

**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
	)	
	)	
	)	

**REPLY COMMENTS OF  
CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION,  
FREE PRESS, MEDIA ACCESS PROJECT, NEW AMERICA FOUNDATION,  
AND PUBLIC KNOWLEDGE**

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## SUMMARY

In the present *Notice of Inquiry*, the Commission seeks comment on the clarity, accuracy and thoroughness of information available to consumers when they choose a communications service provider; choose a service plan; manage the use of their service plan; and decide to switch providers or plans. The *Notice of Inquiry* properly expands on past investigations, raising questions about not just billing practices but also sales practices more broadly, including point-of-sale disclosures that drive consumer purchase decisions.

In initial comments, Commenters representing the public interest and other groups demonstrated substantial problems with the current level of disclosure in both wireless and Internet access services. Current disclosure practices present consumers with problems of incomplete, confusing, and misleading information, whether in advertisements, at the point of sale, or in service bills. Industry commenters, by contrast, contended that consumers were happy with the state of disclosure, particularly in their service bills, and that even if there are any ongoing problems, some combination of existing voluntary disclosures and competition will resolve them.

In these reply comments, Commenters representing the public interest rebut the industry arguments against increased disclosure by showing their inherent deficiencies and by reminding the Commission of the substantial problems demonstrated in initial comments. Commenters also offer more detailed guidance to the Commission on specific information needed by consumers to make an effective choice of service provider and service plan, to manage the use of a service plan once chosen, and to make a meaningful choice concerning when to switch a service provider or plan.

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The Consumer Federation of America, Consumers Union, Free Press, Media Access Project, the New America Foundation, and Public Knowledge (together, “Commenters”) respectfully submit these reply comments in response to the Commission’s *Notice of Inquiry* in the above-captioned docket.<sup>1</sup>

In the initial round of filings, Commenters demonstrated that current disclosure practices present consumers with incomplete, confusing, and misleading information, and that meaningful consumer choice is stymied by these poor practices.<sup>2</sup> Commenters further began to discuss the solutions to these problems – rules that would ensure sufficient and clear disclosure of necessary

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<sup>1</sup> *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry, FCC 09-68 (rel. Aug. 28, 2009) (“*Notice*”).

<sup>2</sup> Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge at 8-17 (“Initial Comments”).

information.<sup>3</sup> In these comments, Commenters respond to the arguments offered by industry participants, who generally seek to convince the Commission that consumers are fine and that competition or voluntary measures will solve all problems, even though the self-interest of a single company may be to hide complete and clear information about fees, low service quality, or service restrictions whenever possible, and even though hiding such information frustrates the competition which supposedly will ensure disclosure. Commenters also offer a more precise specification of the information needed to help consumers choose their service provider and plan, manage their service plan, and decide whether and when to change providers and plans.

## **I. AS INITIAL COMMENTS SHOW, ACTION IS NEEDED TO IMPROVE INFORMATION AVAILABLE TO CONSUMERS.**

Industry commenters seek to convince the Commission that better disclosure rules are unnecessary or even harmful, but all of their arguments are incorrect. First, industry commenters contend that consumers are not complaining enough to justify intervention, even though complaints over service bills (the sole mechanism currently tracked by the FCC) are on the rise and even though there are demonstrable failures in marketing materials and terms of service. Second, industry commenters contend that voluntary disclosure methods are sufficient, but all current methods have demonstrable weaknesses (and are in any event clearly not correcting the problems shown by the current market). Third, industry commenters contend that competition will fix the problems, but opinions vary as to the current level of effective competition for both wireless and Internet access services, and disclosure problems inherently render competition less effective. Fourth, industry commenters contend that third-party sources provide sufficient information for consumers, although such sources are themselves limited by the incomplete and

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<sup>3</sup> Initial Comments at 21-30.

misleading disclosures currently provided by industry. Finally, industry commenters contend that standardized disclosure will somehow limit innovation and competition, but a wide diversity of plans only increases the need for clear information to enable consumers to understand basic features including service price, quality, and limitations.

As is commonplace in disclosure proceedings, industry comments merely seek to sustain the service providers' position on the good side of informational asymmetries in the communications market, so that they may continue to stifle effective competition and consumer choice and to recover profits well above competitive levels. Commenters urge the Commission to require complete and comprehensive disclosure, to allow consumers to make meaningful choices and to help make competition more effective.

#### **A. The Current State of Disclosure is Far from Sufficient.**

Industry commenters contend that no changes are necessary, and that there are no ongoing disclosure problems, because consumer satisfaction surveys report high positive numbers for satisfaction with the information presented in wireless bills and at the point of sale.<sup>4</sup> Many of these assertions can be dismissed on their face. For example, Verizon notes that, compared to the large number of wireless customers, the number of complaints filed is small<sup>5</sup> – but the *Notice* cited a GAO survey reporting that many consumers were not even aware of the complaint process.<sup>6</sup> Verizon also asserts that even though more consumers are complaining about confusing bills, the increase is “not meaningful;”<sup>7</sup> Sprint makes a comparable assertion.<sup>8</sup> Similarly, AT&T notes that, even though the number of consumers filing wireless complaints

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<sup>4</sup> See, e.g., AT&T Comments at 28-29; Sprint Comments at 6-8.

<sup>5</sup> Verizon Comments at 6-8; see also MetroPCS Comments at 6.

<sup>6</sup> *Notice* at para. 51.

<sup>7</sup> Verizon Comments at 8.

<sup>8</sup> Sprint Comments at 3.

has gone *up*, the *percentage* of complaints filed that relate to confusing bills has gone down<sup>9</sup> – but the percentage has only gone down because the number of telemarketing-related complaints has gone so far up, as both AT&T and Verizon admit.<sup>10</sup> The increase in the number of complaints – however trivial to the industry – is troubling, and is even more so if relatively few complaints are filed as a result of unclear rules or obscure complaint filing processes.

And these contentions only concern billing-related confusions, for which the Commission already has rules and tracks complaints. As Commenters demonstrated repeatedly in initial comments, there are widespread problems with disclosure in the market for wireless and Internet access services, whether in advertisements, at the point of sale, or in the service bills.<sup>11</sup> Additionally, even if the industry comments could be trusted blindly in their assertion that the situation for consumer clarity is marginally better than it has been – despite their lack of evidence – that would not obviate the need for the Commission to improve the situation further through the adoption of clear and simple disclosure rules.

## **B. Current Methods of Voluntary Disclosure are Woefully Inadequate.**

Industry commenters also contend that voluntary guidelines such as the CTIA Code ensure adequate transparency.<sup>12</sup> Numerous wireless service providers assert their compliance with the Code.<sup>13</sup> Some of the substantive principles of the code are helpful, including provisions suggesting disclosure of “maps depicting approximate voice service coverage” and discussing rates and fees.<sup>14</sup> However, as we showed in our initial comments, the CTIA Code provisions

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<sup>9</sup> AT&T Comments at 30.

<sup>10</sup> AT&T Comments at 30-31; Verizon Comments at 8.

<sup>11</sup> Initial Comments at 8-17.

<sup>12</sup> CTIA Comments at 20-24.

<sup>13</sup> *See, e.g.*, Sprint Comments at 11-12; AT&T Comments at 11-13.

<sup>14</sup> *See, e.g.*, AT&T Comments at 12.

allow for overwhelming ambiguity and flexibility in both language and in practice, defeating the Code's ostensible purpose of providing standardized information to consumers.<sup>15</sup> If the CTIA Code represents the best efforts of the wireless industry to create a universal, thorough disclosure standard for consumers, then the industry has failed.

Many providers, including both wireless<sup>16</sup> and cable<sup>17</sup> operators, also tout their own independent processes for disclosure, often at great length. These processes and promises should not always be taken at face value, as in many instances (such as for hidden fees that drive up the true cost of service) complete disclosure cuts against the interest of the service provider. AT&T, for example, proposes a detailed "voluntary consumer empowerment framework" with ten lofty principles<sup>18</sup> – at least three of which are demonstrably violated by AT&T's own marketing materials and contractual terms of service.<sup>19</sup> However, some voluntary disclosures do offer specific and detailed information useful for consumers, and to the extent that providers are currently disclosing necessary information to consumers, they should not object to rules to formalize what they are already doing. More importantly, though, disclosure by one service provider has less value to a consumer and to competition than standardized and comparable disclosure by a set of multiple providers, allowing consumers (those who have the luxury of a

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<sup>15</sup> Initial Comments at 17-20.

<sup>16</sup> AT&T Comments at 13-25; CTIA Comments at 24-39; Verizon Comments at 14-48; Sprint Comments at 12-20.

<sup>17</sup> Time Warner Cable Comments at 6-14; NCTA Comments at 3-11.

<sup>18</sup> AT&T Comments at 37-38.

<sup>19</sup> Principle 1 specifies "upfront disclosure of key and pertinent information related to rates, terms and conditions," yet AT&T buries substantial information concerning service restrictions and provider control over service use in fine-print legalese in its terms of service. Initial Comments at App. A, p. 1, 8. AT&T also disguises aspects of promotional prices and lengthy contracts in some advertisements for its wireless service. Initial Comments at App. B, Exhibit 5. AT&T's proposed principles 2 and 9 are similarly violated by the same materials.



choice of service providers, particularly for Internet access service) to be able to meaningfully choose based on all essential information.

And furthermore, as Commenters demonstrated in initial comments, there are substantial problems that aren't being fixed by voluntary commitments.<sup>20</sup> Ultimately, the proof of the quality of voluntary commitments is in the pudding – consumers are still complaining over their bills, and marketing materials and terms of service are still incomplete, indecipherable, or misleading. Clearly, more is needed.

### **C. Competition is Not Fixing, and Cannot Fix, Problems that Weaken Competition.**

Industry somehow argues that competition in the market for services (particularly wireless services) will fix disclosure problems, because consumers will choose providers who disclose more information.<sup>21</sup> As an initial matter, Commenters do not believe that the market for wireless services is effectively competitive,<sup>22</sup> and even Chairman Genachowski has observed that the market for Internet access services often offers few choices of providers to consumers.<sup>23</sup> That aside, as Commenters demonstrated in initial comments, problems of insufficient,

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<sup>20</sup> Initial Comments at 8-17.

<sup>21</sup> AT&T Comments at 5-9; Verizon Comments at 49-54; Sprint Comments at 8-11. AT&T makes a related assertion that providers will be more likely to follow voluntary commitments because they had a hand in their design, AT&T Comments at 40. Commenters agree that compliance with vague and loose commitments such as those in the CTIA Code is easier than compliance with clear disclosure rules, but ease of compliance does not mean that voluntary commitments will be more successful than rules at providing a remedy for consumer harms.

<sup>22</sup> See, e.g., Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, the New America Foundation, and Public Knowledge, WT Docket No. 09-66 (filed Sept. 30, 2009).

<sup>23</sup> See, e.g., Prepared Remarks of Chairman Julius Genachowski, The Brookings Institution, Washington, D.C., Sept. 21, 2009, available at <http://www.openinternet.gov/read-speech.html> (“As American consumers make the shift from dial-up to broadband, their choice of providers has narrowed substantially.”).

uninformative, and inaccurate disclosure persist; competition is certainly not working very quickly, if at all, to remedy these problems.

Furthermore, disclosure is necessary to facilitate effective competition. Therefore even if competition would promote strong disclosure, both the wireless and Internet access service markets are currently in a chicken-and-egg situation – insufficient disclosure leads to ineffective competition which therefore cannot effectively police disclosure. More specifically, information asymmetries often occur in aspects of service in which it may be competitively disadvantageous to be up front and honest, such as actual data transfer speeds, hidden fees, and overbroad restrictions in terms of service that reserve broad rights to monitor and control service use. Competition will in fact encourage a race to the bottom in such scenarios: the provider who advertises the most falsely low prices, the most falsely high speeds, and the fewest restrictions on service use – regardless of whether these qualities are in fact true – will win the most customers and the most success.

#### **D. Third-Party Sources are Insufficient and Limited by Poor Direct Disclosure.**

AT&T also states that services offered by third parties to help understand service choices, whether in the form of software tools to compare plans or online reviews to compare service quality and customer service and other features, can adequately enable consumers to make choices.<sup>24</sup> Although these services assist the consumer, they are not a substitute for clear, direct disclosure, standardized across service providers. Moreover, these services are limited to making sense of the information that is voluntarily disclosed, and cannot divine undisclosed

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<sup>24</sup> AT&T Comments at 25-27.

information or separate out inaccurate information. These services will therefore be even more helpful, and will empower choice even more, if more information is disclosed.<sup>25</sup>

No third-party source can solve the problem of vague and overbroad terms of service, present in all services and described in detail in Commenters' initial comments.<sup>26</sup> The rights reserved by service providers are "disclosed" in these terms, but in an overly broad way that renders tools and reviews useless. After all, no third party can determine when Comcast will find information transmitted by a consumer to be "unacceptable" or "undesirable" – but Comcast asserts the right to block such transmissions.<sup>27</sup> No third party can determine what use of the service Verizon will deem to be "objectionable," even though Verizon reserves the right to deny, restrict, suspend, or terminate service if it is used in an "objectionable" manner.<sup>28</sup> Only clear and enforceable Commission rules requiring service providers to specifically indicate the limitations and restrictions on the use of a service – in language comprehensible to users – will help remedy these problems.

#### **E. Disclosure is Feasible and Will Not Somehow Limit Innovation or Competition.**

Most egregiously, some commenters argue that disclosure rules will somehow inhibit "innovation" and the options available to consumers by requiring basic information about service quality, price, limitations, and restrictions.<sup>29</sup> CTIA uses this argument in particular to oppose the imposition of a "Schumer" box-like structure.<sup>30</sup> Much of CTIA's rhetoric dwells on the

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<sup>25</sup> *See, e.g.*, Comments of BillShrink at 4-7.

<sup>26</sup> Initial Comments at 15-17 and Appendix A.

<sup>27</sup> Initial Comments at App. A, p. 22.

<sup>28</sup> *Id.* at App. A, p. 15-16.

<sup>29</sup> *See, e.g.*, Verizon Comments at 54-63.

<sup>30</sup> CTIA Comments at 39-40.

difficulties of comparing mobile broadband to wireline Internet access services.<sup>31</sup> Certainly, wireless services and wireline Internet access services have different technical features, and in some instances have different disclosure requirements, particularly as wireless services also often include voice and text message services while wireline Internet access services typically do not. However, as CTIA has itself frequently argued that mobile Internet access services compete with fixed services,<sup>32</sup> to the extent these services overlap, they should be compared with standard units of price, data transfer speeds, and data usage limits and overage fees. Commenters recognize that there are distinctions between these services. For example, Commenters propose requiring fixed Internet access service providers to disclose actual speeds during “peak” usage times, reflecting studies that indicate a clear peak time window<sup>33</sup> which will disproportionately impact service performance. But, as mobile wireless services do not (yet) show a similar peak period, Commenters do not propose a “peak” time period speed disclosure for these services.

Apart from the difficulties of comparing wireless to wireline, Verizon and CTIA also contend that mandatory disclosure of specific information would frustrate the ability of service providers to “innovate” in their presentation of customer information in their bills, and would frustrate their ability to offer a wide variety of service options to consumers.<sup>34</sup> However, the complexity of plan options described by CTIA demonstrates clearly the need for some method of standardization in disclosure, so that consumers can make meaningful comparisons among providers and plans on basic, universal information including service price, service speed, and limitations and restrictions on service. If the “innovation” or “competition” desired by the

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<sup>31</sup> CTIA Comments at 40-41.

<sup>32</sup> See, e.g., Reply Comments of Free Press, GN Docket No. 09-51, at 38-44 (filed July 21, 2009).

<sup>33</sup> See “The Internet After Dark (Part 1)”, Arbor Networks, Aug. 24, 2009, *available at* <http://asert.arbornetworks.com/2009/08/the-internet-after-dark/>.

<sup>34</sup> CTIA Comments at 42-54; Verizon Comments at 54-55.

industry consists solely of new ways to hide true service quality, true service price, or limitations and restrictions on service, then Commenters respectfully submit that consumers will be content without such innovation or competition.

## **II. CONSUMERS NEED DIRECT DISCLOSURE OF SERVICE QUALITY, PRICE, AND LIMITATIONS TO MAKE MEANINGFUL CHOICES.**

In initial comments, Commenters asked for greater and clearer disclosure of useful information for consumers, such as base rate service prices that include line-item fees, limits and associated fees for service use, actual service speeds, restrictions on service use, and obstacles to changing or terminating service.<sup>35</sup> In these reply comments, Commenters expand upon initial proposals and identify in detail the information needed by consumers of wireless services and fixed Internet access services that the consumers do not universally receive at present. This information falls into three substantive categories: service quality, service price, and service limitations. These needs arise at three separate stages of the service process: in advertisements, in the point-of-sale disclosures as a customer applies for service, and in the periodic service bill.

### **A. Wireless and Internet Access Service Consumers Need Better Information on Quality.**

Consumers need better information on wireless service coverage and reliability to make meaningful judgments about service quality. Mobile wireless consumers choose a service provider through many factors, only some of which, such as available handsets, are fully disclosed. Others such as price are partially disclosed, often with omissions or deceptions. But one of the hardest attributes of wireless service to discern is one of the most important – service

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<sup>35</sup> Initial Comments at 21-28.

quality, and more specifically, service coverage and reliability. Major service providers generally display coverage maps on websites, but as initial comments noted, these voluntary disclosures are incomplete.<sup>36</sup> To remedy this, the state of California has imposed disclosure requirements for standardized display of service quality attributes including outdoor signal strength and coverage boundaries for offered rate plans.<sup>37</sup> Commenters encourage the Commission to follow this example by establishing standardized formats for reporting coverage and signal strength at the point-of-sale and on service provider websites. These reports should allow consumers to view or search for signal quality at a fine level of granularity, so that they may determine before choosing a provider whether that provider will have adequate service at their home or work. Such reporting should distinguish clearly between different generations of wireless service (2G, 3G, and 4G networks). Furthermore, the Commission should consider requiring disclosure of dropped call data, to help consumers evaluate service reliability.<sup>38</sup>

As Commenters demonstrated in detail in initial comments, providers of Internet access service routinely disclose only an “advertised” data transfer speed, and sometimes only a “promotional” speed.<sup>39</sup> Current disclosure practices, at best, state that actual speeds may vary. To help consumers receive meaningful service quality information for Internet access services, the Commission should require disclosure of actual speeds in a standardized format in advertisements, at the point of sale, and in service bills. “Actual speed” is the speed of service that can be delivered by the service provider under typical usage conditions (including large file

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<sup>36</sup> *See, e.g.*, Comments of California PUC at 3; Comments of BillShrink at 4-5.

<sup>37</sup> Comments of California PUC at 3.

<sup>38</sup> *See* Comments of BillShrink at 4.

<sup>39</sup> Initial Comments at 25-26.

transfers) through the portion of the network under its control.<sup>40</sup> In advertisements for fixed Internet access services, whether provided by DSL, cable, fiberoptic cable, or fixed wireless service, whenever a service speed is advertised, the advertisement should display two actual speeds for customers who subscribe to that advertised speed of service: one for all times and one for peak hours.<sup>41</sup> Similarly, applications for service and service bills should disclose actual speed at all times and in peak hours for the subscriber's requested service, in the subscriber's geographic area.<sup>42</sup> These numbers should also be kept reasonably up to date.

Because mobile wireless Internet access service does not currently demonstrate a clear "peak" usage pattern, reporting requirements for these services may need to be different. In particular, there may be no need for calculation or disclosure of a "peak" actual speed in any context. Additionally, there may be substantial geographic variations in use of a mobile wireless Internet access service, rendering it impossible to assign a user to any single geographic region. However, some form of geographic calculation of actual deliverable speed within a local region may be feasible, and providers should, if possible, construct and make available information on regional actual data transfer speeds. Prospective or current users could then determine the actual data transfer speed they should expect from use of their mobile wireless Internet access service at their home, their office, or other locations.

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<sup>40</sup> See Initial Comments of Free Press, GN Docket Nos. 09-137, 09-51, at 15-17 (filed Sept. 4, 2009) (Free Press Section 706 Comments). See generally Initial Comments of Free Press, GN Docket No. 09-51, at 281-85 (filed June 8, 2009) (discussing in detail the difficulties of determining actual speeds, and methods by other service providers to determine such information, and discussing FCC collection of contention ratios as a strong alternative).

<sup>41</sup> Peak hour speeds could be determined by the speed that could be delivered 95 percent of the time through the service provider's network between 8 and 11 pm local time, or some other window that accurately measures peak Internet use.

<sup>42</sup> To accurately determine the quality that the subscriber should expect from the service, the service provider should determine actual deliverable speed within the subscriber's local area (such as a node for cable modem service).

## **B. Wireless and Internet Access Service Consumers Need Better Information on Price.**

As discussed by Commenters in initial comments, recent rule changes have created an environment for all communications services where “base rates” as displayed in consumer bills and in advertisements may not include a wide range of administrative charges and other line-item fees.<sup>43</sup> Such obfuscations create surprises for consumers who may face larger than expected bills, and create obstacles to effective competition by making it more difficult for consumers to make comparisons between services and service providers. The Commission should act to correct this loophole, and require that a displayed “base” price include mandatory line-item charges and fees. The base price should also include any mandatory device leasing fees for cable modems and set top boxes. These rules should apply to all services, including mobile wireless services and fixed Internet access services, and they should apply to all three contexts: advertisements, point of sale, and service bills.

Wireless and wireline data transfer services present additional possibilities for unexpected charges that harm consumers and hamper competition, through insufficient disclosure of usage limits and overage fees. Mobile wireless services present comparable problems with voice and text message usage.<sup>44</sup> Commenters urge the Commission to require better disclosure of potential overage fees. More specifically, whenever an advertisement lists a usage limit for voice minutes, text messages, or data transfer, the advertisement should prominently disclose the price per voice minute, the price per 10 text messages, and the price per

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<sup>43</sup> Initial Comments at 22-24.

<sup>44</sup> See Initial Comments at 24.



1 GB of data usage over the limit.<sup>45</sup> Similarly, point-of-sale disclosures and service bills should clearly indicate both usage limits and overage fees for all services.

Some initial commenters raise the potential for confusion created by increasing subscriptions to service bundles.<sup>46</sup> Commenters urge the Commission to require that prices of individual services within service bundles be disclosed according to the same disclosure rules applicable to the individual services. This may require service providers to make decisions as to divisions of bundle discounts across services; Commenters do not propose any restrictions on such decisions, merely that individual service prices as paid within the bundle be disclosed. Such disclosure would allow consumers to compare the price of bundles to individual offerings, and to see and understand the costs of the services and the discounts offered in the bundle.

Mobile wireless services also present unique bundling and pricing disclosure problems between services and devices. Wireless devices are heavily subsidized, and the provider's recovery of this subsidization is hidden within service bills over the course of the subscriber's contract for service. Currently, by conflating these costs, the provider can charge the same fee during the contract (while recovering the device subsidy) and after the end of the service contract – essentially enabling the provider to recover for the subsidization long after it has been paid off. In an ideal scenario for consumers, device subsidies would be repaid over the duration of the service contract (or a shorter time window) as a separate add-on to mobile wireless service cost, and users could bring their own devices or purchase a device with a lower subsidy and face a lower total bill as a result. However, even under a scenario in which device subsidization is merely listed separately from service price, consumers would see a reduction in cost after the

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<sup>45</sup> Setting the threshold at 1 GB of data usage allows for standardized comparisons of usage costs across mobile wireless and fixed Internet access services, and helps prevent misleading disclosures of fees measured on a trivial amount of data usage such as a kilobyte.

<sup>46</sup> Comments of NASUCA at 39-40; Comments of BillShrink at 6.

termination of the service contract (or, to maintain the same incoming revenue, service providers would have to transparently increase mobile wireless service revenue, instead of secretly doing so as they are currently). The Commission should strongly consider requiring price for device subsidization repayment and for mobile wireless service to be labeled separately on a user's bill and at the point of application for service.

Finally, as demonstrated in initial comments, promotional prices can also lead consumers into unexpected charges, particularly when paired with contracts that exceed the duration of the promotional price.<sup>47</sup> Commenters submit that in any advertisement or point-of-sale/application process where a promotional price is given, the post-promotional price must also be disclosed prominently. Furthermore, if the promotional price requires a contract that goes beyond the duration of the promotional price,<sup>48</sup> then the advertisement or application process should disclose the non-promotional price and the duration of the contract at an equal level of prominence, *before* the promotional price.<sup>49</sup> Clear rules on proper disclosure of promotional prices could go far to promote fair competition and meaningful consumer choice based on true service price.

### **C. Wireless and Internet Access Service Consumers Need Better Information Concerning Restrictions on Changing or Using the Service.**

Customers of both wireless and Internet access services should receive better disclosure of service contract duration, termination fees, and other obstacles to changing service.<sup>50</sup> More specifically, monthly service bills should include a clear display of the current prorated fee for terminating service. Similarly, contract duration and associated early termination fees should be

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<sup>47</sup> Initial Comments at 8-9.

<sup>48</sup> *E.g. id.* at 9, App. B, Exhibit 4.

<sup>49</sup> As an example: Service could be advertised with a price of “\$59.99 with a one year contract, \$39.99 for first 6 months.”

<sup>50</sup> Initial Comments at 27-29.

disclosed at the point of sale, and in any advertisement in which a monthly service price is given if that service price requires a contract. Such disclosures help keep a consumer from being unknowingly trapped into a service provider or service plan. Similarly, some service plans impose technical or contractual restrictions on keeping a device such as a wireless handset or a cable set-top box acquired with the service. These restrictions should be prominently disclosed in the process of applying for a service.

As initial comments note,<sup>51</sup> Internet access services frequently come with vague and overbroad terms of service that cause substantial confusion for consumers. The Commission should require terms of service to include a complete “plain language” summary of its essential contents, comprehensible to the average reader, and should disclose such a summary to a prospective customer at the point of sale. In particular, any rights that the service provider asserts to monitor the use of the service should be clearly and prominently disclosed, along with rights that the service provider asserts to be able to block the use of the service. Any changes to these rights should be disclosed with a minimum of 30 days advance notice, and a consumer should be permitted to opt out of any contracts without any penalty if the consumer chooses not to be subject to the modified contractual terms. Although a “plain language” rule does not provide much guidance or standardization of disclosure, other businesses have demonstrated that terms of service can be accompanied with meaningful plain language summaries,<sup>52</sup> and a strong yet nonspecific rule requiring “plain language” disclosure can strongly encourage Internet access service providers to follow suit.

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<sup>51</sup> *Id.* at 26-27.

<sup>52</sup> *See, e.g.*, “Terms of Use,” Aviary, <http://aviary.com/terms>.

As some of the Commenters have requested in detail in the past,<sup>53</sup> the Commission should require disclosure in plain language of any tools or methods in use by the service provider that will affect the use of the service, for example by deliberately slowing down or blocking certain uses of the service, or by monitoring certain uses of the service. Such tools or methods should be disclosed to every prospective consumer at the point-of-sale. As with changes to the terms of service, any updates to these tools or methods should be disclosed directly to the consumer with a minimum of 30 days advance notice, and the consumer should be permitted to opt out of any contracts without any penalty if the consumer does not consent to the changes.

**D. Wireless and Internet Access Service Consumers Need Better Information at All Points, Including Advertisements, at the Point of Sale, and in Bills.**

In this subsection, the information specified above is briefly rearranged based on the context faced by the consumer – from advertisements used by the consumer to decide which service provider and service to choose, to disclosures at the point of sale as the consumer applies for service, to the ongoing periodic bills for service.

*1. Consumers need better information in service advertisements.*

As discussed above, disclosed information on service advertisements for fixed Internet access services should include the following:

- Actual deliverable speed including for “peak” hours, whenever advertised speed is given;
- A true base price including all mandatory charges and fees, whenever price is given;
- Contract duration and total fee for service termination, separately displaying prices for device subsidy payoff and service termination fee, where applicable;

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<sup>53</sup> See Ex Parte of Free Press, In the Matter of Broadband Industry Practices, WC Docket No. 07-52 (Oct. 24, 2008).

- Non-promotional prices and contract durations, whenever a promotional price is given that requires a contract; and
- Price per 1 GB of data usage over a data usage limit, whenever a limit is given.

Similarly, mobile wireless service advertisements should include the following:

- Actual deliverable speed, whenever advertised speed of data service is given;
- All mandatory charges and fees, whenever price is given;
- Contract duration and total fee for service termination, separately displaying prices for device subsidy payoff and service termination fee, where applicable;
- Non-promotional prices and contract durations, whenever a promotional price is given that requires a contract;
- Price per voice minute for overage, whenever a voice minute limit is given;
- Price per 10 text messages for overage, whenever a text message limit is given; and
- Price per 1 GB data usage for overage, whenever a data usage limit is given;

*2. Consumers need better information at the point of sale.*

Prospective customers of fixed Internet access services should receive the following information at point-of-sale when applying for service:

- Actual deliverable speed including for “peak” hours, for the immediate neighborhood where service will be used;
- The true service base price including mandatory charges and fees;
- Non-promotional prices and contract durations, whenever a promotional price is given that requires a contract;
- Data usage limit, if any, and price per 1 GB of data usage over the limit;
- Contract duration and total fee for service termination, separately displaying prices for device subsidy payoff and service termination fee, where applicable;

- Whether the service includes any restrictions on device retention (locks, rules, or fees);
- Prominent and plain language disclosure of rights asserted by service provider to monitor, block, or otherwise affect usage; and
- Any and all tools or methods currently in place that affect the use of the service.

Prospective customers of mobile wireless services should receive, at point-of-sale:

- A detailed coverage map, by generation of technology;
- Data on dropped calls;
- Actual deliverable speed of data transfer service, measured regionally;
- The true service base price including mandatory charges and fees;
- Non-promotional prices and contract durations, whenever a promotional price is given that requires a contract;
- Contract duration and total fee for service termination, separately displaying prices for device subsidy payoff and service termination fee, where applicable;
- Whether the service includes any restrictions on device retention (locks, rules, or fees);
- Voice minute limit, if applicable, and price per minute for overage;
- Text message limit, if applicable, and price per 10 text messages for overage;
- Data usage limit, if applicable, and price per 1 GB used for overage;
- Prominent and plain language disclosure of rights asserted by service provider to monitor, block, or otherwise affect usage; and
- Any and all tools or methods currently in place that affect the use of the service.

### *3. Consumers need better information in service bills.*

Customers of fixed Internet access services should receive the following information in their monthly service bills:

- Actual deliverable speed including for “peak” hours, for the immediate neighborhood where service will be used;
- The true service base price including mandatory charges and fees;
- Data usage limit, if any, and price per 1 GB of data usage over the limit; and
- If applicable, remaining contract duration and current prorated total fee for service termination, separately displaying prices for device subsidy payoff and service termination fee.

Customers of mobile wireless services should receive the following:

- Actual deliverable speed of data transfer service, measured regionally;
- The true service base price including mandatory charges and fees;
- Voice minute limit, if applicable, and price per minute for overage;
- Text message limit, if applicable, and price per 10 text messages for overage;
- Data usage limit, if applicable, and price per 1 GB of data usage over the limit; and
- If applicable, remaining contract duration and current prorated total fee for service termination, separately displaying prices for device subsidy payoff and service termination fee.

### **III. CONCLUSION**

Commenters respectfully request that the Commission establish clear disclosure rules for mobile wireless and Internet access services, including rules for specific information in standardized format to be included in service advertisements, at the point of sale, and in service bills, supplemented with plain language rules where standardized formats may not be possible. As demonstrated in the initial round of comments, consumers currently face a wide range of

incomplete, confusing, and misleading information when evaluating service providers and plans. This misinformation frustrates consumer choice, and ultimately reduces the level of effective competition – and the benefits that competition should deliver – by making it harder for a service provider to win customers through lower service price or better service quality. Simple disclosure rules, by contrast, will eliminate many current consumer harms and will encourage competition over service quality and service price, without imposing a substantial burden on service providers or restricting any legitimate business activity or speech.

Respectfully submitted,

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