> <li>o 450</li> <li>o 650</li> <li>o 900</li> <li>o 1000</li> <li>o 1350</li> <li>o 2000</li> <li>o Unlimited</li> </ul>	Unlimited nights beginning at 9pm for the 450 and 650 plans, and unlimited weekends (all day Sat. and Sun.). Unlimited nights beginning at 7pm for the remaining plans and unlimited weekends (all day Sat. and Sun.)	Unlimited for 650 plan and up with a two-year contract.	No activation fee.
<b>Verizon</b> <sup>128</sup>	<ul style="list-style-type: none"> <li>o 450</li> <li>o 900</li> <li>o 1350</li> <li>o Unlimited</li> </ul>	Unlimited nights and weekends (M-F 9:01pm-5:59am; 12:01am Sat-11:59pm Sun).	Unlimited.	At 900 minutes and up, unlimited calling to and from 5 out-of-network friends and family members; landlines included.

<sup>127</sup> [http://www.uscc.com/uscellular/SilverStream/Pages/b\\_plan.html?zip=60601&mkt=608830&tm=1&tabPlan=2](http://www.uscc.com/uscellular/SilverStream/Pages/b_plan.html?zip=60601&mkt=608830&tm=1&tabPlan=2). Note: plans based on 60601 zip code.

<sup>128</sup> <http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanList&sortOption=priceSort&typeId=1&subTypeId=19&catId=323>

## Text, Data, and Unlimited Wireless Mobile Plan Options for Individual Subscribers<sup>129</sup>

	Messaging Plans	Non-smartphone Data Plans	Smartphone Data Plans	Unlimited Plans <sup>130</sup>
<b>AT&amp;T</b>	<p>For voice only plans, three messaging options:<sup>131</sup></p> <ul style="list-style-type: none"> <li>o 200</li> <li>o 1500</li> <li>o Unlimited</li> <li>o 100 international</li> </ul>	<p>Three plans:</p> <ul style="list-style-type: none"> <li>o Unlimited nationwide data without messaging</li> <li>o Unlimited nationwide data bundled with unlimited messaging</li> <li>o Unlimited nationwide data bundled with AT&amp;T navigator.</li> </ul>	<p>Basic plan includes minutes, data, and e-mail. Premium plan includes minutes, data, e-mail, and unlimited messaging. Data only plans available. Data with tethering available.<sup>132</sup></p>	<p>Unlimited plan includes:<sup>133</sup></p> <ul style="list-style-type: none"> <li>o Unlimited voice minutes</li> <li>o Unlimited domestic long-distance</li> <li>o Unlimited roaming</li> </ul>
<b>Cellular South<sup>134</sup></b>	<p>Text messaging included with unlimited voice and 200 minute plan.<sup>135</sup></p> <p>Unlimited text messaging offered for all other voice only plans.<sup>136</sup></p> <p>Picture message plans available for all plans, but must first add data plan.<sup>137</sup></p>	<p>One plan offering unlimited regional data access.<sup>138</sup></p>	<p>One smartphone-only plan with limited minutes, unlimited nationwide text messaging, nationwide data, and e-mail.<sup>139</sup></p> <p>Except for unlimited plan and smart phone plan, text, data, e-mail, and voice are not bundled.<sup>140</sup></p>	<p>Two plans, one with:</p> <ul style="list-style-type: none"> <li>o Unlimited domestic long-distance</li> <li>o Unlimited voice</li> <li>o Unlimited nationwide text and picture messaging</li> <li>o Unlimited regional data.<sup>141</sup></li> </ul> <p>The second, a smartphone-only plan, includes all the same features plus unlimited nationwide data.<sup>142</sup></p>

<sup>129</sup> Information gathered from each carrier's website between 9/28/09 and 10/02/03. When a zip code was required, 20554 was used, unless noted otherwise. Unless noted otherwise, "messaging" includes text and picture messaging, and may include video messaging and instant messaging. When noted, "e-mail" is e-mail that is pushed to the user's device. The lists of features in unlimited column are not exhaustive; basic features such as caller ID and call waiting were excluded from features lists, as were most features unique to a particular carrier. All messaging plans are domestic, unless noted otherwise. All plans are monthly. Data plan list excludes plans that provide access only to walled web and/or carrier downloads.

<sup>130</sup> Unlimited plans listed outline most of the features available with an unlimited voice plan.

<sup>131</sup> <http://www.wireless.att.com/cell-phone-service/services/services-list.jsp?catId=cat1470003&catName=Messaging+%26+Data>

<sup>132</sup> <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/pda-personal-plans.jsp>

<sup>133</sup> [http://www.wireless.att.com/cell-phone-service/cell-phone-plan-details/?q\\_sku=sku3830293&q\\_planCategory=cat1370011](http://www.wireless.att.com/cell-phone-service/cell-phone-plan-details/?q_sku=sku3830293&q_planCategory=cat1370011)

<sup>134</sup> [https://www.cellularsouth.com/cscommerce/products/plans/category\\_plan\\_list\\_individual.jsp?id=cat320003](https://www.cellularsouth.com/cscommerce/products/plans/category_plan_list_individual.jsp?id=cat320003)

<sup>135</sup> [https://www.cellularsouth.com/cscommerce/products/plans/category\\_plan\\_list\\_individual.jsp?id=cat320003](https://www.cellularsouth.com/cscommerce/products/plans/category_plan_list_individual.jsp?id=cat320003)

<sup>136</sup> [https://www.cellularsouth.com/cscommerce/products/features/category\\_features\\_list.jsp?\\_DARGS=/cscommerce/cart/util/genie/fragments/package.jsp\\_A&\\_DAV=r16819985&navAction=jump&navCount=0&id=cat5500](https://www.cellularsouth.com/cscommerce/products/features/category_features_list.jsp?_DARGS=/cscommerce/cart/util/genie/fragments/package.jsp_A&_DAV=r16819985&navAction=jump&navCount=0&id=cat5500)

<sup>137</sup>

<sup>138</sup> [https://www.cellularsouth.com/cscommerce/products/features/category\\_features\\_list.jsp?\\_DARGS=/cscommerce/cart/util/genie/fragments/package.jsp\\_A&\\_DAV=r16819985&navAction=jump&navCount=0&id=cat5500](https://www.cellularsouth.com/cscommerce/products/features/category_features_list.jsp?_DARGS=/cscommerce/cart/util/genie/fragments/package.jsp_A&_DAV=r16819985&navAction=jump&navCount=0&id=cat5500)

<sup>139</sup>

<sup>140</sup>

	Messaging Plans	Non-smartphone Data Plans	Smartphone Data Plans	Unlimited Plans
<b>Cincinnati Bell</b>	<p>Text messaging included in unlimited plan, premium plans, and in 200 minute plan.<sup>143</sup></p> <p>For voice only plans, three text messaging options:<sup>144</sup></p> <ul style="list-style-type: none"> <li>o 500</li> <li>o 1000</li> <li>o 500 with 1MB of media use</li> <li>o Unlimited</li> </ul>	<p>Two plans:</p> <ul style="list-style-type: none"> <li>o 1 MB</li> <li>o Unlimited<sup>145</sup></li> </ul> <p>Data is bundled with premium plans.<sup>146</sup></p>	<p>Two options, largely depending on the phone, for non-blackberry smartphones:</p> <ul style="list-style-type: none"> <li>o Unlimited data with choice of pay for use messaging or unlimited messaging.</li> <li>o Unlimited messaging and unlimited data.</li> </ul> <p>Blackberry only plans:<sup>147</sup></p> <ul style="list-style-type: none"> <li>o Choice of unlimited or pay-per-use text</li> <li>o Choice of unlimited e-mail, excluding data, and unlimited data, including e-mail</li> <li>o Unlimited text with unlimited data, e-mail, and enterprise service.</li> </ul>	<p>Unlimited plan includes:<sup>148</sup></p> <ul style="list-style-type: none"> <li>o Unlimited text messaging</li> <li>o Unlimited data</li> <li>o Unlimited voice</li> <li>o Unlimited roaming</li> </ul>

<sup>138</sup>[https://www.cellularsouth.com/cscommerce/products/features/category\\_features\\_list.jsp?\\_DARGS=/cscommerce/cart/util/genie/fragments/package.jsp\\_A&\\_DAV=r16819985&navAction=jump&navCount=0&id=cat550006](https://www.cellularsouth.com/cscommerce/products/features/category_features_list.jsp?_DARGS=/cscommerce/cart/util/genie/fragments/package.jsp_A&_DAV=r16819985&navAction=jump&navCount=0&id=cat550006)

<sup>139</sup>[https://www.cellularsouth.com/cscommerce/products/plans/product\\_plan\\_details.jsp?navAction=push&navCount=0&id=prod22450057](https://www.cellularsouth.com/cscommerce/products/plans/product_plan_details.jsp?navAction=push&navCount=0&id=prod22450057)

<sup>140</sup>[https://www.cellularsouth.com/cscommerce/products/features/category\\_features\\_list.jsp?\\_DARGS=/cscommerce/cart/fragments/package\\_content.jsp.2\\_A%3A\\_D%3A/atg/commerce/order/purchase/CartModifierFormHandler.addItem&\\_DAV=r16819985&navAction=jump&navCount=0&id=cat550006](https://www.cellularsouth.com/cscommerce/products/features/category_features_list.jsp?_DARGS=/cscommerce/cart/fragments/package_content.jsp.2_A%3A_D%3A/atg/commerce/order/purchase/CartModifierFormHandler.addItem&_DAV=r16819985&navAction=jump&navCount=0&id=cat550006)

<sup>141</sup>[https://www.cellularsouth.com/cscommerce/products/features/category\\_features\\_list.jsp?\\_DARGS=/cscommerce/cart/fragments/package\\_content.jsp.2\\_A%3A\\_D%3A/atg/commerce/order/purchase/CartModifierFormHandler.addItem&\\_DAV=r16819985&navAction=jump&navCount=0&id=cat550006](https://www.cellularsouth.com/cscommerce/products/features/category_features_list.jsp?_DARGS=/cscommerce/cart/fragments/package_content.jsp.2_A%3A_D%3A/atg/commerce/order/purchase/CartModifierFormHandler.addItem&_DAV=r16819985&navAction=jump&navCount=0&id=cat550006)

<sup>142</sup>[https://www.cellularsouth.com/cscommerce/products/plans/product\\_plan\\_details.jsp?id=prod26340022](https://www.cellularsouth.com/cscommerce/products/plans/product_plan_details.jsp?id=prod26340022)

<sup>143</sup>[http://www.cincinnati-bell.com/consumer/wireless/rate\\_plans/](http://www.cincinnati-bell.com/consumer/wireless/rate_plans/)

<sup>144</sup>[http://www.cincinnati-bell.com/consumer/wireless/rate\\_plans/](http://www.cincinnati-bell.com/consumer/wireless/rate_plans/)

<sup>145</sup><http://www.cincinnati-bell.com/consumer/wireless/cart/>

<sup>146</sup>[http://www.cincinnati-bell.com/consumer/wireless/rate\\_plans/](http://www.cincinnati-bell.com/consumer/wireless/rate_plans/)

<sup>147</sup>[http://www.cincinnati-bell.com/consumer/wireless/rate\\_plans/](http://www.cincinnati-bell.com/consumer/wireless/rate_plans/)

<sup>148</sup>[http://www.cincinnati-bell.com/consumer/wireless/rate\\_plans/popup\\_unlimitedsingle.asp](http://www.cincinnati-bell.com/consumer/wireless/rate_plans/popup_unlimitedsingle.asp). Note: Blackberry phones require an additional, required, blackberry data package.

	Messaging Plans	Non-smartphone Data Plans	Smartphone Data Plans	Unlimited Plans
<b>Cricket</b>	<p>Unlimited nationwide messaging bundled with all but one basic voice plan.<sup>149</sup> Some bundles include text and picture messaging, messaging to Mexico, and international messaging.<sup>150</sup></p> <p>Separate unlimited nationwide text and picture messaging plans available for basic phone plan.</p>	<p>Unlimited data bundled with three of six plans.<sup>151</sup></p> <p>Unlimited data available for other three plans.</p>	<p>Unlimited data and e-mail plan; messaging not bundled.</p>	<p>All plans include unlimited voice minutes.</p> <p>Plan with most unlimited features includes:<sup>152</sup></p> <ul style="list-style-type: none"> <li>○ Unlimited text, picture, and international messaging</li> <li>○ Unlimited data</li> <li>○ Unlimited voice</li> <li>○ Unlimited long-distance</li> <li>○ Extended national coverage</li> <li>○ Unlimited directory service</li> <li>○ 200 nationwide roaming minutes</li> </ul>

<sup>149</sup> <http://www.mycricket.com/cricketplans/>

<sup>150</sup> <http://www.mycricket.com/cricketplans/washingtondc>

<sup>151</sup> <http://www.mycricket.com/cricketplans/washingtondc>

<sup>152</sup> <http://www.mycricket.com/cricketplans/washingtondc>

	Messaging Plans	Non-smartphone Data Plans	Smartphone Data Plans	Unlimited Plans
<b>MetroPCS</b>	<p>Unlimited text messaging included with three-of-four plans.<sup>153</sup></p> <p>For one voice-only plan, unlimited text messaging available.</p> <p>Unlimited picture messaging available for two-of-four plans for which it is not included.</p>	<p>Data available as bundle with two-of-four voice plans.</p>	<p>Two phone-specific smartphone plans, which include:<sup>154</sup></p> <ul style="list-style-type: none"> <li>o Unlimited text and picture messaging</li> <li>o Unlimited data</li> <li>o Unlimited e-mail</li> <li>o Enterprise e-mail support included in one, extra in the other</li> </ul>	<p>All plans include unlimited voice minutes.<sup>155</sup></p> <p>Plan with most unlimited features includes:<sup>156</sup></p> <ul style="list-style-type: none"> <li>o Unlimited text, picture, and international messaging</li> <li>o Unlimited data</li> <li>o Unlimited voice</li> <li>o Unlimited long-distance</li> <li>o Extended national coverage</li> <li>o Unlimited GPS service</li> <li>o Unlimited e-mail</li> <li>o Unlimited premium directory assistance</li> </ul>
<b>Sprint</b> <sup>157</sup>	<p>Unlimited nationwide messaging included in the top three (of five) voice plans.<sup>158</sup></p> <p>For the two voice only plans:</p> <ul style="list-style-type: none"> <li>o 300 domestic messages</li> <li>o 1000 domestic messages</li> <li>o Unlimited domestic messaging.</li> </ul>	<p>Unlimited nationwide data available for the three (of five) plans that lack a data bundle. The unlimited data plan is not bundled with unlimited messaging.</p> <p>Unlimited nationwide data included in unlimited everything plan, and plan with limited voice but unlimited data and messaging.<sup>159</sup></p> <p>Offer an unlimited nationwide data plan without a voice plan.</p>	<p>Do not differentiate between regular mobile data plans and smartphone data plans.</p> <p>Separate blackberry-only plan available for enterprises.</p>	<p>Unlimited plan includes:<sup>160</sup></p> <ul style="list-style-type: none"> <li>o Unlimited voice minutes</li> <li>o Unlimited domestic messaging</li> <li>o Unlimited domestic long distance</li> <li>o Unlimited roaming</li> <li>o Unlimited data</li> <li>o Unlimited GPS service</li> <li>o Unlimited e-mail</li> </ul>

<sup>153</sup> <http://www.metropcs.com/plans/Default.aspx>

<sup>154</sup> <http://www.metropcs.com/plans/>

<sup>155</sup> <http://www.metropcs.com/plans/>

<sup>156</sup> <http://www.metropcs.com/plans/>

<sup>157</sup> [http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/SubmitRegionAction?isUpgradePathForCoverage=false&currZipCode=&upgradeOption=&nextPage=DisplayPlans&equipmentSKUurlPart=%3FcurrentPage%3DratePlanPage&filterStringParamName=filterString%3DIndividual\\_Plans\\_Filter&newZipCode=20554](http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/SubmitRegionAction?isUpgradePathForCoverage=false&currZipCode=&upgradeOption=&nextPage=DisplayPlans&equipmentSKUurlPart=%3FcurrentPage%3DratePlanPage&filterStringParamName=filterString%3DIndividual_Plans_Filter&newZipCode=20554)

<sup>158</sup> <http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans>

<sup>159</sup> <http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans>

<sup>160</sup> [http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans?filterString=Individual\\_Plans\\_Filter&id12=UHP\\_PlansTab\\_Link\\_IndividualPlans](http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans?filterString=Individual_Plans_Filter&id12=UHP_PlansTab_Link_IndividualPlans)

	Messaging Plans	Non-smartphone Data Plans	Smartphone Data Plans	Unlimited Plans
<b>T-Mobile</b>	<p>Unlimited nationwide messaging bundled with unlimited voice plan.<sup>161</sup></p> <p>For all other voice plans, nationwide messaging plans include:<sup>162</sup></p> <ul style="list-style-type: none"> <li>o 300 messages</li> <li>o 1000 messages</li> <li>o Unlimited messaging</li> </ul>	<p>Two data plans:</p> <ul style="list-style-type: none"> <li>o Unlimited nationwide data with no messaging</li> <li>o Unlimited data and messaging.</li> </ul> <p>Unlimited data is not bundled with unlimited voice and messaging plan</p>	<p>Basic plan includes voice minutes, data, and e-mail, with the same messaging options as in the first column.</p> <p>Premium plan includes everything in basic plus unlimited messaging.</p> <p>Separate blackberry-only plan available for enterprises.</p>	<p>Unlimited plan includes:<sup>163</sup></p> <ul style="list-style-type: none"> <li>o Unlimited voice minutes</li> <li>o Unlimited domestic messaging</li> <li>o Unlimited domestic long distance</li> <li>o Unlimited roaming</li> </ul>

<sup>161</sup> <http://www.t-mobile.com/shop/plans/cell-phone-plans-detail.aspx?tp=tb1&rateplan=Individual-Unlimited>

<sup>162</sup> [http://www.t-mobile.com/shop/addons/services/information.aspx?PAsset=Messaging&oscid=4CD51BA7-B5AF-4AB2-85E0-50EC0AF141F9,7BEE06FF-8DD3-4220-9BA6-86D80709D8CD&tp=Svc\\_Tab\\_TextMessaging](http://www.t-mobile.com/shop/addons/services/information.aspx?PAsset=Messaging&oscid=4CD51BA7-B5AF-4AB2-85E0-50EC0AF141F9,7BEE06FF-8DD3-4220-9BA6-86D80709D8CD&tp=Svc_Tab_TextMessaging)

<sup>163</sup> <http://www.t-mobile.com/shop/plans/cell-phone-plans-detail.aspx?tp=tb1&rateplan=Individual-Unlimited>

	Messaging Plans	Non-smartphone Data Plans	Smartphone Data Plans	Unlimited Plans
U.S. Cellular <sup>164</sup>	<p>Messaging is not bundled with any voice plan.<sup>165</sup></p> <p>Text messaging plans include:<sup>166</sup></p> <ul style="list-style-type: none"> <li>o 250 messages</li> <li>o 750 messages</li> <li>o Unlimited (includes picture, text, and video)</li> </ul> <p>Picture and video messaging plans include:<sup>167</sup></p> <ul style="list-style-type: none"> <li>o 20 messages</li> <li>o 50 messages</li> <li>o 100 messages</li> <li>o Unlimited (includes text)</li> </ul>	<p>Two data plans:<sup>168</sup></p> <ul style="list-style-type: none"> <li>o Unlimited data with e-mail</li> <li>o Unlimited data with e-mail, and unlimited messaging.</li> </ul>	<p>Only one smartphone only plan, which includes unlimited data, e-mail, messaging, and GPS.<sup>169</sup></p> <p>Specific plan available for Blackberry.<sup>170</sup></p>	<p>Unlimited plan includes:<sup>171</sup></p> <ul style="list-style-type: none"> <li>o Unlimited incoming text messages</li> <li>o Unlimited incoming calls</li> <li>o Unlimited mobile-to-mobile calls</li> <li>o Unlimited nights and weekends</li> <li>o Unlimited domestic long distance</li> </ul>

<sup>164</sup> Note: plans based on 60601 zip code.

<sup>165</sup> [http://www.uscc.com/uscellular/SilverStream/Pages/b\\_plan.html?zip=60601&mkt=608830&tm=1&tabPlan=2](http://www.uscc.com/uscellular/SilverStream/Pages/b_plan.html?zip=60601&mkt=608830&tm=1&tabPlan=2)

<sup>166</sup> [http://www.uscc.com/uscellular/SilverStream/Pages/x\\_page.html?p=mobmess\\_Menu\\_Features](http://www.uscc.com/uscellular/SilverStream/Pages/x_page.html?p=mobmess_Menu_Features)

<sup>167</sup> <http://easyedge.uscc.com/easyedge/PictureMessaging.do?1011#plans>

<sup>168</sup> <http://easyedge.uscc.com/easyedge/jsp/plans.jsp>

<sup>169</sup> <http://easyedge.uscc.com/easyedge/jsp/plans.jsp>. Note: Blackberry and WindowsMobile specific plans available, but details are not posted online.

<sup>170</sup> Details of plan not posted online.

<sup>171</sup> [http://www.uscc.com/uscellular/SilverStream/Pages/b\\_plan.html?zip=60601&mkt=608830&tm=1&tabPlan=2](http://www.uscc.com/uscellular/SilverStream/Pages/b_plan.html?zip=60601&mkt=608830&tm=1&tabPlan=2)

	<b>Messaging Plans</b>	<b>Non-smartphone Data Plans</b>	<b>Smartphone Data Plans</b>	<b>Unlimited Plans</b>
<b>Verizon</b>	<p>Unlimited nationwide messaging included for Select, Connect, and Premium plans (3 of 4 total plans).<sup>172</sup></p> <p>Messaging options for Basic voice plan:<sup>173</sup></p> <ul style="list-style-type: none"> <li>o 250 messages</li> <li>o 500 messages plus unlimited in-network messaging</li> <li>o 1500 messages plus unlimited in-network messaging</li> <li>o 5000 messages plus unlimited in-network messaging</li> </ul> <p>Unlimited nationwide messaging available without voice plan.<sup>174</sup></p>	<p>Data plan options, which exclude push e-mail, for Basic and Select plans (2 most basic plans):</p> <ul style="list-style-type: none"> <li>o 25 MB</li> <li>o 75 MB</li> </ul> <p>Unlimited nationwide data and push e-mail for Connect and Premium plans.<sup>175</sup></p> <p>Unlimited nationwide data plans, with and without push e-mail, available without voice plan.<sup>176</sup></p>	<p>Basic plan include voice minutes, unlimited data, and e-mail, with the same messaging options as available for the Basic voice plan (see first column).<sup>177</sup></p> <p>Premium plan includes voice minutes, data, unlimited e-mail, and unlimited national messaging.</p> <p>Unlimited data, nationwide messaging, and e-mail available without voice plan.<sup>178</sup></p> <p>Separate enterprise plan available for blackberry.</p>	<p>Unlimited plan includes:<sup>179</sup></p> <ul style="list-style-type: none"> <li>o Unlimited nationwide messaging</li> <li>o E-mail</li> <li>o Unlimited data</li> <li>o Unlimited GPS service</li> <li>o Unlimited voice minutes</li> </ul>

<sup>172</sup> <http://www.verizonwireless.com/b2c/splash/plansingleline.jsp?lid=//global//plans/voice+plans/individual>.

<sup>173</sup> Messaging options can be viewed online by first selecting a plan and a phone.

<sup>174</sup> <http://www.verizonwireless.com/b2c/splash/messagingplans.jsp>

<sup>175</sup> <http://www.verizonwireless.com/b2c/splash/plansingleline.jsp?lid=//global//plans/voice+plans/individual>

<sup>176</sup> <http://www.verizonwireless.com/b2c/splash/messagingplans.jsp>

<sup>177</sup> <http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanList&sortOption=priceSort&typeId=3&subTypeId=50&catId=947>

<sup>178</sup> <http://www.verizonwireless.com/b2c/splash/messagingplans.jsp>

<sup>179</sup> <http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanList&sortOption=priceSort&typeId=1&subTypeId=19&catId=323>

## VI. THE COMMISSION MUST TAKE INTO ACCOUNT THE SIGNIFICANT COSTS OF REGULATION

Before determining to saddle the broadband industry with extensive and unnecessary regulation, the Commission should consider all the significant costs that would accompany such a decision.

First, there are very real costs associated with complying with any regulation, but especially those that address billing. Especially in these difficult economic times, complying with such regulations impacts all carriers. But such requirements would have a particularly negative effect on small carriers.<sup>180</sup> Small providers are negatively impacted by increased regulation because they lack the efficiencies of scale of the larger carriers and their cost of compliance with new mandates, on a per-subscriber basis, is often larger.<sup>181</sup> They therefore “bear a disproportionate share of the federal regulatory burden.”<sup>182</sup> For any-sized carrier, however, the costs of regulation divert limited resources from other uses, such as deploying additional sites to cover previously unserved areas.

In addition to the direct costs to service carriers, increased regulation has a larger impact on the market as a whole. Congress and the Commission repeatedly have recognized that regulation has a chilling effect on the deployment of new technologies, raises the cost of services, and diverts funds that could be used to create or obtain additional services, thereby discouraging new subscribers.<sup>183</sup> If carriers are forced to expend scarce resources on complying

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<sup>180</sup> Kenneth Johnson, *Beast of Burden: Regulatory Compliance and the Small Carrier*, RURAL TELECOMMUNICATIONS, Vol. 27, No. 1, Jan. 1, 2008, at S5, S10-S11.

<sup>181</sup> *Wireless Industry Sees Hurdles For Emergency Alert Adoption*, COMMUNICATIONS DAILY, Nov. 15, 2004.

<sup>182</sup> *Id.*

<sup>183</sup> *See, e.g., TCI Cablevision of Oakland County, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 21396, 21441-42 ¶¶ 105-106 (1997) (regulatory over-reaching will discourage both competition and

with new regulation, there will also be a very real effect on their allocation of existing resources.<sup>184</sup> Carriers make difficult decisions every day about how to invest revenues and work hard to ensure that each investment benefits the network and the subscribers to the greatest extent possible, so that they can get the most out of each limited dollar they spend. If they must instead divert some of those resources to regulatory compliance, other needed expenditures will suffer. Moreover, increased regulation could thwart larger FCC and Congressional efforts to promote spending on broadband infrastructure.

Regulations requiring a standardized bill or advertising will also interfere with carriers' attempts to distinguish themselves in the marketplace and so hurt competition.<sup>185</sup> As discussed above, wireless carriers go to great lengths to distinguish themselves and their services from those of other wireless carriers. How their bills and advertisements look, and how the consumer experiences them, is an important part of this effort. Mandating how a carrier must convey information to its customers will eliminate their ability to innovate in this manner, hinder competition and stifle diversity,<sup>186</sup> all to the detriment of consumers.

## **VII. THE COMMISSION SHOULD CONSIDER THE LEGAL IMPACTS OF REGULATION IN THIS AREA**

As the Commission considers regulation in this area it should be cognizant of the effect that imposition of regulations would have on providers' First Amendment-protected rights to

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new services); *2000 Biennial Regulatory Review: Spectrum Aggregation Limits For Commercial Mobile Radio Services, Report and Order*, 16 FCC Rcd 22668, 22677-79 ¶¶ 22-25 (2001) (discussing Congress' and, consequently, the Commission's preference for de-regulation over regulation).

<sup>184</sup> *Non-Regulatory Paths Beckon for Open Wireless Networks*, COMMUNICATIONS DAILY, Apr. 3, 2008.

<sup>185</sup> *Unnecessary Regulation of the Internet Is Harmful to Consumers; Over-Regulation Will Delay Innovation, Stifle Growth, Says Free-Market Advocacy Organization*, PR NEWSWIRE U.S., Feb. 1, 2007.

<sup>186</sup> Brian O'Hara & Erica Tetuan, *Telecom Act REWRITE: What's at Stake?*, RURAL TELECOMMUNICATIONS, Vol. 24; Issue 1, Jan. 1, 2005.

communicate freely and truthfully with their subscribers. Monthly bills are one of the primary ways that wireless providers communicate with their customers, and in a competitive environment in which consumers have a choice of providers, it is critical that providers be able to speak freely with their subscribers, unfettered by burdensome and potentially confusing restrictions on those communications. While the government may regulate speech to prevent fraudulent and misleading statements regulations aimed at “clarifying” billing and advertising practices or specifying typeface size do not protect consumers against such practices. Similarly, prescriptive regulations mandating the manner in which broadband providers must detail the terms, conditions, features, speeds, costs, and options for broadband service is an area where First Amendment rights of broadband providers may be implicated.

The Supreme Court has made clear that commercial speech is protected by the First Amendment, and that government regulation of a company’s speech must directly advance a substantial government interest and be narrowly tailored to serve that interest.<sup>187</sup> If the regulation does not directly advance the government interest involved, or if the governmental interest could be served as well by a more limited restriction on commercial speech, the restriction cannot survive.<sup>188</sup>

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<sup>187</sup> See, e.g., *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557, 564 (1980); *Edenfield v. Fane*, 507 U.S. 761, 770 (1993); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 648 (1985). In *Central Hudson* (at 564), the Supreme Court set forth the standard for evaluating government regulation of commercial speech:

If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

<sup>188</sup> *Central Hudson*, 447 U.S. at 564.

Here, there is no evidence that wireless broadband consumers are encountering untruthful, misleading, or incomplete information on their bills or in wireless broadband providers' disclosure practices; quite simply, there is no problem here for the Commission to solve, much less one that would provide the Commission with a substantial interest sufficient to warrant the suppression of truthful speech. The Supreme Court has made clear that, in order to sustain its burden of defending a restriction on commercial speech, a government actor (in this case, the Commission) "must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree."<sup>189</sup> There is no evidence of a market failure concerning wireless provider communications with consumers that would justify speech-burdening regulation in this case.

To the contrary, Congress and the Commission have repeatedly identified a substantial government interest in keeping wireless services *unregulated*. Competition among carriers to provide the most consumer-friendly services already guards against any potential harms arising from inadequate or misleading disclosures. Moreover, more limited prophylactic restrictions on speech already exist in the CTIA Consumer Code – and are functioning well in today's marketplace. The First Amendment does not permit speech-burdening regulation of a problem that does not exist.<sup>190</sup> Therefore, the Commission should avoid the constitutional problems associated with regulating wireless carriers' speech altogether.<sup>191</sup>

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<sup>189</sup> *Edenfield*, 507 U.S. at 770-771; *U.S. West v. FCC*, 182 F.3d 1224, 1237 (10th Cir. 1999) ("The government presents no evidence showing the harm to either privacy or competition is real. Instead, the government relies on speculation that harm to privacy and competition for new services will result if carriers use CPNI.").

<sup>190</sup> *Id.*

<sup>191</sup> It is not unusual for the Commission to consider First Amendment issues when considering new rules, and to limit or forego action as a result. *See, e.g., In the Matter of Carriage of Digital Television Broadcast Signals, Amendments to Part 76 of the Commission's Rules*, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd 4516, 4523 - 4529 ¶¶ 14-25(2005) (declining to mandate

## CONCLUSION

The Commission should continue to trust that competitive market forces will ensure that wireless consumers remain informed and continue to receive the benefits of the constant innovations in the wireless market.

Respectfully Submitted,

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dual carriage for cable operators due to constitutional problems arising from the lack of a substantial government interest); *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, 14874 ¶ 30 (2002) (taking carrier's First Amendment interests into account as directed by Tenth Circuit Court of Appeals when fashioning CPNI rules).