Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

[CORRECTED VERSION]

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

FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: April 15, 1999 Released: May 11, 1999

Comment Date: 14 days from Federal Register publication for comments concerning standardized labels for charges relating to federal regulatory action; 30 days from Federal Register publication for comments concerning applicability of truth-in-billing principles and guidelines to Commercial Mobile Radio Service (CMRS) carriers
Reply Date: 21 days from Federal Register publication for comments concerning standardized labels for charges relating to federal regulatory action; 45 days from Federal Register publication for comments concerning applicability of truth-in-billing principles and guidelines to CMRS carriers

By the Commission: Commissioner Ness issuing a statement, Commissioner Powell concurring and issuing a statement, and Commissioner Furchtgott-Roth dissenting and issuing a statement.

Table of Contents

I. THE IMPORTANCE OF CLEAR AND INFORMATIVE BILLS IN COMPETITIVE TELECOMMUNICATIONS MARKETS

1. In this Order, we undertake common-sense steps to ensure that consumers are provided with basic information they need to make informed choices in a competitive telecommunications marketplace, while at the same time protecting themselves from unscrupulous competitors. We believe that the "truth-in-billing" principles adopted herein will significantly further consumers' opportunity to reap fully the benefits envisioned by the Telecommunications

Act of 1996 (1996 Act), which amended the Communications Act of 1934 (Act).[1]

2. By the 1996 Act, Congress intended to facilitate the introduction by private firms of new consumer services, service providers and technologies by promoting the development of competition and deregulation in all telecommunications markets.[2] The Act instructs the Commission and state public utility commissions to open telecommunications markets to competition and to reform universal service support mechanisms to ensure their consistency with competitive markets. The proper functioning of competitive markets, however, is predicated on consumers having access to accurate, meaningful information in a format that they can understand. Unless consumers are adequately informed about the service choices available to them and are able to differentiate among those choices, they are unlikely to be able fully to take advantage of the benefits of competitive forces.

3. Unfortunately, as a by-product of these changes, we also have seen growing consumer confusion concerning the provision of these services and an increase in the number of entities willing to take advantage of this confusion.[3] The most glaring manifestations of consumer confusion may be the dramatic growth in the number of slamming and cramming complaints received by the Commission and the states.[4] As we explained in the *Notice of Proposed Rulemaking* (*Notice*) in this proceeding,[5] our review of the complaints received by this

---

1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

2 The principal goal of the Act is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement).

3 *See, e.g.*, NCL comments at 2-3 (noting that unscrupulous companies take advantage of consumer confusion over phone bills, and that fraud is increasing).

4 Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization. Cramming refers to the practice of causing unauthorized, misleading, or deceptive charges to be placed on consumers' telephone bills. *Notice*, 13 FCC Rcd at 18177-78. In 1998, our Common Carrier Bureau Enforcement Division processed 20,154 complaints of slamming and 4,558 complaints of cramming. We received 8,761 slamming complaints in 1995, 12,795 in 1996, and 20,475 in 1997. Prior to 1998, the Commission did not track cramming complaints. Consumer Complaints and Inquiries, Consumer Protection Branch, Enforcement Division, Common Carrier Bureau, Federal Communications Commission (Oct. 31, 1998). The Federal Trade Commission (FTC) states it received 9,000 cramming complaints in the 12 month period prior to filing its comments in this proceeding. FTC comments at 5. State commissions also have received thousands of complaints. *See, e.g.,* Vermont comments at 8.

5 *Truth-in-Billing and Billing Format*, Notice of Proposed Rulemaking, CC Docket No. 98-170, 13 FCC Rcd 18176 (1998).

Commission plainly demonstrates that the difficulty consumers experience in trying to understand their bills for telecommunications service has been a significant, contributing factor in the growth of these fraudulent activities. The comments in this proceeding reinforce this conclusion.[6] Beyond these frauds, however, we have seen a substantial rise in the number of complaints generally arising out of consumers' confusion concerning charges on their telephone bills.[7] Since, for most consumers, the monthly telephone bill is their primary source of information and point of contact with respect to their telecommunications services providers, these complaints are strong evidence that consumers are not getting necessary information in a format that allows them to make informed choices in this market.[8] Indeed, it is apparent from our review of consumer complaints that, while the nature and variety of the services charged on consumers' telephone bills have changed dramatically in recent years, the format of the bills themselves have remained largely unchanged since the court ordered divestiture of the Bell System in 1983.[9]

4. Nor are we alone in this concern. Virtually every state and consumer advocacy group that commented in this proceeding urges us to take action to address the growing problem

---

[6] *See, e.g.*, Missouri Commission comments at 5 (statistics of National Fraud Information Center show use phone bill is a "preferred" method for "con artists" seeking to defraud consumers). *See also* TCA comments at 2 (telecommunications fraud "a growth industry" in Texas); Georgia comments at 2 (complaints of slamming and cramming far outnumber all other types of telecommunications complaints Georgia receives); NYCPB comments at 5 (companies engaged in cramming rely on consumer confusion over bills to encourage consumers to pay for services that they have not authorized); FTC comments at 3, 6 (unclear telephone bills have led to a proliferation of cramming, and LEC anti-cramming voluntary guidelines do not obviate the need for additional consumer safeguards); CompTel comments at 3 (confusing and unclear local telephone bills create opportunity for unscrupulous carriers to take advantage of consumers).

[7] *See, e.g.*, Vermont Commission comments at 8 (state and federal regulators have received "literally thousands" of complaints and inquiries suggesting many consumers are confused about the nature of charges contained on their telephone bills); TOPC comments at 3 (sixty percent of the calls that agency receives involve complaints about telephone billing); Bills Project comments at 1 (due to the "complexity and inscrutability of consumers' bills" many billing errors brought to Bills Project's attention went undetected for significant periods of time before consumers noticed them and complained).

[8] NASUCA notes that, when fraud is discovered, consumers remain greatly disadvantaged when disputing unauthorized charges because bills often lack vital information, such as the name, address, and telephone number of the service provider. NASUCA comments at 9.

[9] *See*, *e.g.*, USTA comments at 5; Qwest comments at 6-7 (discussing "legacy" billing systems). "Legacy" system refers to a non-standard or proprietary, typically older, computer system that cannot easily be upgraded and is incompatible with other computer systems. The breakup of the Bell System is described in *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983).

of consumer confusion with their telephone bills.[10] Similarly, our colleagues at the Federal Trade Commission assert that intervention on our part is necessary to help consumers avoid "falling prey" to unscrupulous service providers who hide or mislabel unauthorized charges on consumers' telephone bills.[11] Several members of Congress also have identified consumer confusion with their telephone bills as a growing concern that should be addressed by this Commission.[12]

5. Accordingly, in this Order, we adopt generally the "truth-in-billing" principles proposed in the *Notice* in order to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers. Specifically, we will require:

First, that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers;

Second, that bills contain full and non-misleading descriptions of charges that appear therein; and,

Third, that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill.

Additionally, we adopt minimal, basic guidelines that explicate carriers' binding obligations pursuant to these broad principles. These principles and guidelines are designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints we have received.[13] Moreover, we believe that they represent fundamental principles of fairness to

---

[10] *See, e.g.,* Small Business comments at 1-2; NCL comments at 2; NAAG comments at 3; Bills Project comments at 1-2; West Virginia Commission comments at 1; Vermont Commission comments at 3-4; Washington Commission Staff comments at 2; California Commission comments at 2; Maine Commission comments at 2; Minnesota OAG comments at 4; TCA comments at 2 (absent billing and formatting reforms, consumers will remain unable to discern legitimate services and charges from fraudulent cramming and slamming); UCAN comments at 1-3; NASUCA comments at 7-8. *See also* NYCPB comments at 3, 6 (favoring non-binding guidelines); Missouri Commission comments at 2 (same); Florida Commission comments at 4 (Commission should act as national forum and adopt model procedures which states can use to develop their own truth-in-billing rules).

[11] FTC comments at 3.

[12] *See, e.g., Cramming: An Emerging Telephone Billing Fraud, Hearing Before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs*, S. Hrg. 105-646, 105th Cong., 2d. Sess. (1998) (opening statements).

[13] State commissions and the FTC also have received thousands of complaints. *See, e.g.,* FTC comments at 5; Vermont Commission comments at 8. *See also* NASUCA reply at 2 (complaints received by FCC represent "tip of the iceberg").

consumers and just and reasonable practices by carriers.[14]

6. In taking action today, we recognize that, at this time, competitive pressures alone do not ensure that consumers receive clear, informative and consumer-friendly telephone bills from certain carriers. We acknowledge, for example, that most consumers continue to have both their local and long distance service billed together by their local exchange company (and, indeed, consumers have generally expressed a preference for a single bill), and most consumers do not yet have significant choice in who they select as a provider of local service.[15] We certainly hope that, as competition develops for the provision of local telephone service, all carriers, including those upon which we impose requirements here will seek to distinguish their services by providing clear, informative, and accessible bills to their customers. Moreover, by implementing these principles through broad, binding guidelines as described more fully below, we allow carriers considerable discretion to satisfy their obligations in a manner that best suits their needs and those of their customers. Thus, carriers that wish to distinguish themselves through creative and consumer-friendly billing formats have wide latitude to compete in this manner (*i.e.*, by producing bills on 8½ x 11 inch paper).[16]

7. Even in competitive markets, however, disclosure rules are needed to protect consumers.[17] Indeed, our adoption of these truth-in-billing principles is in large part designed to bring to consumers some of the protections to which they would be entitled if these services were billed in the same manner as other credit purchases.[18] For example, the Truth in Lending Act

[14] 47 U.S.C. § 201(b) (common carrier practices and charges must be "just and reasonable").

[15] *See, e.g., Local Competition*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (Dec. 1998) at 9.

[16] Our principles and guidelines are broad enough to allow carriers to continue to differentiate themselves from their competitors based on their billing practices, and accordingly, we disagree with GTE and ALTS, who argue that truth-in-billing requirements could take away the competitive edge of carriers who already possess consumer-friendly bills. *See, e.g.,* GTE comments at 9; ALTS comments at 5.

[17] TOPC reply at 3. Because mature markets also require disclosure rules, we disagree with ALTS' argument that any confusion over billing formats that exists today is merely the result of the transition to fully competitive telecommunications markets. *See* ALTS comments at 3.

[18] We note that, to some degree, it is significantly *easier* to bill fraudulent charges on telephone bills than on credit card bills. While credit card charges require access to a customer account number that consumers understand should be treated confidentially, all that is often required to get a charge billed on a local telephone bill is the consumer's telephone number. This number is not only expected to be widely distributed, but can easily be "captured" by an entity even when the consumer has not authorized charges or made a purchase. *See Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996*, Order and Notice of Proposed Rulemaking, CC Docket No. 96-146, 11 FCC Rcd 14738, 14741 (1996)

(TILA) and implementing rules require credit card issuers to provide information concerning the amount and date of each transaction appearing on a bill, the seller's name, and the location where the transaction took place.[19] These requirements are intended to "protect the consumer against inaccurate and unfair billing and credit card practices."[20] In a similar manner, our principles and guidelines will protect consumers from misleading and inaccurate billing practices.

8. In sum, we take this action in furtherance of the pro-competitive goals of the 1996 Act and our responsibility to ensure that *all* consumers have a fair opportunity to share in the benefits of competitive telecommunications markets. Certainly, in a competitive marketplace, consumers should investigate the choices available to them and decide which services best fit their needs. They also have a responsibility to be vigilant in protecting themselves from perpetrators of fraud. In this item, we seek to provide consumers with the basic tools they need to participate meaningfully in a competitive telecommunications marketplace.

II. TRUTH-IN-BILLING PRINCIPLES

A. Adoption of Guidelines

9. Through this Order, we adopt broad, binding principles to promote truth-in-billing, rather than mandate detailed rules that would rigidly govern the details or format of carrier billing practices. The majority of commenters in this proceeding support such a flexible approach.[21] We use the terms principles and guidelines in this Order to distinguish our approach from a more detailed regulatory approach urged by some commenters. That is, we envision that carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and

---

(noting that automatic number identification has been used to charge telephone subscribers for calls to toll-free numbers).

[19] *See, e.g.*, TILA, 15 U.S.C. 1601, *et seq*., 12 C.F.R. § 226. Congress passed TILA to ensure that consumers are given meaningful information about credit transactions and to create important protections for consumers using credit card billing and collections systems. FTC comments at 4-5.

[20] 15 U.S.C. § 1601.

[21] States and consumer groups are generally supportive of our efforts. *See, e.g.,* Small Business comments at 1-2; Bills Project comments at 1-2; NCL comments at 2; West Virginia Commission comments at 1; Vermont Commission comments at 1-2; Washington Commission Staff comments at 2; NAAG comments at 3; California Commission comments at 2; Maine Commission comments at 2; Minnesota OAG comments at 4; TCA comments at 2. *See also* NYCPB comments at 3, 6 (supporting voluntary guidelines); Missouri Commission comments at 2 (same); Florida Commission comments at 4 (urging this Commission to issue model rules for states to enact). Most carriers oppose rules, but state that, if the Commission determines to act, we should do so in the form of broad guidelines that carriers may comply with in a number of different ways. *See, e.g.,* USTA comments at 3, 8; TRA comments at 3; U S West comments at 5.

those of their customers. We incorporate these principles and guidelines into the Commission's rules, because we intend for these obligations to be enforceable to the same degree as other rules. Thus, while we provide carriers flexibility in their compliance, we fully expect them to meet their obligation to provide consumers with the accurate and meaningful information contemplated by these principles.

10. Our decision to adopt broad, binding principles, rather than detailed, comprehensive rules, reflects a recognition that there are typically many ways to convey important information to consumers in a clear and accurate manner. For this reason, we disagree with those commenters who assert that more prescriptive rules are necessary to combat consumer fraud through the use of misleading telephone bills.[22] Instead, our principles provide carriers flexibility in the manner in which they satisfy their truth-in-billing obligations. Accordingly, this approach responds to the concerns of many carriers that detailed regulations could increase their costs,[23] and that rigid rules might prevent competing carriers from differentiating themselves on the basis of the clarity of their bills.[24]

11. Conversely, we disagree with commenters who suggest that purely voluntary guidelines would be sufficient to combat misleading bills that facilitate slamming and cramming.[25] The extent of the current problem shows that voluntary action alone is inadequate for many carriers. Failure to codify these principles and implementing guidelines might result in carriers ignoring our requirements, to the detriment of consumers. Our Order permits carriers to render bills using the format of their choice, so long as the bills comply with the implementing guidelines that we adopt today. We consider our principles and guidelines to be flexible enough that carriers will be able to comply with them without incurring unnecessary expense. In fact, we note that many carriers commented that their current practices already comport with proposals we outlined in the *Notice.*[26] Although complying with these principles certainly may require expenditures by some carriers whose bills currently do not meet these standards, we conclude that such costs do not outweigh the benefits consumers will reap from better understanding their service charges.

---

22 *See, e.g.,* NASUCA comments at 21.

23 ALTS comments at 7; MCI comments at 4.

24 *See, e.g.,* GTE comments at 9; ALTS comments at 5. We also find that this flexibility addresses the concerns expressed by CompTel that adoption of rules could make bills longer and more complex. CompTel comments at 6. Concise bills are more likely, not less likely, to comport with our principles that bills be clear and understandable because excessively long bills may confuse consumers.

25 NYCPB comments at 7 n. 3.

26 *See, e.g.,* Ameritech comments at 13; BellSouth comments at 4; SBC comments at 4 (all noting that their bills already segregate charges by service provider).

Particularly in light of the flexibility we provide carriers to satisfy these guidelines, we find that the comments do not provide any detailed information by which we could make such a finding.[27] Accordingly, we conclude that the approach we adopt today appropriately balances the rights of consumers and the concerns of carriers, in furtherance of the deregulatory thrust of the 1996 Act, and we decline to accept the assertions of some rural and other carriers that compliance will be too costly for such carriers.[28]

12. As we conclude in section II.B., *infra*, the ability of consumers to read and understand their bills is crucial to their ability to protect themselves against slamming. We note, however, that some consumers with disabilities may, due to the nature of their disability, be unable to read and understand their telephone bills if they do not have the ability to receive their bills in accessible formats. Persons with disabilities, therefore, due to barriers in standard billing formats, may not be able to determine whether their interexchange carrier has been changed without their authorization. In this Order, we are not setting forth requirements that carriers provide their bills in accessible formats for persons with disabilities. We note, however, that the issue of access to telecommunications service bills will be addressed in the pending rulemaking underway to implement section 255 of the Act. Section 255 states that providers of telecommunications services and manufacturers of telecommunications equipment must make their services and equipment "accessible to and usable by" persons with disabilities if readily achievable. Billing would appear to be included in the usability requirements of section 255. We believe that the section 255 proceeding is a more appropriate place to address the issue of accessibility to telecommunications service bills. In the meantime, however, we strongly encourage carriers to provide billing information in accessible formats for their customers with disabilities upon request, so that those customers may effectively understand their bills and protect themselves against unauthorized carrier changes. Of course, carriers also are expected to comply with any existing state requirements regarding accessibility of telecommunications services and related bills.

[27] Several wireless industry commenters provided specific cost estimates, but only for implementation of proposals mentioned in the *Notice*, such as requiring separate status pages, that we do not adopt. *See e.g.*, GTE comments at 11 (cost of mailing an additional page of wireless bill would add $9.6 million per year); BellSouth comments at 15 (one additional page on wireless bill would cost between $500,000 and $1 million for programming costs, resulting in 7 cent per customer per month charge); Bell Atlantic Mobile reply at 8 ($5 million in systems development work to add separate page to highlight any changes form prior billing period and to provide a visual separation of difference services organized by provider.)

[28] In fact, according to telecommunications consulting firm Detecon, although telephone bill format rules might cause carrier costs to increase in the short term, our rules ultimately may reduce carriers' costs. Detecon contends that costs incurred by carriers to implement our rules ultimately will be offset by cost savings resulting from quicker collection of revenues, because bills issued pursuant to rules requiring clear telephone bill formats are less likely to be disputed. This will reduce the amount of calls to customer service representatives, resulting in lower staffing costs. Detecon comments at 2.

13. Commercial Mobile Radio Service (CMRS) Carriers. We believe that the broad principles we adopt to promote truth-in-billing should apply to all telecommunications carriers, both wireline and wireless. The principles we adopt today represent fundamental statements of fair and reasonable practices. Like wireline carriers, wireless carriers also should be fair, clear, and truthful in their billing practices. Consumers deserve no less.

14. We therefore reject the threshold arguments that certain classes of carriers should be wholly exempted from complying with the guidelines that we announce today solely because competition exists in the markets in which they operate.[29] We emphasize that one of the fundamental goals of our truth-in-billing principles is to provide consumers with clear, well-organized, and non-misleading information so that they may be able to reap the advantages of competitive markets. We anticipate that, as competition evolves and convergence occurs, wireless carriers will increasingly compete for wireline customers. In a world of bundled packages and multiple service providers, clear and truthful bills are paramount.

15. As we stated above, however, we reject the detailed regulatory approach urged by some commenters, because we envision that carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers. Nonetheless, in the wireline context, we incorporated these principles and guidelines into Commission rules for enforcement purposes. We have adopted these rules after considering an extensive record on both the nature and volume of customer complaints, as well as substantial information about wireline billing practices.

16. The record does not, however, reflect the same high volume of customer complaints in the CMRS[30] context, nor does the record indicate that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices. If current CMRS billing practices are clear and non-misleading to consumers, then it might be appropriate either to forbear from specific wireline rules or not to apply them in the first instance. Furthermore, in some instances, the rules we have adopted might simply be inapplicable in the wireless context. For example, because CMRS carriers are excluded from equal access obligations,[31] it appears that CMRS carriers will seldom need to indicate a new long distance

---

[29] *See, e.g.,* C&W comments at 3; AT&T comments at 4-5; TRA comments at 5; MCI comments at 5 (rules should apply only to bills rendered by LECs and not to IXC direct billing).

[30] *See* 47 C.F.R. § 20.9 (enumerating classes of CMRS providers). Requirements established for CMRS in this order apply similarly to providers of mobile services, as defined in Section 20.7 of the Commission's rules, that are regulated as telecommunications common carriers.

[31] *See Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*,

service provider on the bill.

17. Despite the fact that some rules may be inapplicable or unnecessary in the CMRS context, there are two rules that we think are so fundamental that they should apply to all telecommunications common carriers: (1) that the name of the service provider associated with each charge be clearly identified on the bill; and (2) that each bill should prominently display a telephone number that customers may call free-of-charge in order to inquire or dispute any charge contained on the bill. As a practical matter, we believe that most CMRS bills already contain the name of the service provider and a contact number. Thus, complying with these obligations should be neither onerous nor costly. But, in the unlikely event that a CMRS bill does not contain the name of the service provider or a contact number, we believe that, at a minimum, consumers expect and should receive this basic information.

18. We also intend to require CMRS carriers to comply with standardized labels for charges resulting from Federal regulatory action, if and when such requirements are adopted. As a practical matter, this rule will not apply until we issue an order that adopts the standard labels for federal line-item charges. We expect to apply the same rule to both wireline and CMRS carriers, however, because we believe that labels assigned to charges related to federal regulatory action should be consistent, understandable, and should not confuse or mislead customers. Uniform labels will also enable customers to compare such charges among all providers.

19. Furthermore, notwithstanding our decision at this time not to apply these several guidelines to CMRS providers, we note that such providers remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202 of the Act, and our decision here in no way diminishes such obligations as they may relate to the billing practices of CMRS carriers.[32]

B. Legal Authority

20. We conclude that it is critical to the effective operation of a competitive telecommunications marketplace to ensure that telephone bills provide consumers with the information they need to make informed telecommunications choices, as well as the tools to protect themselves against telecommunications-related fraud. As explained in the *Notice*, the

Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, FCC 98-334 at ¶ 85 (Dec. 23, 1998) (*1998 Slamming Order and Further Notice*).

[32] *See* 47 U.S.C. §§201(b), 202. *Also* 47 U.S.C. § 332(c)(1)(A). In our recent Order declining to forbear from applying sections 201and 202 of the Act to wireless providers, we emphasized that these sections "codif[y]the bedrock consumer protection obligations of common carriers . . ." *Wireless Forbearance Order*, 11 FCC Rcd 16857, 16865. We also noted that their importance would increase "as customers begin to rely on CMRS as a partial or complete substitute for wireline service . . ." *Id.* at 16870.

telephone bill is an integral part of the relationship between a carrier and its customer.[33] As such, the manner in which charges and providers are identified on the telephone bill is essential to consumers' understanding of the services that have been rendered, the charges imposed for those services, and the entities that have provided such services.

21. Most commenters agree that we possess, at minimum, concurrent jurisdiction with states to address these problems.[34] We find that our authority to enact the truth-in-billing guidelines set forth herein stems from both section 201(b) and section 258 of the Act.[35] Section 201(b) requires that all carrier charges, practices, classifications, and regulations "for and in connection with" interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement.[36] Section 258 of the Act further authorizes the Commission to adopt verification requirements to deter slamming in *both* the interstate and the intrastate markets. The Supreme Court has ruled that section 201(b) provides the Commission with authority to implement all of the provisions of the Act, including those that apply to intrastate communications.[37] As explained in detail below, with the exception of the guideline discussed at section II(C)(2)(c) of this Order,[38] which involves standardized labels for charges relating to federal regulatory action, the truth-in-billing principles and guidelines adopted herein are justified as slamming verification requirements pursuant to section 258, and thus can be applied to both interstate and intrastate services. We therefore reject arguments by ALTS and other commenters that, as a threshold matter, authority to regulate local exchange

[33] *Notice*, 13 FCC Rcd at 18182.

[34] *See, e.g.*, GTC comments at 10-13 (Commission possesses jurisdiction under both under Title I and Title II of the Act); ACTA comments at 3-4 (same); BellSouth comments at 2 (Commission possesses jurisdiction under both under Title I and Title II of the Act, states possess concurrent jurisdiction); Minnesota OAG comments at 3 (billing constitutes "practices in connection with communication service" under 201(b), although Commission jurisdiction extends primarily to interstate toll charges); Billing Coalition comments at 8-10; MCI comments at 21 n. 15 (Commission possesses jurisdiction under Section 201(b) to enforce "consumer protection obligations of common carriers"); ELNC comments at 2-3 (same); ECA comments at 3-5; NASUCA comments at 12 (Commission possesses authority to issue directives to providers under Title II of Act concerning manner in which charges are described or disclosed to customers).

[35] *See* 47 U.S.C. §§ 201(b), 258. In addition, section 332 of the Act, 47 U.S.C. § 332, also provides us with jurisdiction to enact rules concerning CMRS carriers.

[36] 47 U.S.C. § 201(b).

[37] *AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999).

[38] *See infra* Section II(C)(2)(c).

carrier (LEC) billing practices resides solely with the states.[39] We recognize, however, that the standardized label guideline rests exclusively on our authority under section 201(b) and therefore is limited to interstate services.

22. Section 258 of the Act provides us with jurisdiction to regulate the billing practices of interstate, as well as intrastate, carriers to the extent that our regulations serve as a means of verifying carrier changes. Section 258(a) of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."[40] The Commission has previously concluded that this provision encompasses both interstate and intrastate service providers.[41] The language of section 258 makes clear that Congress charged the Commission with the responsibility to promulgate verification rules to prevent slamming in both the interstate and intrastate markets. Pursuant to the mandates of section 258, in the *1998 Slamming Order and Notice* we adopted verification procedures and liability rules, as well as rules regarding the administration of preferred carrier freezes,[42] in order to deter the incidence of slamming by both interstate and intrastate carriers.[43] Importantly, in the *1998 Slamming Order and Notice* we also stated that our slamming rules are intended to establish a new comprehensive framework, in accordance with the provisions of section 258, to combat aggressively and deter slamming in the future.[44]

23. The truth-in-billing guidelines we adopt in this Order are intended to function as a

---

[39] *See, e.g.,* ALTS comments at 2 n. 2 (stating that the Commission has no jurisdiction to adopt rules relating to billing of intrastate services); Ameritech comments at 4 (stating that the Commission does not have jurisdiction over intrastate bills except for pay-per-call services); AT&T comments at 11 n. 8 (stating that the Commission's jurisdiction likely only extends to billing of interstate telecommunications services); Bell Atlantic comments at Attachment, "Answers to Specific Questions," at 2 (stating that the Commission lacks jurisdiction over charges for intrastate telecommunications services or over how those charges are billed); NYCPB comments at 7 n. 3 (stating that the authority to address the format and content of bills rendered by local telephone companies resides with the states).

[40] 47 U.S.C. § 258(a).

[41] *1998 Slamming Order and Further Notice* at ¶ 86.

[42] A preferred carrier freeze prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was obtained his or her express written or oral consent. *See 1998 Slamming Order and Further Notice* at ¶ 112, n. 348.

[43] *Id.* at ¶ 5.

[44] *Id.* at ¶ 4.

critical component of the Commission's verification procedures. Many commenters have indicated that unclear bills prevent customers from realizing that their carrier of choice has been switched.[45] A clear indication on the bill of who is providing service and whether the service provider has changed since the last bill provides a necessary final step in the verification process by allowing customers readily to detect unauthorized changes. Thus, our first principle, requiring telephone bills to indicate when a consumer's presubscribed interstate or intrastate carrier has been changed, is adopted as a verification requirement. Our second principle, requiring bills to provide full and non-misleading descriptions of services, will also serve a verification function, by helping consumers to detect slamming by ensuring that consumers do not confuse the name of any carrier with the service it provides.[46] Finally, our third principle, requiring telephone bills to contain clear and conspicuous disclosure of consumer inquiry information,[47] will enable consumers to report slamming and begin the process of returning to their authorized carriers. Therefore, these truth-in-billing principles serve as the final step in verifying service provider changes, and such rules are authorized by section 258 of the Act.

24. Our truth-in-billing principles and guidelines also will deter carriers from engaging in unjust and unreasonable practices in violation of section 201(b). Under section 201(b), carrier practices must be just and reasonable. As we stated above, the Commission has authority to promulgate rules implementing that requirement as to the provision of interstate services. Thus, section 201(b) provides further authority for the guidelines adopted herein. We emphasize that a carrier's provision of misleading or deceptive billing information is an unjust and unreasonable practice in violation of section 201(b) of the Act.[48] The principles and guidelines established in this Order are intended to define more specifically what would constitute a violation of section 201 in the billing context for the covered carriers. Moreover, the implementation of the general

---

[45] *See, e.g.*, NCL comments at 2 (stating that fraudulent companies take advantage of consumer confusion over phone bills); NYCPB comments at 5 (stating that consumers often complain that telephone bills do not facilitate the detection of slamming); Texas Commission comments at 6 (stating that focus group found it difficult to find changes in services unless they were specifically anticipating and looking for one).

[46] For example, if a carrier is named "Phone Calls," the name of such carrier on a telephone bill could be confused with telephone service, and the consumer may not realize that he or she has been switched to an unauthorized carrier. *See infra*, Section II(C)(2). We note the standardized label guideline provides an important consumer protection, as discussed *infra* Section II(C)(2)(c), but is not, however, related to deterring slamming. *See supra* ¶ 21.

[47] *See infra*, Section II(C)(3).

[48] For example, the Commission has previously warned a carrier that failure to correct misleading information it provided in connection with issuance of a calling card could constitute a violation of section 201(b) and result in enforcement action, including show cause or forfeiture proceedings. *See, e.g.*, *Robert E. Allen*, Letter, 7 FCC Rcd 7529, 7530 (1992) (information provided by carrier in connection with issuance of calling cards "may have persuaded many consumers to unnecessarily destroy or discard otherwise valid calling cards").

principles and guidelines set forth in this Order, such as requiring clear descriptions of services for which charges appear on the bill, will facilitate consumer detection of fraud, and thereby deter unscrupulous carriers from engaging in unreasonable practices such as cramming. In this regard, we note that the record supports our finding in the *Notice* that consumer difficulty in identifying unauthorized charges in telephone bills is a significant factor in the ability of unscrupulous entities to engage successfully in cramming.[49]

25. Some commenters contend that our jurisdiction to adopt rules concerning carrier billing, if it exists at all, exists only pursuant to our ancillary jurisdiction under Title I of the Act.[50] The Commission has previously stated that it has jurisdiction under Title II to regulate the manner in which a carrier bills and collects for its own interstate offerings, because such billing is an integral part of that carrier's communications service.[51] The guidelines adopted here apply to the carrier providing service to customers, not to those carriers' billing agents. Thus, for example, even where an interexchange carrier (or other carrier) uses the billing and collection services of a LEC or other third-party billing agent, the interexchange carrier still bears the responsibility of ensuring that such charges appear on the bill remitted to the consumer in a manner that complies with the principles set forth in this Order. The Commission's *Detariffing Order* specifically stated that a carrier's billing and collection for its own service, as opposed to billing services provided to other carriers, *is* subject to the Commission's Title II jurisdiction.[52] Billing, like all other practices for and in connection with interstate service, must be just and reasonable.[53] Therefore we find

---

[49] *See, e.g.*, NYCPB comments at 5; FTC comments at 3, 6.

[50] *See, e.g.*, ALTS comments at 2; AT&T comments at 11 n. 8; Time Warner comments at 7.

[51] *See Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Report and Order and Request for Supplemental Comment, CC Docket No. 91-115, 7 FCC Rcd 3528, 3530-3533 (1992), *clarified on reconsideration*, 12 FCC Rcd 1632, 1643-1645 (1997); *Public Service Commission of Maryland*, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4004-4006 (1989), *aff'd Public Service Commission of Maryland v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990); *Detariffing of Billing and Collection Services*, Report and Order, CC Docket No. 85-88, 102 F.C.C.2d 1150, 1169-71 (1986) (*Detariffing Order*).

[52] The *Detariffing Order* states that:

> Although carrier billing and collection for a communication service that it offers individually or as a joint offering with other carriers is an incidental part of a communications service, we believe that carrier billing or collection for the offering of another unaffiliated carrier is not a communication service for purposes of Title II of the Communications Act.

Detariffing Order 59 Rad. Reg. 2d (P & F) 1007, ¶ 31.

[53] *See* 47 U.S.C. § 201(b).

that we possess Title II jurisdiction to adopt the principles and guidelines set forth herein, and no reliance on our ancillary jurisdiction is necessary.

26. Notwithstanding the requirement of our *1998 Slamming Order and Further Notice* that states must accept the same verification procedures as prescribed by the Commission,[54] states will be free to continue to enact and enforce additional regulation consistent with the general guidelines and principles set forth in this Order, including rules that are more specific than the general guidelines we adopt today.[55] In addition to whatever powers they may have to enforce their rules under state law, states also have express authority under section 258 to enforce the Commission's verification procedure rules, including the principles and guidelines adopted here, with respect to intrastate services.[56] We are aware of several states that have existing regulations that are consistent with the truth-in-billing guidelines we adopt here. For example, Pennsylvania has previously adopted "regulations to impose fair and equitable standards governing billing and customer complaint procedures."[57] Michigan prohibits the provision of misleading information in local exchange telephone bills, and requires notification of new services or changes in existing service.[58] We support these efforts. Additionally, we note that the National Association of Regulatory Utilities Commissions (NARUC) has published a White Paper giving guidance to states on how to provide consumer protection in the area of telephone service, including proposals to increase the clarity of telephone bills.[59] In setting forth its proposals, NARUC highlighted the need for "clear billing that customers can easily read and understand" and noted that "[i]n many cases, this is not true of current telecommunications company bills, particularly those that come from the local exchange company."[60] Many of the principles and guidelines adopted in this Order are consistent with NARUC's proposals. We look upon this Order as another phase of our partnership with the states to promote competition and to combat

[54] *1998 Slamming Order and Further Notice* at ¶ 87.

[55] *1998 Slamming Order and Further Notice* at ¶¶ 86-90; see, *e.g.*, California Commission comments at 2 (stating that the Commission should set minimum standards, but not prevent states from applying stricter standards); Maine Commission comments at 2 (same); Minnesota OAG comments at 4 (same).

[56] *1998 Slamming Order and Further Notice* at ¶ 90.

[57] Pennsylvania Commission comments at 4.

[58] Mich. Admin. Code MCL 484.322(a), 484.337 (1996).

[59] NARUC, *White Paper on Resolution Urging Support of Principles Promoting Consumer Awareness and Protection by Policy Makers Involved with Telecommunications Regulation*, at 1 (NARUC White Paper).

[60] *Id*.

telecommunications-related fraud.[61] Through information sharing and dialogue, we intend to work together with the states towards the common objective of truth-in-billing.

27. Finally, we note that we possess complementary but distinct jurisdiction with the Federal Trade Commission (FTC) to ensure that consumers are treated fairly with regard to their telephone bills. The FTC does not have jurisdiction over activities of common carriers subject to Title II of the Communications Act.[62] Congress has, however, in limited circumstances, granted the FTC concurrent authority to establish rules relating to certain areas of telephone billing and collection. For example, the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) requires both the FCC and the FTC to adopt separate, complementary rules to promote legitimate pay-per-call services and protect telephone subscribers from fraudulent and abusive practices from both carriers and non-carrier entities, respectively.[63] We have enacted regulations pursuant to section 228 that, *inter alia*, require carriers to show, in a portion of the bill separate from ordinary telephone charges, the amount of pay-per-call charges, the type of services for which the consumer is being charged, and the date, time, and duration of pay-per-call calls.[64] We also require such segregation for interstate information charges assessed pursuant to a presubscription or comparable agreement.[65] The FTC is working currently to extend its pay-per-call authority to enact billing dispute rights akin to those available under the Fair Credit Reporting Act.[66] Our truth-in-billing guidelines will compel subject carriers to provide consumers with clear and necessary information in order to make informed choices and safeguard themselves against fraud. The FTC states that the goals of this truth-in-billing proceeding dovetail with the objectives of its own pay-per-call rulemaking, and that "[c]learer bills that provide non-deceptive information will enhance the ability of consumers to take advantage of the improved billing dispute rights for telephone-billed purchases contemplated in the FTC's proposed Rule revisions."[67] We agree and shall continue to work closely with the FTC on ways to exercise our

---

[61] *See*, *e*.g., *1998 Slamming Order and Further Notice* at ¶ 87.

[62] *See* 15 U.S.C. § 45(a)(2) (stating that the Federal Trade Commission does not have jurisdiction over "common carriers subject to the Acts to regulate commerce, air carriers, and foreign air carriers . . . ."); *see also* FTC Comments at 7 n.10.

[63] Pub. L. No. 102-556, 106 Stat. 4181 (1992) (codified at 15 U.S.C. § 1507 *et seq*. and 47 U.S.C. § 228).

[64] 47 C.F.R. §§ 64.1510(a)(2)(ii), (iii).

[65] *Id*. at § 64.1510(b).

[66] FTC comments at 7, *citing* Proposed Rules, Federal Trade Commission, 16 C.F.R. Part 308, Pay-Per-Call Rule, 63 Fed. Reg. 58,524 (1998).

[67] FTC comments at 8.

respective jurisdictions to ensure that all consumers receive the benefit of clear and understandable telephone bills.

C. Specific Truth-in-Billing Guidelines

1. Clear Organization and Highlighting New Service Provider Information

28. We adopt the threshold principle set forth in the *Notice* that telephone bills must be clearly organized and highlight new service provider information.[68] We conclude that such a basic principle is essential to facilitate consumers' understanding of services for which they are being charged, and thereby discourage consumer fraud such as slamming. The goal of these requirements is to deter slamming, as well as cramming, and accordingly, we possess jurisdiction to impose these requirements under sections 201(b) and 258 of the Act.[69] Based on our review of the record and experience handling consumer complaints of fraudulent carrier practices, we further conclude that implementation of this principle translates into three broad, binding guidelines on which we sought comment in the *Notice*: (1) the name of the service provider associated with each charge must be clearly identified; (2) charges must be separated by service provider; and (3) clear and conspicuous notification of any change in service provider must be made manifest.[70] Through ensuring that the billed information concerning service providers is clear and conspicuous, these guidelines enhance consumers' ability to review individual charges contained in their telephone bills and detect unwarranted charges or unauthorized changes in their service arrangements.

29. In our view, as well as that of virtually all commenters who addressed this issue,[71]

---

[68] *Notice,* 13 FCC Rcd at 18185-86.

[69] 47 U.S.C. §§ 201(b), 258.

[70] *Notice*, 13 FCC Rcd at 18185-18188.

[71] *See, e.g.,* Minnesota OAG comments at 13-15; NYDPS comments at 1; NYCPB comments at 12-13; USP&C comments at 5-6; NCL comments at 8-9; Commonwealth comments at 4; Century comments at 5-6; West Virginia Commission comments at 2-3; Small Business comments at 8; SBC comments at 13-14; Sprint comments at 13-14; TCA comments at 5-6; Americatel comments at 1-6; Billing Coalition comments at 16; AT&T comments at 14-15; Ameritech comments at 17; FTC comments at 14-15; Maine Commission comments at 5-6; Ohio Commission comments at 8; Wisconsin Commission comments at 4; Missouri Commission comments at 3-4; Florida Commission comments at 6; Washington Commission Staff comments at 6; AFT comments at 1; NAAG comments at 5; BellSouth comments at 7; Bills Project comments at 6; UCAN comments at 9; Georgia comments at 3; Kansas Commission comments at 5; NACAA comments at 2; Pennsylvania Commission comments at 7; QCI comments at 5.

a clear description of the name of the service provider is both rudimentary to any reasonable billing practice and essential to combat unfair carrier practices, including slamming and cramming. Consumers will be able to detect whether or when they have been slammed, crammed, or even overcharged only if they can readily identify their current service providers. Clear identification of service providers is also an essential predicate for consumers to be able to communicate complaints and dispute billed charges.[72] Indeed, our complaint experience suggests that consumers are both confused and potentially hampered in obtaining information about billed charges or lodging complaints when the only entity name associated with a charge is, for example, that of a "billing aggregator."[73] Regardless of whether the billing aggregator can handle the consumer inquiry or complaint on behalf of the service provider,[74] we believe that identification of the service provider is essential to enable consumers to monitor their service arrangements and judge the accuracy of the charges levied.

30. We agree with NAAG that it is both unreasonable and unfair to expect consumers to undertake extensive investigations on their own simply to discover the identity of the service provider who placed a charge on their bill.[75] Accordingly, we find that, consistent with most carriers' existing practices,[76] our truth-in-billing guidelines require that the name of the service provider must be clearly listed on the bill in connection with that entity's charges to the consumer.[77]

---

[72] SBC comments at 13-14 (this information will aid the consumer in identifying the carrier responsible for the charge, and most LECs already follow this practice); Sprint comments at 13-14 (identifying carrier levying the charge is particularly important where a reseller uses the carrier identification code (CIC) of the underlying facilities provider, and arguing that LECs should be required to use the Switchless Reseller Indicator in their service order systems); FTC comments at 14-15 (suggesting carriers list name of service provider and, where applicable, name and number of billing aggregator or clearinghouse with authority to resolve a consumer complaint).

[73] *See, e.g.*, Informal Complaint of WIS Sheet Metal Inc., IC No. 99-00232 (submitted Jan. 13, 1999); Informal Complaint of Roberts & Roberts, IC No. 99-04707 (submitted Feb. 5, 1999); *see also* NASUCA comments at 15 (stating that billing aggregators often are unable to provide consumers information about charges). Billing aggregators or clearinghouses consolidate charges from multiple providers of telephone services and contract with LECs for those charges to appear on consumers' telephone bills. Billing Coalition comments at 1.

[74] *See* Section II(E), *infra* (requiring that bills must display a toll-free number for an entity authorized to resolve consumer complaints).

[75] *See* NAAG comments at 5. NAAG further asserts that providers that do not wish to disclose their identity should not be permitted access to the billing process. *Id.*

[76] *See, e.g.,* Ameritech comments at 17; SBC comments at 13-14; BellSouth comments at 7.

[77] We note that this guideline does not require wireless carriers to identify all entities with which they have roaming arrangements. We agree that listing each such entity would be both unnecessary and potentially

31. We conclude that, where telephone bills include charges from more than one service provider, the charges should be displayed according to service provider with clear visual separation -- although not necessarily separate pages -- to distinguish the different providers. In our view, this provider-based means of presenting charges establishes a logical, unambiguous framework to associate charges with a particular service provider, which in turn promotes clarity in billed charges and reduces customer confusion that gives rise to fraudulent carrier practices. In response to our query in the *Notice*,[78] commenters generally favor as most effective and economical a provider-based bill format over grouping charges exclusively by service category.[79] We agree that listing charges by service provider should produce bills that can be reviewed by consumers more easily than those that would list charges by service type, and facilitate the prompt detection of unreasonable and fraudulent carrier practices. For instance, if a consumer were slammed, a bill segregated by provider would show, in a distinct portion of the bill, all the charges billed on behalf of the unauthorized carrier. A bill segregated by service type, on the other hand, could list together long distance charges from the unauthorized carrier, the authorized carrier, and any carrier that was used to place dial-around calls. This intermingling of authorized and unauthorized charges could make it more difficult for a consumer to realize that he or she has been slammed.

32. It appears that listing charges by service provider presently is the industry standard.[80] Several carriers that are currently engaged in, or recently have completed, billing improvement projects report favorable customer reaction to bills that segregate charges by service provider.[81] Some commenters also note that listing charges by service provider rather than by service type avoids the confusion that might ensue if each component of a bundled service package were required to be listed and priced separately.[82] In particular, we agree with the

---

confusing to consumers. *See e.g.* Primeco comments at 9; Bell Atlantic Mobile comments at 12-13; Airtouch comments at 6-7; CenturyTel comments at 5; BellSouth reply at 7; Bell Atlantic Mobile reply at 9.

[78] Specifically, we asked whether telephone bills might be improved by listing all charges by service type (*e.g.*, local, long distance, and miscellaneous services) in clearly separate sections of the bill or, alternatively, by grouping charges according to service provider. *Notice*, 13 FCC Rcd at 18185.

[79] *See*, *e.g.*, Florida Commission comments at 4-5; NCL comments at 7, Maine Commission comments at 2-3; Ohio Commission comments at 6; Ameritech comments at 13; BellSouth comments at 4; SBC comments at 4-5.

[80] *See*, *e.g.*, Ameritech comments at 13; BellSouth comments at 4; SBC comments at 4. *See also* California Commission comments at 4 (stating that California law requires separate sections for each billing entity).

[81] *See*, *e.g.*, Ameritech comments at 2, 13; Bell Atlantic comments at Attachment, "Answers to Specific Questions," at 3-4.

[82] *See*, *e.g.*, Bell Atlantic comments at Attachment, "Answers to Specific Questions," at 4-5; Sprint comments at 4; GTE comments at 10; Time Warner comments at 10-11; CTIA comments at 5; U S West

observations of several commenters that consumers understand the bundled offerings they purchase in terms of the single overall price of the services provided by carrier, and would be confused if the bundled offering were broken apart and the component parts priced separately solely for billing purposes.[83]

33. As a final corollary to our guidelines concerning providers, we conclude that new service providers must be clearly and conspicuously identified on the bill. We contemplate that such clear and conspicuous identification would involve all service providers that did not bill for services on the previous billing statement, and would describe, where applicable, any new presubscribed or continuing relationship with the customer.[84] Clear identification of new service providers will improve consumers' ability to detect slamming.[85] Currently, telephone bills do not always clearly show when there has been a change in presubscribed carriers. Telephone subscribers may realize that their presubscribed interexchange carrier has been changed only if they notice a carrier change charge on their bill.[86] Moreover, as noted in our *Notice*, the difficulty in detecting a change in carriers may be compounded by carriers that use potentially misleading names so that consumers may believe that a carrier's name refers to a service offering, rather than being the name of a carrier.[87] As noted previously, our recently enacted anti-slamming regulations can be fully effective only if consumers are able to detect promptly that a slam has occurred. Because our new slamming rules absolve consumers of liability for unpaid charges by unauthorized carriers for a period of 30 days after a slam has occurred, the efficacy of such rules hinge on consumers being able reasonably to discover a slam on the first bill that they receive after the unauthorized change in service occurs.[88] In the *1998 Slamming Order and Further Notice,*

---

comments at 17; SBC comments at 7; PCIA comments at 8; NCL comments at 7 (also stating that each service included in bundled offering should be itemized and described clearly).

83 *See*, *e.g.*, Sprint comments at 4-5; BellSouth comments at 4.

84 That is, if a new provider has become the customer's new presubscribed intra or interLATA toll carrier, the bill must make this information apparent to the customer.

85 Small Business comments at 8 (arguing that merely listing name of billing aggregator or clearinghouse is insufficient, and that identifying the reseller instead of the underlying facilities-based carrier will assist consumers in detecting if they have been slammed by a reseller where the underlying facilities-based carrier remains the same).

86 A carrier change charge is a charge typically imposed by a local exchange carrier on a subscriber who has requested a change in presubscribed interexchange carrier.

87 *Notice*, 13 FCC Rcd at 18185.

88 *See* 47 C.F.R. § 64.1100(d).

we recognized the importance of the telephone bill in providing notice of a carrier change.[89]

34. Clear identification of new providers also will improve consumers' ability to detect cramming. We find that consumers' discovery of fraudulent charges would be prompted by noticing that an unfamiliar service provider has charges appearing on the bill. Indeed, because cramming complaints most commonly emanate from charges levied by service providers that do not have a pre-existing business relationship with the consumer,[90] highlighting the name of a new service provider should prompt a subscriber to examine closely the particular charges billed by that provider and facilitate detection of cramming. Moreover, although many LECs now participate in voluntary anti-cramming guidelines that enable LECs to remove cramming charges from the bill,[91] such measures do not protect consumers who pay their bills without realizing that they have been crammed. TCA cites results of a recent survey involving over 400 randomly selected Texas consumers who filed cramming complaints with the Texas Commission. Forty-four percent of the survey respondents claimed to have paid unauthorized charges totalling between $11 and $50. Another 25 percent paid unauthorized charges between $51 and $100, and 21 percent paid charges exceeding $100.[92] Our complaint records also indicate that consumers often pay unauthorized recurring charges for several months before they realize the questionable nature of the charges.[93] In our view, clear identification of new service providers will appropriately signal to consumers the need to scrutinize their bills to make sure that they are being billed only for authorized services. Moreover, some crammed charges may involve "telephone-billed purchases"[94] which trigger a range of consumer rights and protections under the TDDRA[95]

---

[89] We emphasized that this "absolution" rule would encourage telephone subscribers to examine their telephone bills early and carefully and observed that "a waiver of the 30-day limit might be appropriate if the subscriber's telephone bill failed to provide reasonable notice to the subscriber of a carrier change." *1998 Slamming Order and Further Notice* at ¶¶ 20, 24.

[90] *See*, *e.g.*, U S West comments at 11 (stating that most consumer billing complaints involve "third-party toll charges").

[91] *FCC and Industry Announce Best Practice Guidelines to Protect Consumers from Cramming,* FCC Press Release (July 22, 1998).

[92] TCA comments at 2-5.

[93] *See*, *e.g.*, Informal Complaint of Sarah Krank, IC No. 98-29550.

[94] Under the TDDRA, a telephone-billed purchase is defined as:

> any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include --
>
> (A) a purchase by a caller pursuant to a preexisting

and the Federal Trade Commission's implementing regulations. Our provider identification guidelines, which facilitate consumers' detection of crammed charges, appropriately protect consumers' opportunity to assert those rights.

35. In adopting these provider-based identification guidelines, we have considered the substantial implementation concerns raised by carriers in response to the *Notice* proposal that telephone bills explain any new types of charges appearing on the bill for the first time.[96] Virtually all carriers assert that their current billing systems cannot conduct a month-to-month comparison of all charges as would be necessary to identify and explain all new services being billed for the first time, and that the modifications necessary to perform this function would be prohibitively expensive.[97] In contrast, highlighting each new service provider, as opposed to each new service, will be considerably more economical to implement.[98] Opponents also question the ultimate value

> agreement with the vendor;
> (B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule --
>> (i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and
>> (ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or
>
> (C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

15 U.S.C. § 5724(1).

95 Public Law l02-556, 106 Stat. 4181, approved Oct. 28, 1992.

96 *Notice*, 13 FCC Rcd at 18185.

97 *See, e.g.*, Ameritech comments at 11-12; Sprint comments at 7-8; RCA comments at 4; Bell Atlantic comments at Attachment, "Answers to Specific Questions," at 6 (identifying new service charges each month would require comparing approximately 40 million billing lines against previous month's entries); MCI comments at 34-35; U S West comments at 5, 20 (would require substantial and costly modification of three principal billing systems and approximately 30 interacting databases that are used to produce 12.2 million bills per month); PCIA comments at 9.

98 Month-to-month comparison of service providers would involve far less data than comparison of all billed charges.

of highlighting new charges to elucidate fraud.[99] Highlighting charges for new types of service probably would involve a larger number of items than highlighting new service providers. This could significantly lengthen bills and confuse consumers by repeating a significant amount of information that is shown elsewhere in the bill. Given the more economical alternative of provider-based identification which effectively communicates changes in service to the consumer, we believe that highlighting those service providers that did not charge for service on the previous bill is the better choice to advance consumer education and our anti-cramming and slamming goals.

36. Carriers have discretion to determine the best means to highlight the required information; we do not require that separate bill pages be used to show the charges billed by each service provider. Again, we are cognizant of commenters' concerns that any rigid formatting rule that required separate pages, or produced "dead space" on the bill, may frustrate consumers[100] and substantially, or even prohibitively, increase carriers' billing expenses.[101] Accordingly, we do not mandate any particular means of complying with the guidelines set forth herein, but rather permit and contemplate that carriers will employ a variety of practices that would be consistent with this Order. For example, following suggestions by the FTC and NCL, colored ink or different fonts or type sizes, along with explanatory notes, could be used to highlight, within the body of the bill or on an existing summary page, the names of new presubscribed carriers and service providers.[102] In adopting a provider-based guideline and affording wide latitude to determine the most efficient way to convey the service provider information, we have balanced consumers' need for clear, logical, and easily understood charges against concerns that rigid formatting and disclosure requirements would inhibit innovation and greatly increase carrier costs.

2. Full and Non-Misleading Billed Charges

37. We adopt the second core principle set forth in the *Notice* that bills should contain full and non-misleading descriptions of the service charges that appear therein. In our view, providing clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices. Indeed, we

---

[99] *See, e.g.*, PCIA comments at 7-8; Ameritech comments at 10-11; BellSouth Reply comments at 5; Billing Coalition comments at 15-16.

[100] *See, e.g.*, Bell Atlantic comments at Attachment, "Answers to Specific Questions," at 5 (consumers already complain about too many pages); FTC comments at 10-11.

[101] *See, e.g.*, Sprint comments at 6; USTA comments at 5 (reporting that small USTA member estimates that adding additional page to bill would increase mailing costs by $600,000 per year).

[102] FTC comments at 10-11; NCL comments at 7.

find it difficult to imagine any scenario where payment could be lawfully demanded on the basis of inaccurate, incomplete, or misleading information.[103] Moreover, to permit such practices in the context of telecommunications services is particularly troublesome in light of the rapid technological and market developments, and associated new terminology, that can confuse even the most informed and savvy telecommunications consumer. Accordingly, as discussed below, we adopt three guidelines that implement this core disclosure principle.

a. Billing Descriptions

38. We conclude that services included on the telephone bill must be accompanied by a brief, clear, plain language description of the services rendered.[104] The description of the charge must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged. Requiring clear descriptions of billed charges will assist consumers in understanding their bills, and thereby, deter slamming, as well as cramming.

39. In the *Notice,* we observed that telephone bills often contain vague or inaccurate descriptions of the services for which the customer is being charged. For example, many complaints we have received involve charges identified on local telephone bills simply as "monthly fee" or "basic access," without further explanation.[105] The record in this proceeding persuades us that unclear or cryptic telephone bills exacerbate consumer confusion, as well as the problems of cramming and slamming.[106] Indeed, a common theme voiced in the consumer complaints we receive is that telephone bills contain insufficient information to enable consumers to determine the nature of the service for which they are being billed. In our view, clear billing descriptions of the services rendered will reduce these problems. Clear and easily understood service descriptions

---

[103] We agree with U S West that "no reputable business can be against the ideas associated with 'truth-in-billing' anymore than comparable ideas reflected in other 'truth-in-xxx' initiatives, such as truth-in-lending or truth-in-advertising." U S West comments at 1. *See also Thompson Medical Co. Inc., v. Federal Trade Commission*, 791 F.2d 189, 195 (D.C. Cir. 1986) (a company has "no right to stay in business if the only way it can do so is to engage in false and misleading advertising").

[104] We agree with Sprint that a customer should be able to determine what service a carrier has provided based on the service description presented in his or her telephone bill. *See* Sprint comments at 11-13; *see also* TCA comments at 5-6 (language and format of the bill must be sufficiently clear in presentation and specific enough in content that customers can accurately assess that the services for which they are billed correspond to those they have requested and received, and that the costs assessed for those services conform to their understanding of their price).

[105] *Notice*, 13 FCC Rcd at 18177.

[106] *See supra* Section II(A) (Adoption of Guidelines) and Section II(C) (Specific Truth-in-Billing Guidelines).

will enable consumers to verify the services they have ordered, thus facilitating the detection of slamming and cramming. Although the requirement of clear identification of service providers, discussed earlier, will solve a large portion of the problem, it does not eliminate the potential for fraudulent carrier practices. For example, the record indicates that some carriers choose corporate names that sound like telecommunications services, *e.g.*, "Phone Calls," to confuse consumers and facilitate cramming, while others use corporate names such as "I Don't Know," "Whatever," and "Anyone is OK," as a device to trick consumers into unwittingly selecting the deceiver as their long-distance service provider.[107] Requiring descriptions of services, in combination with the clear identification of service providers, assists in the detection of slamming by enabling consumers to distinguish between the names of services ordered and the names of carriers. Accordingly, our jurisdiction to impose this requirement stems from section 258 and its goal of deterring slamming.[108]

40. We contemplate that sufficient descriptions will convey enough information to enable a customer reasonably to identify and to understand the service for which the customer is being charged.[109] Conversely, descriptions that convey ambiguous or vague information, such as, for example, charges identified as "miscellaneous," would not conform to our guideline.[110] Similarly, in our view, a charge described by what it is *not*, such as, for example, "service not regulated by the Public Service Commission" is inherently ambiguous and does not disclose sufficient information. There is no way for a consumer to discern from this description that the charge refers to, for example, inside wiring maintenance insurance.[111]

41. Although carriers must provide sufficient information, we emphasize that full descriptions do not mean redundant or unnecessary explanations. In particular, carriers need not define those terms that are already generally understood by consumers, such as "local service" or "long distance service." Similarly, carriers need not identify every long distance call as being a

107 *See* Small Business comments at 7-9 (highlighting the problem of misleading carrier company names). By using a corporate name such as "I Don't Know," an unscrupulous carrier can trick unwitting consumers into selecting it as their preferred carrier. For example, the telemarketing representative for the carrier I Don't Know may ask a leading question such as, "Who would you like to be your long distance carrier?" The consumer who responds, "I don't know," may then have his phone service switched to the carrier I Don't Know.

108 47 U.S.C. § 258.

109 *See, e.g.*, NASUCA comments at 15-16 (description should be conveyed in terms generally understood by ordinary customer); *see also* USP&C comments at 4-5 (descriptions should not use terminology comprehensible only to those who are well versed in telecommunications regulatory matters).

110 We agree with NASUCA that no charge should be identified as "miscellaneous" or described by ambiguous terms that may confuse a customer or suggest that a service or product is regulated when in fact it is not. NASUCA comments at 16.

111 *See* Bills Project comments at 4 (describing Bell Atlantic line item charge).

long distance call. Rather, they may simply identify a section of the telephone bill as "long distance service," followed by an itemized description of calls showing the destination cities, the numbers dialed, the date, and the charge for each call. We also invite carriers to consider using graphical presentations such as symbols, color coding, etc., to identify services in a space-efficient manner.[112] Such methods may make it easier for small carriers to comply with our rules since it may afford them flexibility to work within the technical parameters of their current billing systems. We do not prescribe any particular methods of presentation, organization, or language, but rather encourage carriers to be innovative in designing bills that provide clear descriptions of services rendered.

42. A few commenters have expressed concern that including full descriptions of the services appearing on telephone bills could overburden the rather limited capabilities of some carrier legacy billing systems.[113] In response, we point out that several carriers recently have undertaken efforts to improve their billing formats, after recognizing that the format of old bills did not meet consumers' needs.[114] More importantly, we simply cannot accept that it is reasonable for consumers to be deprived of clear descriptions of the services they may have purchased because carriers have not upgraded their systems to accommodate this most basic of disclosure obligations. Nor are we persuaded that the meaningful consumer protection against slamming and cramming that our service description guideline will provide should be held hostage to claims of antiquated billing processes. Moreover, we believe the flexibility permitted under our guidelines affords carriers many options to enable them to provide clear and meaningful service descriptions that may not necessitate costly modifications to their existing billing systems. In any event, we agree with FTC and TOPC that telephone bills that accurately describe the services and charges appearing on them will enable consumers to take greater advantage of the new products and services available in the telecommunications marketplace.[115]

43. Although we decline to formulate standardized descriptions, we encourage carriers to develop uniform terminology, as recommended by NCL, Bills Project, and the Kansas

---

112 *See, e.g.,* UCAN comments at 8.

113 *See, e.g.,* USTA comments at 5 (mentioning 30 character limit for service descriptions; USTA also maintains that many legacy billing systems have limited capabilities with respect to changing bill formats or including significantly more information); U S West comments at 21 (character limits prevent detailed service descriptions); Qwest comments at 6-7. *But see* CompTel comments at 5 (characterizing cost of providing summary and status pages and toll-free customer contact number as "modest").

114 GTE comments at 5-7; USTA comments at 8; Bell Atlantic comments at 3-4; Ameritech comments at 2; MCI comments at 6-7.

115 *See, e.g.,* FTC comments at 3; TOPC reply at 2-3.

Commission.[116] We believe that industry is better equipped than the Commission to develop, in conjunction with consumer focus groups, standardized descriptions that are compatible with the character limitations for text messages and other operational restrictions found in the systems currently used for billing. Adopting understandable common descriptions for services offered could enable consumers to comparison shop more readily, and thereby take full advantage of the benefits of a competitive telecommunications market.

b. "Deniable" and "Non-Deniable" Charges

44. We further conclude that, where additional carrier charges are billed along with local wireline service, reasonable practice necessitates that carriers clarify when non-payment for service would not result in the termination of the consumer's basic local service. More specifically, we adopt the guideline we proposed in the *Notice* that telephone bills differentiate between what are commonly referred to as "deniable" and "non-deniable" charges.[117] A "deniable" charge is a charge that, if not paid, may result in the termination -- "denial" -- of the customer's local exchange service. Conversely, a "non-deniable" charge is a charge that will not result in the termination of the customer's basic service for non-payment, even though the particular service for which the charge has been levied, *e.g.*, paging service, could be terminated.[118] We agree with the comments of state regulatory agencies and consumer advocacy groups that distinguishing between such charges on consumers' bills protects consumers from paying contestable, unauthorized charges out of fear of losing basic telephone service for non-payment.[119] Based on this consumer protection rationale, many states, including New York,

---

[116] NCL contends that we should create standard terms for carriers to use to describe services rendered, just as the Food and Drug Administration prescribes standard terms to refer to different food products. NCL suggests that providers that wish to use their own brand names or marketing terms should be obliged to also show the standard FCC description for each service. Developing standard terms should be collaborative process among companies, regulators, and consumer advocates, and NCL suggests that the proposed descriptions be tested with consumers to ensure they are understood. NCL comments at 7-8. *See also* Bills Project comments at 4; Kansas Commission comments at 4.

[117] *Notice*, 13 FCC Rcd at 18189.

[118] *Id.*

[119] *See, e.g.*, Nevadacom comments at 4-5 (distinguishing between deniable and non-deniable charges will reduce tendency of consumers to pay unauthorized charges out of fear that local service will be disconnected if they fail to pay and arguing that this Commission should reaffirm that it and state commissions, and not the LECs, have authority to determine which charges are deniable); Small Business comments at 13 (such disclosure is necessary so that small business users will know what charges they can contest and not pay pending resolution of their complaint without fear of having their service disconnected); TCA comments at 7-9 (recounting specific instances where customer service representatives attempted to intimidate and to mislead intentionally consumers into believing that service would be cut off for failure to pay a non-deniable charge); Wisconsin Commission comments

Pennsylvania, Ohio, California, Oregon, and Arizona have enacted similar requirements.[120] The FTC comments that providing this information on bills will reduce slamming and cramming by enabling consumers to question charges without fear of losing service.[121] We agree that consumers should not be intimidated into paying contestable charges because of fear that they will lose telephone service. We likewise believe that consumers must be fully empowered and apprised of their right to refuse to pay for unauthorized charges. Accordingly, we conclude that carriers must clearly identify on bills those charges for which non-payment will not result in disconnection of basic, local service.[122]

45. We agree with those commenters who state that the terms "deniable" and "non-deniable" are inherently confusing, if not counter-intuitive, and therefore fail to achieve the basic goal of signalling to consumers their rights with respect to such charges.[123] Rather than mandate any particular means for accomplishing this goal, however, we merely require that carriers clearly and conspicuously identify those charges for which nonpayment will not result in termination of local service. We note with approval the suggestions of some commenters that this may be best accomplished by noting charges with an asterisk or other symbol directing the consumer to an explanatory footnote.[124] This footnote could provide information similar to that mandated by the pay-per-call provisions of the Act.[125] Carriers may also elect to devise other methods of informing

at 4 (noting that the threat of loss of service is not an appropriate collection tool); NASUCA comments at 16; USP&C comments at 6-7; NYCPB comments at 13; BRTF comments at 3-4; FTC comments at 15-16; Maine Commission comments at 7; Ohio Commission comments at 9-10; Missouri Commission comments at 4; Florida Commission comments at 6-7; TOPC comments at 1-2; AARP comments at 3; Bills Project comments at 7; UCAN comments at 9; Kansas Commission comments at 5; NACAA comments at 2; Pennsylvania Commission comments at 7; West Virginia Commission comments at 2.

120 *See* NYCPB comments at 13.

121 FTC comments at 15-16.

122 *See* 47 C.F.R. § 64. 1510(c)(1); *see also Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Report and Order, 8 FCC Rcd 6885, 6898 (1993).

123 *See, e.g.*, NASUCA comments at 16 (stating that terms "deniable" and "undeniable" are not easily understood by average customers, and that clear disclosure that basic service cannot be terminated if non-basic or unregulated charges are unpaid would be preferable); Maine Commission comments at 7.

124 *See, e.g.*, AARP comments at 3 (noting that monthly bill could identify deniable charges with an asterisk and include a brief description of the terms deniable and non-deniable at the bottom of the bill); BellSouth comments at 9 (recommending use of an asterisk).

125 Section 228 of the Act states that carriers must annotate pay-per-call charges on telephone bills as follows: "Common carriers may not disconnect local or long distance service for failure to pay disputed charges for information service." 47 U.S.C. § 228(c)(8)(B)(ii).

consumers on the bill that they may contest charges prior to payment.[126]

46. We emphasize, however, that this guideline only applies where carriers include in a single bill both "deniable" and "non-deniable" charges. Accordingly, a carrier that bills directly for service that includes no charges for basic, local wireline service would not have a disclosure obligation. In this direct billing circumstance, we are persuaded that consumers understand that, for example, their wireless or interexchange service may be disconnected should they fail to pay the bill for the specific service involved, but that their basic local service, billed on a separate invoice, will not be disconnected.[127] Accordingly, requiring carriers to disclose such information on direct bills that contain no basic local service charges would place a burden on carriers without any corresponding consumer benefit. We further note that, whether a charge is or is not "deniable" varies according to state law. Our requirement is not meant to preempt states that have yet to adopt such a distinction.

47. We are unpersuaded by some commenters that customers should be informed of these rights through a "dunning message" issued prior to termination of service for non-payment, rather than through the telephone bill.[128] Such an approach does not protect those consumers who pay charges that they did not authorize out of the mistaken fear that their service will be disconnected if they fail to pay.[129] The complaints we receive demonstrate that many consumers pay disputable charges immediately, even if they believe the charge is unauthorized, out of fear of losing local service. These consumers would not receive any dunning notice and, thus, would remain unaware of their rights with regard to these charges.

48. We are also not persuaded by those commenters who contend that this guideline may lead to an increase in non-payment of legitimate charges that will outweigh the consumer benefits.[130] Although carriers must clearly identify those charges for which non-

[126] We note that the precise language used to describe clearly and conspicuously those charges for which non-payment would not result in termination of local service is at the discretion of the carrier that is seeking payment for these charges. Thus, while a carrier may elect to have another entity bill the charges, this guideline does not permit the billing entity to decide unilaterally the appropriate language.

[127] *See, e.g.,* US Cellular comments at 6-7 (arguing that the distinction between "deniable" and "non-deniable" charges possesses little relevance for wireless carriers as all wireless charges are "deniable").

[128] *See, e.g.,* Media One comments at 3; Commonwealth comments at 5; Qwest comments at 7; Ameritech comments at 15.

[129] *Notice*, 13 FCC Rcd at 18189.

[130] *See, e.g.,* GTC comments at 14-16; Media One comments at 1-4; PMT comments at 5-6; NITCO comments at 4; Liberty comments at 4; CompTel comments at 7-8; C&W comments at 11; Commonwealth

payment will not affect local service, the guideline does not prevent carriers from reminding customers of their obligation to pay all authorized charges and of the consequences, such as credit bureau reporting, of a failure to pay any authorized charge. Carriers may, for instance, remind customers that failure to pay a legitimate charge for paging would not result in the customer's loss of local exchange service, but might result in termination of the paging service, collection action by the paging provider, and damage to the customer's credit rating. We find that such notice will adequately deter consumers from withholding payment of authorized charges. Moreover, insofar as consumers *do* have a right to contest such charges without risk of losing basic service, any suggestion to the contrary -- either explicit *or implicit* -- is misleading and infringes on the customer's ability to exercise those rights.

c. Standardized Labels For Charges Resulting from Federal Regulatory Action

49. We conclude that the principle of full and non-misleading descriptions also extends to carrier charges purportedly associated with federal regulatory action. Consistent with our core principle that charges should be clearly described in a manner that allows consumers to understand them, we expressed concern in the *Notice* that consumers may be less likely to engage in comparative shopping among service providers if they are led erroneously to believe that certain rates or charges are federally mandated amounts from which individual carriers may not deviate.[131] Moreover, we noted that complaints received by the Commission indicate considerable consumer confusion with regard to various line item charges appearing on their monthly service bills that are assessed by carriers ostensibly to recover costs incurred as a result of specific government action.[132] Charges resulting from federal regulatory action are "charges, practices [or] classifications . . . for and in connection with" interstate communication service pursuant to section 201(b), and accordingly, we possess jurisdiction to require carriers to employ standardized labels for such charges.

50. We find that the substantial record on this issue supports our adoption of guidelines to address customers' confusion and potential for misunderstanding concerning the nature of these charges. Specifically, for the reasons discussed more fully below, we adopt our

comments at 4; Century comments at 5-6; SBC comments at 14-15; Sprint comments at 14-16; Excel comments at 11; ALTS comments at 9-10; Time Warner comments at 14; ACTA comments at 8; Bell Atlantic comments at Attachment, "Answers to Specific Questions," at 9-10; Ameritech comments at 15-16; GST comments at 21-24.

131 *Notice*, 13 FCC Rcd at 18188.

132 For instance, from January 1998 through May 1998, the Federal Communications Commission's National Call Center received approximately 10,000 calls per month from consumers with questions regarding charges on their bills.

proposals that require carriers to identify line item charges associated with federal regulatory action through a standard industry-wide label and provide full, clear and non-misleading descriptions of the nature of the charges, and display a toll-free number associated with the charge for customer inquiries. While we adopt guidelines to facilitate consumer understanding of these charges and comparison among service providers, we decline the recommendations of those that would urge us to limit the manner in which carriers recover these costs of doing business.

51. We focus particularly on three types of line items that have appeared on consumers' bills. Specifically, the 1996 Act instructed the Commission to establish support mechanisms to ensure that all Americans have access to affordable telecommunications services. Pursuant to this directive, the Commission is in the process of fundamentally altering the manner in which long distance carriers pay for access to the networks of local carriers and for supporting the universal availability of telecommunications services at just, reasonable, and affordable rates.[133] Although the Commission did not direct the manner in which carriers could recover their universal service contributions or access fees directly from their customers,[134] and substantially reduced the access rates charged to long distance carriers to offset their new universal service obligations,[135] some carriers began including on their customers' bills line item charges purportedly intended to recover these costs. These fees have been charged in connection with consumers' long distance service. The amounts charged and the name describing the universal service-related fees, however, have varied considerably among carriers. For example, some carriers have labelled the fee as "Universal Connectivity Charge," "Federal Universal Service Fee," "Carrier Universal Service Charge," and even "Local Service Subsidy,"[136] and charges have ranged from \$.93 per bill to 5% of the customers' net interstate and international charges.[137] Access related charges and associated names have likewise varied by carrier.[138] The nature of these charges is, in some instances, further confused because different charges may be assessed on the consumer's

---

133 *See Access Charge Reform*, First Report and Order, CC Docket No. 96-262, 12 FCC Rcd 15982 (1997) (*Access Reform Order*); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) (*Universal Service Order*).

134 *See Universal Service Order*, 12 FCC Rcd at 9211; *Access Reform Order*, 12 FCC Rcd at 16005.

135 The Presubscribed Interexchange Carrier Charge (PICC) is the charge billed by interexchange carriers to recover a portion of the fees paid to local telephone companies for access to their networks.

136 Florida Commission comments at Attachment A.

137 *Id*.

138 Some labels for line-item charges for the recovery of access fees include "Carrier Line Charge," "National Access Fee," "Presubscribed Line Charge," and "PIC Charge." *Id*.

"primary," or first line, than on a consumer's subsequent or "non-primary" lines.[139]

52. Local exchange carriers have also chosen to assess various line item charges associated with federal regulatory action. Since 1985, the Commission has allowed local exchange carriers to assess a "subscriber line charge," (SLC), also known as the end-user common line charge. This charge allows local exchange carriers to recover a portion of the costs for providing local loops.[140] More recently, pursuant to the dictates of the 1996 Act, the Commission permitted local exchange carriers to recover through a line-item charge on end-user bills the costs associated with implementing local number portability, which allows a consumer to retain the same phone number when changing local phone companies.[141] This local number portability charge first appeared on some consumers' bills in February, 1999. The amount of the charge, however, as well as the name describing it varies by carrier (*e.g.*, "number portability surcharge;" "local number portability service charge;" "federal charge - service provider number portability").[142]

53. The record in this proceeding supports our concern that the failure of carriers to label and accurately describe certain line item charges on their bills has led to increased consumer confusion about the nature of these changes.[143] Several factors appear to have contributed to this confusion. The names associated with these charges as well as accompanying descriptions (or

---

[139] Pursuant to our access charge rules, carriers may set higher caps for the subscriber line charges and presubscribed interexchange carrier charges assessed on non-primary residential lines and multi-line business lines than on primary residential lines and single line business lines. In the *Primary Lines Order*, we adopted requirements for differentiating and identifying such lines and decided to consider whether to require carriers to provide consumers with a uniform disclosure statement describing the distinction between primary and non-primary residential lines in conjunction with this, our Truth-in-Billing proceeding. *Defining Primary Lines*, Report and Order & Further Notice of Proposed Rulemaking, CC Docket No. 97-181, 1999 WL 125821 (1999) (*Primary Lines Order*). We hereby incorporate the comments from the Primary Lines rulemaking into the record of this proceeding.

[140] *Id*.

[141] *Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, 13 FCC Rcd 11701 (1998).

[142] *See* Jeannine Aversa, *Yet Another New Fee Showing Up On Telephone Bills*, Associated Press Newswires, Feb. 19, 1999.

[143] *See* Bills Project comments at 4 (stating that "[i]n general, consumers are confused by the various taxes, surcharges and other charges that appear on their bills"); NYCPB comments at 13 (stating that in their experience, "many consumers are confused by current explanations on telephone bills concerning access charges and universal service fees.").

entire lack thereof) may convince consumers that all of these fees are federally mandated.[144] In addition, a lack of consistency in the way such charges are labelled by carriers makes it difficult for consumers accurately to compare the price of telecommunications services offered by competing carriers.[145]

54. In the *Notice*, we generally sought comment on the methods by which the nature and purpose of these charges could be clarified.[146] We adopt the guideline proposed in our *Notice*, and supported by the great majority of commenters,[147] that line-item charges associated with federal regulatory action should be identified through standard and uniform labels across the industry. We agree that standardized labels will promote consumers' ability to understand their bills, thus facilitating their ability to compare rates and packages among competing providers. Such comparisons are very difficult when carriers choose different names for the same charge.[148] In considering which specific labels would be most accurate, descriptive and consumer-friendly, however, we believe that consumer groups are particularly well suited to assist in the development of the uniform terms. Accordingly, through a further notice in this proceeding, we encourage consumer and industry groups to come together, conduct consumer focus groups, and propose jointly to the Commission standard labels for these line item charges.[149] We will choose the standard labels based on the suggestions we receive in response to our *Further Notice*.

55. We decline to take a more prescriptive approach as to how carriers may recover these costs. We recognize that several commenters assert that service providers should be required to combine all regulatory fees into one charge,[150] or should be prohibited from separating

---

[144] *See, e.g.*, Vermont Commission comments at 11 (stating that carriers should avoid suggesting that a charge is a government tax on the consumer); Maine Commission comments at 8 (asserting that carriers "should be required to clearly and unambiguously state that the surcharges are part of the carrier's rate structure and are not mandated by any regulatory or taxing entity.").

[145] *See* AARP comments at 3 (arguing that consumers must be able to compare among carriers to select the best value, but making comparisons becomes difficult if carriers choose different names for the same charge).

[146] *Notice*, 13 FCC Rcd at 18189-90.

[147] *See, e.g.*, SBC comments at 21; Missouri Commission comments at 4; Texas Commission comments at 11; AARP comments at 3; NCL comments at 8; NASUCA reply at 7.

[148] *See, e.g.*, *Federal-State Joint Board on Universal Service*, Second Recommended Decision, 13 FCC Rcd 24744, 24772 (1998) (*Second Recommended Decision*) (stating that "[s]tandard nomenclature could benefit consumers by having common language across carriers so that consumers can easily identify the charge.").

[149] *See infra* at section III.A.

[150] California Commission comments at 7-8.

out any fees resulting from regulatory action.[151] Other commenters urge us to go even farther and require carriers to include on bills per-minute rates that include all fees associated with the service.[152] We decline at this time to mandate such requirements, but rather prefer to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in separate line items.[153] We believe that so long as we ensure that consumers are readily able to understand and compare these charges, competition should ensure that they are recovered in an appropriate manner. Moreover, we are concerned that precluding a breakdown of line item charges would facilitate carriers' ability to bury costs in lump figures. Insofar as the regulatory-related charges have different origins, and are applied to different service and provider offerings, we also question whether implementation of a lump-sum figure for all charges resulting from federal regulatory action could be presented in a manner in which consumers could clearly understand the origin of such a charge. On the other hand, we recognize that consumers may benefit from a simplified, total charge approach. As a result, we encourage industry and consumer groups to consider further whether some categorization and aggregation of charges would be advisable. For example, we seek further comment on whether the line item charges associated with long distance service could be or should be identified as a single, uniformly described, charge, while those charges associated with local service be identified by a separate standardized term. Our goal is to enable consumers to make comparisons among different service providers in connection with these charges, but we expect that this end will be accomplished though several means.

56. Although we adopt the guideline that charges be identified through standard labels, carriers may nevertheless choose to include additional language further describing the charges. We are persuaded by the record not to adopt any particular "safe-harbor" language, as set forth in the *Notice*, or mandate specific disclosures.[154] Rather, we believe carriers should have broad

---

151 Minnesota OAG comments at 11-12. *See also* RUS reply at 2 (stating that "[e]fforts to break out new line items as universal service fees or taxes are misleading to consumers, particularly since none of the other costs of business, such as advertising, stock options, or salaries, are highlighted in this manner. . . A separate line item charge for universal service may disguise a rate increase, or allow a carrier to advertise an apparently low per-minute rate, a rate [that] doesn't actually exist once the line item is added to the bill.").

152 For example, NASUCA proposes that carriers be required to disclose the average per line universal service and access charges on the same page as a customer's individual statement of universal service and access charge-related line items. *See* NASUCA comments at 19.

153 Century reply at 8 (stating that "[c]arriers should have the freedom to respond to consumer demand and market place forces in determining whether to include these charges as part of their rates, to bundle the charges as one line item or to list the charges in separate line items.").

154 Notably, several commenters state that such language may be regarded as *de facto* mandatory, and that it would be difficult to script language that would be relevant to all carriers in all situations. *See* MCI comments at 38-39; Qwest comments at 7; Paging Network reply at 4.

discretion in fashioning their additional descriptions, provided only that they are factually accurate and non-misleading. For example, for purposes of good customer relations, a carrier may wish to elaborate on the nature and origin of its universal service charge. A full, accurate and non-misleading description of the charge would be fully consistent with our guideline. In contrast, we would not consider a description of that charge as being "mandated" by the Commission or the federal government to be accurate. Instead, it is the carriers' business decision whether, how, and how much of such costs they choose to recover directly from consumers through separately identifiable charges.[155] Accordingly, to state or imply that the carrier has no choice regarding whether or not such a charge must be included on the bill or the amount of the charge would be misleading.[156] Our view is consistent with the recent decision of the Federal-State Joint Board on Universal Service which recommended that the Commission "prohibit carriers from depicting [universal service] charges as . . . mandated by the Commission or the federal government by terms or placement on the bill."[157]

57. In the *Notice*, we sought comment on whether it is a violation of section 201(b) for a carrier to bill customers for more than their *pro rata* share of universal service and access fees.[158] Additionally, in the *Second Recommended Decision*, the Joint Board recommended that the Commission consider adopting a rule restricting a carrier from charging a line item assessment

---

155 *See* Bills Project comments at 5; Detecon comments at 4; Kansas Commission comments at 6; Pennsylvania Commission comments at 8. Some commenters suggest that the Commission should eliminate carriers' discretion as to how they recover universal service contributions, and require instead that contributions be recovered through federally mandated surcharges. *See* AT&T comments to *Second Recommended Decision* at 9; Ameritech comments to *Second Recommended Decision* at 11; U S West comments to *Second Recommended Decision* at 15. The Commission previously considered and rejected this approach in the *Universal Service Order*. *Universal Service Order*, 12 FCC Rcd at 9210-11. Based on recommendations from the Joint Board, we concluded that, in a competitive telecommunications market, carriers should be allowed to decide how they should recover their contributions, and mandatory recovery through an end-user surcharge would eliminate carriers' pricing flexibility to the detriment of consumers. *Id*. In its *Second Recommended Decision*, the Joint Board reaffirmed its recommendation that carriers should have the flexibility to decide how they recover their universal service contributions. *Second Recommended Decision*, 13 FCC Rcd at 24,771. We find no compelling reason to depart from our earlier conclusions or the Joint Board's recommendations regarding this issue.

156 *See, e.g.*, NCL comments at 8; Maine Commission comments at 7-8. *See also* RUS reply at 2; Wisconsin Commission comments at 5.

157 *Second Recommended Decision*, 13 FCC Rcd at 24770. In the *Universal Service Order*, the Commission determined that it would be misleading for carriers to characterize their universal service contributions as a surcharge, because carriers retain the flexibility to structure the recovery of the costs of universal service in many ways. *Universal Service Order*, 12 FCC Rcd at 9211-12.

158 *See Notice*, 13 FCC Rcd at 18,190.

in an amount greater than the carrier's universal service assessment rate.[159] We decline, however, to adopt specific rules addressing these concerns. Some commenters assert that it may be impractical accurately to allocate some line-item charges to an individual customer on a per-bill basis.[160] For example, a carrier's universal service contributions may depend on variables whose values are not known at the time the carrier issues a bill, such as the total revenue contribution base of all carriers and the high-cost and low-income projections for universal service support.[161] At least one commenter argues that carriers should be allowed to account for uncollectibles, billing expenses, and administrative expenses in setting the amount of their line item assessments for universal service.[162] Although we decline to adopt specific rules here, we caution that we will not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges.[163]

58. We also decline suggestions to require carriers to provide a detailed breakdown of their costs and cost reductions on their customer bills.[164] The purpose behind these proposals in the *Notice* was to enhance consumers' understanding of the costs of telecommunications services, thereby increasing their ability to determine whether such services are fairly priced. For example, as we reduce the cap on access charges assessed by LECs against IXCs, it would be useful for an individual consumer to be informed of the extent to which his or her IXC passes those access charge reductions through to the consumer in the form of lower long distance rates, and to be able to make comparisons between IXCs on this basis. We agree, however, that long explanations of a carrier's cost calculations may add complexity to telephone bills, creating confusion that

---

159 *See Second Recommended Decision*, 13 FCC Rcd at 24771.

160 *See* SBC comments at 20; Air Touch comments at 7; Nextel reply at 5-6.

161 Omnipoint comments at 14-15; PCIA comments at 15-16; Nextel reply at 5-6.

162 MCI comments to *Second Recommended Decision* at 20-21.

163 47 U.S.C. § 201(b).

164 We asked for comment on a number of related proposals requiring carriers to disclose or explain particular costs in their monthly bills. Specifically, we asked: (1) whether long distance carriers that include a separate line item for the recovery of universal service contributions should be required to explain the net reduction in their costs of providing long distance service since enactment of the 1996 Act; (2) whether carriers attributing line items to new government action should be required to disclose exact cost reductions, such as reduction in access charge costs, or other related benefits arising from government action; (3) whether carriers who assess a PICC should be required to show whether the corresponding reduction in the per-minute rate was actually passed on to each individual consumer; (4) whether carriers should include the exact cost of PICC and universal service obligations incurred as a result of serving that customer; and (5) whether it would be helpful to consumers if carriers were required to explain in customer bills their reasons for assessing a flat fee or percentage charge to recover amounts that exceed the costs the carrier incurs. *Notice*, 13 FCC Rcd at 18189-90.

outweighs the benefits of providing such descriptions.[165] For these reasons, we also decline to adopt specific language describing the distinction between primary and non-primary residential lines. We conclude that LECs may craft their own descriptions to convey the Commission's primary/non-primary definition to their customers, provided that the information is conveyed truthfully and accurately.[166] We believe, however, that our purpose of enhancing consumers' understanding will be adequately met through the guidelines adopted herein. Indeed, we expect that standard identification of the charges associated with federal regulatory action, in conjunction with accurate and non-misleading descriptions, will enable market forces to reduce these charges to their most economically efficient level.[167] In addition, we note that unjust or unreasonable line-item charges are also subject to challenge pursuant to section 201(b) of the Act.[168]

59. We decline to specify any periodic notification to consumers providing additional explanation of any charges resulting from federal regulatory action.[169] We believe our guideline requiring standard labels for such charges should, even without further non-misleading description, provide consumers with, at minimum, notice of these charges. In this regard, we point out that such line-item charges, like all other charges on the bill, are subject to our guideline requiring the prominent display of a toll-free number for consumer inquiries and disputes.[170] We emphasize that carriers' customer service representatives must be prepared to explain fully the nature and purpose of these charges if asked to do so.[171] We believe that the requirements

[165] *See* SBC comments at 21 (stating that customers want shorter, simpler bills, not bills that attempt to explain the history of telephone regulation and the cost basis for all of the charges shown on the bill).

[166] GTE comments at 17-18 (filed in CC Docket No. 97-181).

[167] *See*, *e.g.*, Sprint comments at 18-19 (stating that "the Commission can and should rely upon market forces to determine long distance rate levels and to ensure that IXCs pass through any access charge reductions.").

[168] 47 U.S.C. § 201(b). We decline, however, to find that it is a *per se* violation of section 201(b) for a carrier to bill customers for more than their *pro rata* share of universal service and access fees. *See Notice*, 13 FCC Rcd at 18190. Some commenters assert that it may be impractical to allocate accurately some line-item charges to an individual customer on a per-bill basis. *See* SBC comments at 20; Air Touch comments at 7; Nextel reply at 5-6. For example, a carrier's universal service contributions may depend on variables whose values are not known at the time the carrier issues a bill, such as the total revenue contribution base of all carriers and the high-cost and low-income projections for universal service support. Omnipoint comments at 14-15; PCIA comments at 16; Nextel reply at 5-6.

[169] *See Notice*, 13 FCC Rcd at 18190.

[170] *See infra* Section II(C)(3) (Clear and Conspicuous Disclosure of Inquiry Contacts).

[171] In addition, customer service representatives should give the caller the option of obtaining a hard copy of the descriptions of these charges via the Internet or regular mail, or both, according to the preference of the customer.

adopted here strike a reasonable balance between the needs of consumers for access to accurate and truthful information regarding these line-item charges and any burden or cost that such requirements may impose on carriers.

60. In balancing the legitimate interest of consumers and carriers, we reject suggestions that standardized labels would violate the First Amendment. We therefore disagree with ACTA's comment that the Commission cannot discourage use of other line-item labels "as a matter of constitutional law," if such descriptions are accurate.[172] We emphasize that we have not mandated or limited specific language that carriers utilize to describe the nature and purpose of these charges; each carrier may develop its own language to describe these charges in detail. Commercial speech that is misleading is not protected speech and may be prohibited.[173] Furthermore, commercial speech that is only potentially misleading may be restricted if the restrictions directly advance a substantial governmental interest and are no more extensive than necessary to serve that interest.[174] Finally, commercial speech that is neither actually nor potentially misleading may be regulated if the government satisfies a three-pronged test: first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be "narrowly drawn."[175] As explained below, our requirement that carriers use standard terms to label charges resulting from federal regulatory action passes this three-prong test.

61. First, the government's interest in standardized labelling is substantial. The ultimate goal of our regulation is to ensure that consumers pay fair and efficient rates, an interest the Supreme Court found to be substantial in *Central Hudson*.[176] As the record in this proceeding demonstrates, line-item charges are being labelled in ways that could mislead consumers by detracting from their ability to fully understand the charges appearing on their monthly bills, thereby reducing their propensity to shop around for the best value. Consumers misled into believing that these charges are federally mandated, or that the amounts of the charges are established by law or government action, could decide that such shopping would be futile. In addition, lack of standard labelling could make comparison shopping infeasible. Unlike most

---

[172] ACTA comments at 8.

[173] *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-564 (1980) (*Central Hudson*).

[174] *Id*. at 566.

[175] *Id*.

[176] *Id*. at 568.

products purchased by consumers, these line-item charges cannot be attributed to individual tangible articles of commerce. For example, when a consumer purchases socks from the local department store, the consumer knows what item the bill refers to, whether it describes the product as socks, men's wear, hosiery, etc. In contrast, a consumer receives no tangible product in conjunction with a line-item charge on his or her telecommunications bill. If one carrier labels this charge, for example, as "Access Charge," and another uses the term "FCC-Mandated Charge," a consumer will be unable to discern that these labels refer to the same charges. This impedes the consumer's ability to compare and contrast telecommunications services offered by competing entities. The government's interest is substantial in preventing fraudulent and misleading practices by carriers and ensuring that consumers are able to make intelligent and well informed commercial decisions in the increasingly competitive telecommunications market that the 1996 Telecommunications Act is intended to foster. Moreover, consumers have a First Amendment interest in obtaining information on which to base a decision whether to buy a product, and this interest is "served by insuring that the information is not false or deceptive."[177]

62. Second, the proposed regulation directly advances the governmental interest. The proposed regulation will ensure that the labels assigned to charges related to federal regulatory action are consistent, understandable, and do not confuse or mislead consumers. In addition, the regulatory scheme will encourage carriers to provide consumers with information that will enable them to understand their telecommunications bills, and prevent carriers from misleading consumers into believing they cannot "shop around" to find carriers that charge less for fees resulting from federal regulatory action.

63. When they take effect, following selection of standardized labels, our labelling regulations will be narrowly drawn to be no more extensive than necessary to serve the government's interest. Narrow tailoring requires a reasonable fit between regulatory ends and means: "[n]ot necessarily the single best disposition but one whose scope is 'in proportion to the interest served.'"[178] The requirement that we adopt -- requiring telecommunications carriers to use specified, uniform labels to identify charges resulting from federal regulatory action -- is narrowly tailored to meet this substantial government interest and does not appreciably affect carriers' ability to describe fully the nature and purpose of these charges in their own words. As stated above, we have not mandated or limited specific language that carriers utilize to describe the nature and purpose of these charges: each carrier may develop its own language to describe these charges in detail. We only prescribe that these charges be presented using a standardized

[177] *National Commission on Egg Nutrition v. FTC*, 570 F.2d 157, 162 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978).

[178] *Board of Trustees v. Fox*, 492 U.S. 469, 480 (1989) (citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)); *see also Ward v. Rock Against Racism*, 109 S. Ct. 2746, 2758 (1989) (a regulation is narrowly tailored if government interest would be achieved less effectively without the regulation).

label, so that consumers can comparison shop. Our standardized label requirement is analogous to the disclosure requirements of the Truth in Lending Act (TILA).[179] TILA and its implementing regulations require, for example, that creditors in consumer credit transactions disclose the amount financed and provide descriptive explanations of the applicable annual percentage rate as specified by the Federal Reserve Board.[180] Although disclosure of the annual percentage rate must meet detailed requirements governing how it will be stated and calculated, these requirements have not been challenged as contrary to the First Amendment. Our standardized label requirement is even less onerous, requiring carriers to use the labels, but otherwise leaving them free to determine how best to describe charges related to federal regulatory action in a truthful and nonmisleading manner. The government interest underlying the standardized label requirement is also analogous to that underlying the Truth in Lending Act. The purpose of that statute is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him . . . and to protect the consumer against inaccurate and unfair credit billing and credit card practices."[181] Similarly, the principles that we adopt here seek to protect consumers from unreasonable billing practices while enabling them to make informed choices in the increasingly competitive telecommunications market that the Telecommunications Act of 1996 is intended to foster.

64. Finally, several commenters argue that *44 Liquormart v. Rhode Island*[182] prevents us from requiring carriers to employ standard labels for charges resulting from federal regulatory action. We disagree. In *44 Liquormart*, the Supreme Court struck down a ban on all dissemination of price advertising for alcoholic beverages on First Amendment grounds. Here, however, we ban no speech, so carriers remain free to develop their own descriptions of the nature and purpose of these charges, subject only to a labelling requirement. For this reason, *44 Liquormart* is inapposite. Accordingly, we conclude that our regulation is valid under the limited scrutiny that has been afforded restrictions on commercial speech.

3. Clear and Conspicuous Disclosure of Inquiry Contacts

65. The final fundamental truth-in-billing principle we adopt is that consumers must have the necessary tools to challenge charges for unauthorized services. We conclude that carriers must prominently display on their monthly bill a toll-free number or numbers by which

---

179 15 U.S.C. §§ 1601 *et seq*.

180 15 U.S.C. §§ 1606, 1638.

181 15 U.S.C. § 1601(a); *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 363, 365 (1973).

182 116 S. Ct. 1495 (1996) (*44 Liquormart*).

customers may inquire or dispute any change on that bill.[183] This telephone number shall be provided in a clear and conspicuous manner, so that the customer can easily identify the appropriate number to use to inquire about each charge.[184] We are cognizant, however, that the service provider is not necessarily the most appropriate entity for consumers to call. A service provider may, for example, contract with the LEC or an independent billing aggregator to provide inquiry and dispute resolution services for charges billed through the local telephone bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. This will enable customers to avoid feeling that they are "getting the run around." We decline to require carriers to provide a business address on each telephone bill for the receipt of consumer inquiries and complaints. As several commenters have noted, most customers call when they have questions -- they do not write.[185] Accordingly, the inclusion of a business address will not significantly enhance consumers' ability to contact the billing entity. We do require, however, that each carrier make its business address available upon request to consumers through its toll-free number, for those consumers who wish to follow up their complaint or inquiry in writing.[186]

66. We conclude that conspicuous display of a toll-free inquiry and dispute resolution number is an essential linchpin to consumers' exercise of the rights we seek to protect in this Order, as well as in other proceedings such as our new slamming rules.[187] Consumers often experience considerable difficulty in contacting the entity whose charges appear on the telephone

---

183 BellSouth comments at 9-10 (stating that each provider of billed services should include on the bill page a toll-free telephone number which consumers may contact to obtain information and/or register a complaint); U S West comments at 23 (asserting that it would be helpful to a consumer to have a phone number associated with every service provider, yet the number should not necessarily be that of the service provider itself, but should be a number that can handle inquiries on behalf of the service provider and provide customer resolution of disputes). *See also* Ameritech comments at 16; AT&T comments at 14-15; Sprint comments at 21; C&W comments at 12; Excel comments at 14; NYCPB comments at 14; Wisconsin Commission comments at 6; Missouri Commission comments at 4-5; Maine Commission comments at 8; Ohio Commission comments at 11; Washington Commission Staff comments at 7; NCL comments at 9; USTA comments at 8.

184 The toll-free number should be accessible to persons with disabilities. For example, the carrier could either have a toll-free TTY line, or their toll-free line should not have barriers to TRS service.

185 *See, e.g.*, Bell Atlantic comments at 13.

186 Carriers should also provide an e-mail address so that their customers will have the option of communicating with the carrier via electronic mail.

187 *See supra 1998 Slamming Order and Further Notice*.

bill.[188] This results in delayed resolution of billing problems, often necessitating the intervention of other parties such as the LEC, the state public service commission, or the Commission. Requiring that each telephone bill include at a minimum a toll-free telephone number for the receipt of consumer inquiries and complaints will minimize customer confusion regarding charges on telephone bills and enable consumers to resolve their billing disputes easily and promptly.[189]

67. We decline at this time to adopt standards for the provision of accurate information by carrier customer service representatives.[190] We expect such personnel to be well-trained and that the number of employees is sufficient to handle call volumes, and we assume that competition will provide a strong incentive for each carrier to set appropriate standards on its own initiative. Although we decline to mandate any particular standards for customer service, we remind carriers that the intentional provision of untruthful or misleading information to a customer regarding the nature and purpose of charges or fees would constitute a violation of section 201(b) of the Act.[191]

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Discussion

1. Application of Rules to CMRS Carriers

68. As we indicated in the Order, we seek comment on whether the remaining truth-in-billing rules we adopt in the wireline context should apply to CMRS carriers. More specifically, we seek comment on whether such rules should be imposed on CMRS carriers in order to protect consumers. As we stated in the Order, we believe that all consumers expect and should receive bills that are fair, clear, and truthful. However, absent evidence that there is a problem with wireless bills, it might not be necessary to apply the remaining rules in the CMRS context. Commenters may wish to address the applicability of a section 10 forbearance analysis. Those commenters who wish to apply such an analysis should address the specific elements of the standard set forth in section 10.[192] We also seek comment on the extent to which the presence of

---

188 *See, e.g.*, Washington Commission Staff comments at 7.

189 *See, e.g.*, Ohio Commission comments at 11.

190 *See Notice*, 13 FCC Rcd at 18191.

191 47 C.F.R. § 201(b).

192 Under Section 10, the Commission shall forbear from applying any regulation to a telecommunications carrier or class of carriers if the Commission determines that --

a competitive market is relevant to consumers' ability to protect themselves from the harms we address here.

69. We also note growing evidence that some consumers are substituting wireless for wireline service.[193] To what extent does this phenomenon affect our application of our guidelines to wireless providers? We also seek comment more generally on the benefit that consumers would derive from application of certain of the guidelines relative to the burden that such application would impose on CMRS carriers. First, as we indicated in the Order, all consumers are entitled to fair, clear, and reasonable practices. We seek comment on how to implement this principle in the CMRS context. For instance, we seek comment on the current billing practices of CMRS providers, including the types and descriptions of charges CMRS providers include in their bills.

70. Second, we seek comment on whether identifying new service providers and "deniable" charges makes sense in the wireless context. For example, because CMRS carriers are excluded from equal access obligations,[194] it appears that CMRS carriers will rarely if ever be required to indicate a new long distance service provider on the bill. Similarly, CMRS carriers

---

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
(3) forbearance from applying such provision or regulation is consistent with the public interest.

With respect to the public interest analysis, the Commission must also consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

[193] *See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 13 FCC Rcd 19746, 19817 (1998) (noting that "mobile telephone operators are beginning . . . to position their services as true replacements for the wire-based services of LECs"); *Id*. at 19819 (The Commission "should hasten the day when consumers begin to view wireless as a real substitute for wireline, and not just a complement.") (Separate Statement of Chairman William E. Kennard). *But see Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 (rel. Oct. 13, 1998) at para. 43 (noting that BellSouth's wireline customers, particularly residential customers, are unlikely to switch to wireless service as a competitive alternative to wireline because of rate structure involved).

[194] *1998 Slamming Order and Further Notice* at ¶ 85.

indicate in their comments that, unlike the practice in connection with billing for wireline carriers that can give rise to cramming, CMRS carriers do not at this time include charges for services rendered by third party entities.[195] We seek comment on these assertions. Do CMRS providers bill for any other service providers? If so, for what types of services and how pervasive are these billing practices? Likewise, CMRS carriers, as non-LECs, that do their own billing do not have to distinguish between "deniable" and "nondeniable" charges because non payment of charges on a CMRS bill would not result in termination of basic local wireline service.[196] Therefore, our guideline to identify "deniable" charges may have no relevance, and add no benefit, to consumers' CMRS bills.[197]

[195] PCIA comments at 7; RCA comments at 2; Air Touch comments at 2; Nextel comments at 2.

[196] *See supra* Section II(C)(2)(b).

[197] We recognize, however, that billing for CMRS may change or evolve from current practices.

2. Standard Labels for Line-Item Charges

71. As discussed in section II(C)(2)(c), we adopt the guideline that carriers must use standardized labels to refer to certain charges relating to federal regulatory action. We seek comment, however, on the specific labels that carriers should adopt. We tentatively conclude that the following labels would be appropriate: "Long Distance Access" to identify charges related to interexchange carriers' costs for access to the networks of local exchange carriers; "Federal Universal Service" to describe line items seeking to recover from customers carriers' universal service contributions; and "Number Portability" to describe charges relating to local number portability. We tentatively conclude that such labels will adequately identify the charges and provide consumers with a basis for comparison among carriers, while at the same time be sufficiently succinct such that most carriers will be able to use them without requiring that they modify the field lengths of their current billing systems. We seek comment on these tentative conclusions. In addition, we seek comment on alternative labels, or appropriate abbreviations for the labeling of these charges. For example, the Florida Commission suggests the terms "Federal Long Distance Access Fee," "FCC Long Distance Access Fee," or "Interstate Long Distance Access Fee" to identify access charges, and "Federal Universal Service Fee," "FCC Universal Service Fee," or "Interstate Universal Service Fee" for universal service related charges.[198] Commenters should explain the merit and basis for their proposed labels, including, for example whether their proposals were chosen or evaluated by consumer focus groups. Indeed, we believe that consumer groups, with input from industry, can contribute greatly to our consideration of the appropriate labels. Finally, we seek comment on how carriers should identify line items that combine two or all of these charges into a single charge. We encourage parties to attempt to reach consensus on the appropriate labels.

VI. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act (RFA),[199] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* in Truth-in-Billing and Billing Format.[200] The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The comments received are discussed below. This present Final

---

[198] Florida Commission comments at 8.

[199] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[200] *Notice*, 13 FCC Rcd at 18194.

Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[201]

1. Need for and Objectives of this Order and the Rules Adopted Herein

73. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verificatioHprocedures as the Commission shall prescribe."[202] Accordingly, the Commission adopts in this Order principles to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers. First, consumer telephone bills must be clearly organized, clearly identify the service provider, and highlight any new providers; second, bills must contain full and non-misleading descriptions of charges that appear therein; and third, bills must contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. Additionally, the Commission adopts minimal, basic guidelines that explicate carriers' obligations pursuant to these broad principles. These principles and guidelines are designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints that this Commission, and state commissions, receive each year.[203] In enacting the principles and guidelines contained in this Order, our goal is to implement the provisions of sections 201(b) and 258 to prevent telecommunications fraud, as well as to encourage full and fair competition among telecommunications carriers in the marketplace.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

74. In the IRFA, we found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by 5 U.S.C. § 601(3). The IRFA solicited comment on the number of small businesses that would be affected by the proposed regulations and on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

75. PCIA, Liberty, RTG and others argue that the cost of compliance faced by smaller

[201] *See* 5 U.S.C. § 604.

[202] 47 U.S.C. § 258. Our jurisdiction to enact truth-in-billing requirements also stems from section 201(b) of the Act. *See supra* Section II(B) (Legal Authority).

[203] State commissions and the FTC also have received thousands of complaints. *See, e.g.,* Kansas Commission comments at 1; FTC comments at 5. *See also* NASUCA reply at 2 (complaints received by FCC represent "tip of the iceberg"). *See supra* Sections I, II(A).

carriers would be particularly burdensome.[204] PCIA asserts that medium- and small-sized carriers will be less likely to have billing systems in place that "can simply be 'tweaked' to produce the required modifications."[205] Indeed, PCIA states that smaller carriers may be forced to replace their entire billing systems in order to comply with the format and content mandates proposed in the *NPRM*.[206] RTG agrees, arguing that rural carriers are particularly sensitive to increased regulatory requirements with significant costs.[207]

76. The Office of Management and Budget (OMB) received a large number of comments in response to the *NPRM*.[208] The commenters generally agree that new charges or services need to be easily identifiable on customer bills; that definitions of services and other terms are difficult to reach and could be counterproductive; that more information, including point of contact toll-free numbers for service providers or billing agents needs to be included in billing materials; that materials should be clear, concise, and relatively simple; that the Commission must account for costs of any changes to bills that will be passed on to consumers in making decisions; that CMRS and other wireless firms that provide services only to businesses should be exempt from most new requirements that would be imposed on wireline carriers; that every effort should be made so that billing standards are uniform across the nation; that reseller information should be included; and that, where possible, market-based solutions should be adopted unless there is conclusory evidence that the Commission must enact regulations that affect billing practices.[209] As a result, OMB recommends that we not impose undue burdens on wireless providers and small wireline services, and urges that flexibility be given to small companies that may experience significant cost and managerial issues related to implementation of billing requirements.[210] Moreover, OMB recommends that the Commission allow companies sufficient time to address their necessary Year 2000-related modifications to their computer systems as well as modifying their billing systems to meet any new requirements.[211] OMB also recommends that the

[204] PCIA comments at 9; Liberty comments at 2-3; RTG comments at 6-7; RCA comments at 3-5; PMT comments at 3-4.

[205] PCIA reply at 9.

[206] *Id*.

[207] RTG comments at 6-7.

[208] OMB Action at 2.

[209] *Id*.

[210] *Id*.

[211] *Id*.

Commission make a concerted effort to work with the industry to establish voluntary guidelines in lieu of mandatory requirements that restrict the ability of firms to tailor their billing to meet the needs of customers.[212]

77. We have considered these comments and believe we appropriately balanced the concerns of carriers that detailed rules may increase their costs against our goal of protecting consumers against fraud. We have exempted CMRS carriers from certain of our requirements on ground that the requirements may be inapplicable or unnecessary in the CMRS context.[213] Moreover, we consider our principles and guidelines to be flexible enough that carriers will be able to comply with them without incurring unnecessary expense.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in the Order in CC Docket No. 98-170 May Apply

78. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules.[214] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[215] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[216] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[217]

79. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry*

---

212 *Id*.

213 *See infra* Sections II(A), III(A).

214 5 U.S.C. § 603(b)(3).

215 *Id.* at § 601(6).

216 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

217 Small Business Act, 15 U.S.C. § 632 (1996).

Revenue report, regarding the Telecommunications Relay Service (TRS).[218] According to data in the most recent report, there are 3,459 interstate carriers.[219] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

80. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[220] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

81. Although some affected incumbent LECs may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."[221]

---

[218] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*). We believe that the TRS Fund Worksheet Data is the most reliable source of information for our purposes because carriers file the TRS worksheets yearly and are instructed to select the single category of type of service provision that best describes them. Other sources of carrier data, such as the tariffs on file with the Common Carrier Bureau, may not reflect the same figures as the TRS Fund Worksheet Data, because such sources are not updated annually.

[219] *Id.*

[220] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[221] *See* 13 C.F.R. § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

82. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[222] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[223] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by our principles and guidelines.

83. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[224] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[225] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by our principles and guidelines.

84. **Local Exchange Carriers.** Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than

---

222 U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

223 *See generally* 15 U.S.C. § 632(a)(1).

224 *1992 Census, supra*, at Firm Size 1-123.

225 13 C.F.R. § 121.201, SIC code 4813.

radiotelephone (wireless) companies.[226] According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.[227] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by our principles and guidelines.

85. **Interexchange Carriers**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[228] According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.[229] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by our principles and guidelines.

86. **Competitive Access Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[230] According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.[231] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by our principles

[226] *Id*.

[227] *Telecommunications Industry Revenue*, Figure 2.

[228] 13 C.F.R. § 121.201, SIC code 4813.

[229] *Telecommunications Industry Revenue*, Figure 2.

[230] 13 C.F.R. § 121.201, SIC code 4813.

[231] *Telecommunications Industry Revenue*, Figure 2.

and guidelines.

87. **Resellers (including debit card providers).** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[232] According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.[233] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by our principles and guidelines.

88. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[234] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[235] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[236] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

89. **International Services.** The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[237] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[238] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992,

232 13 C.F.R. § 121.201, SIC code 4813.

233 *Telecommunications Industry Revenue*, Figure 2.

234 The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

235 BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757, 22.759.

236 13 C.F.R. § 121.201, SIC code 4812.

237 An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

238 13 C.F.R. § 120.121, SIC code 4899.

and a total of 775 had annual receipts of less than $9,999 million.[239] The Census report does not provide more precise data.

90. **Telex.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to telex. The most reliable source of information regarding the number of telegraph service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 5 facilities based and 2 resale provider reported that they engaged in telex service. Consequently, we estimate that there are fewer than 7 telex providers that may be affected by our principles and guidelines.

91. **Message Telephone Service.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to message telephone service. The most reliable source of information regarding the number of message telephone service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 1,092 carriers reported that they engaged in message telephone service.[240] Consequently, we estimate that there are fewer than 1,092 message telephone service providers that may be affected by our principles and guidelines.

92. **Cellular Licensees.** Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[241] According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[242] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications

[239] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[240] *International Telecommunications Data,* All Carriers: International Message Telephone Resale Service at Tbl. D1.

[241] 13 C.F.R. § 121.201, SIC code 4812.

[242] *1992 Census, Series UC92-S-1,* at Table 5, SIC code 4812.

Service (PCS) services, which are placed together in the data.[243] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

93. **220 Mhz Radio Services.** Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[244] With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted *supra*), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

94. **Private and Common Carrier Paging.** The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[245] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[246] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would

[243] *Telecommunications Industry Revenue,* Figure 2.

[244] 13 C.F.R. § 121.201, SIC code 4812.

[245] *Id*.

[246] *Telecommunications Industry Revenue,* Figure 2.

qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

95. **Mobile Service Carriers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[247] and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.[248] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

96. **Broadband Personal Communications Service.** The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[249] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[250] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[251] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[252] Based on this information, we conclude that the number of small broadband PCS licensees will include

[247] 13 C.F.R. § 121.201, SIC code 4812.

[248] *Telecommunications Industry Revenue*, Figure 2.

[249] *See Amendment of Parts 20 and 24 of the Commission's Rules* -- *Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, WT Docket No. 96-59, 11 FCC Rcd 7824, 7850-52 (1996), 61 FR 33859 (July 1, 1996) (*Broadband PCS Competitive Bidding Order*); *see also* 47 C.F.R. § 24.720(b).

[250] *See Broadband PCS Competitive Bidding Order*, 11 FCC Rcd at 7852.

[251] *See, e.g.,* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order,* 9 FCC Rcd 5532, 5581-84 (1994).

[252] FCC News, *Broadband PCS, D, E and F Block Auction Closes, N*o. 71744 (released January 14, 1997).

the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

97. **Narrowband PCS.** The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

98. **Specialized Mobile Radio (SMR).** The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[253] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

99. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

100. **Cable Service Providers.** The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating no more than $11 million in revenue annually.[254] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems,

[253] *See* 47 C.F.R. § 90.814(b)(1).

[254] 13 C.F.R. § 121.201, SIC 4841.

satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We note that cable system operators are included in our analysis due to their ability to provide telephony.

4. Summary of Projected Reporting, Recordkeeping and other Compliance Requirements

101. Our binding principles require that all telecommunications carriers, both wireline and wireless, ensure (1) that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers; (2) that bills contain full and non-misleading descriptions of charges that appear therein; and (3) that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. In addition, carriers must comply with the Commission's rules found in Appendix A.

5. Steps Taken to Minimize the Significant Economic Impact of This Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered

102. In this Order, we decline to adopt many of the proposals made in the *Notice* that would be most costly for subject carriers to implement. For example, we decline to adopt our proposal to require carriers to indicate each new service ordered by a customer each month. We also decline to require that carriers provide a detailed breakdown of their costs incurred due to federal regulatory action, and instead permit carriers to use their discretion to describe the nature and purpose of these charges to their customers. We have adopted general principles rather than stringent rules governing the organization of, and information included in, customer bills. We also exempt CMRS carriers from certain of our requirements.[255] By implementing principles through broad guidelines, we allow carriers considerable discretion to satisfy their obligation in a manner that best suits their needs and those of their customers, thus minimizing the economic impact on small carriers to the greatest possible extent. The principles adopted here are common-sense requirements that make good business sense, and we believe that many, if not most, subject carriers already conform to these requirements. Many carriers will therefore find that little or no change to their existing billing practices will be needed.

103. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of

[255] *See infra* Section II(A), Section III(A).

1996.[256] In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.[257]

B. Final Paperwork Reduction Act of 1995 Analysis

104. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and the Office of Management and Budget (OMB) has approved some of its requirements in OMB No. 3060-0854. Among its recommendations, OMB "strongly encourage[d]" us not to adopt an approach that imposes undue burden on wireless carriers, and "urges flexibility be given to small companies that may experience significant cost" as a result of our proposals.[258] In this Order, we have exempted CMRS carriers from certain of the requirements we adopt to promote truth-in-billing.[259] Moreover, we have established general principles and guidelines, rather than rigid formatting rules, which provide sufficient flexibility to small carriers to meet these requirements without incurring undue cost. Some of the proposals have been modified or added, however, and therefore some of the information collection requirements in this item are contingent upon approval by the OMB.

C. Initial Regulatory Flexibility Analysis for Policies Proposed in the Further Notice

105. As required by the RFA, the Commission has prepared this present IRFA of the possible, significant, economic impact on small entities of the policies and rules proposed in this Further Notice.[260] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided below in section IV(E). The Commission will send a copy of this Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[261] In addition, the Further Notice and IRFA (or summaries thereof) will be

[256] *See* 5 U.S.C. § 801(a)(1)(A).

[257] *See* 5 U.S.C. § 604(b).

[258] OMB Action at 2.

[259] *See infra* Section II(A), Section III(A).

[260] *See supra* Section III.

[261] *See* 5 U.S.C. § 603(a).

published in the Federal Register.[262]

106. *Need for, and Objectives of, the Proposed Rules*. This Further Notice seeks comment on a specific proposed rule concerning labelling of charges relating to federal regulatory action. In addition, the Further Notice seeks comment on whether certain of our truth-in-billing requirements should be applicable to CMRS carriers. The proposals made in this Further Notice are necessary to ensure that consumers receive clear and accurate telecommunications bills.

107. *Legal Basis*. The proposed action is authorized under Sections 4(i) and 4(j), 201, 208, 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 208, 254, and 303(r).

108. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*. For purposes of this Further Notice, the Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the SBA, "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. In the FRFA pertaining to this action, we described in detail the small entities potentially subject to the rules adopted in this Order. These same entities possibly would by affected by the proposal made in this Further Notices. For purposes of this IRFA, therefore, we incorporate the list of potentially affected entities contained in section IV(A)(3).

109. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*. We seek comment on a proposal designed to increase the accuracy and understandability of telephone bills to consumers. Comment is requested on a proposal to require uniform labels on line-item charges resulting from federal regulatory action.

110. *Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rule*. None.

111. *Any significant alternatives minimizing impact on small entities and are consistent with stated objectives*. None.

D. Initial Paperwork Reduction Act of 1995 Analysis for the *Further Notice*

112. The *Further Notice* portion of this Order contains either a proposed or modified

[262] *See id.*

information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the Further Notice of Proposed Rulemaking portion of this Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the Further Notice of Proposed Rulemaking; OMB comments are due 60 days from date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Comment Filing Procedure

113. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments concerning the standardized labels for charges relating to federal regulatory action no later than 14 days after publication of this *Further Notice* in the Federal Register. Parties shall file comments concerning application of the truth-in-billing principles and guidelines to CMRS carriers no later than 30 days after publication of the *Further Notice* in the Federal Register. Parties may file reply comments no later than 21 days after publication of the *Further Notice* in the Federal Register concerning charges relating to federal regulatory action, and no later than 45 days after Federal Register publication concerning the CMRS issues raised in the *Further Notice*. Comments will be limited to 15 pages, not including appendices. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

114. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

115. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding,

commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Washington, D.C. 20554.

116. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to David Konuch of the Common Carrier Bureau's Enforcement Division, The Portals, 445 Twelfth Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. Spreadsheets should be saved in an Excel 4.0 format. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case [CC Docket No. 98-170]), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., The Portals, Rm. CY-B400, 445 Twelfth Street, S.W., Washington, D.C. 20554.

F. Further Information

117. For further information concerning this proceeding, contact David Konuch, Enforcement Division, Common Carrier Bureau at (202) 418-0199 (voice), (202) 418-0485 (TTY).

118. Alternate formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 (voice), (202) 418-2555 (TTY), or at mcontee@fcc.gov. The First Report and Order and Further Notice of Proposed Rulemaking can be downloaded in WP or ASCII text at: http//www.fcc.gov/dtf/.

V. ORDERING CLAUSES

119. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 254, 258, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 254, 258, and 403 that this First Report and Order IS HEREBY ADOPTED, effective 30 days after publication of a summary in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

120. IT IS FURTHER ORDERED that Part 64 of the commission's rules, 47 C.F.R. § 64, IS AMENDED as set forth in Appendix B hereto.

121. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 254, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 254, and 403, that this Further Notice of Proposed Rulemaking IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

122. IT IS FURTHER ORDERED that, to the extent issues from CC Docket No. 97-181, *Defining Primary Lines*, are resolved here, we incorporate the relevant portions of the record in that docket.

123. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this First Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A - Final Rules

1. Part 64 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

Subpart Y -- Truth-in-Billing Requirements for Common Carriers

64.2400 Purpose and scope

(a) The purpose of these rules is to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service. These rules are also intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.

(b) These rules shall apply to all telecommunications common carriers, except that rules 64.2401(a)(2), 64.2401(b), and 64.2401(c) shall not apply to providers of Commercial Mobile Radio Service as defined in section 20.9 of the Commission's rules, or to other providers of mobile service as defined in section 20.7 of the Commission's rules, unless the Commission determines otherwise in a further rulemaking.

(c) *Preemptive effect of rules.* The requirements contained in this subpart are not intended to preempt the adoption or enforcement of consistent truth-in-billing requirements by the states.

64.2401 Truth-in-Billing Requirements

(a) *Bill organization.* Telephone bills shall be clearly organized, and must comply with the following requirements:

(1) the name of the service provider associated with each charge must be clearly identified on the telephone bill.

(2) where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider, and the telephone bill must provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service.

(i) "Clear and conspicuous notification" means notice that would be apparent to a reasonable consumer.

(ii) "New service provider" is any provider that did not bill for services on the previous billing statement. The notification should describe the nature of the relationship with the customer, including a description of whether the new service provider is the presubscribed local exchange or interexchange carrier.

(b) *Descriptions of billed charges.* Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

(c) *"Deniable" and "Non-Deniable" Charges.* Where a bill contains charges for basic local service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic, local service, and charges for which non-payment will not result in such disconnection. The carrier must explain this distinction to the customer, and must clearly and conspicuously identify on the bill those charges for which non-payment will not result in disconnection of basic, local service. Carriers may also elect to devise other methods of informing consumers on the bill that they may contest charges prior to payment.

(d) *Clear and Conspicuous Disclosure of Inquiry Contacts.* Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

APPENDIX B

PARTIES FILING COMMENTS TO THE *NOTICE OF PROPOSED RULEMAKING*
RESPONSIVE PLEADINGS
CC DOCKET NO. 98-170

Air Touch Communications (Air Touch)
America's Carriers Telecommunications Association (ACTA)
American Association of Retired Persons (AARP)
American Federation of Teachers (AFT)
American Public Communications Council (APCC)
Americatel Corporation (Americatel)
Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T
Bell Atlantic
Bell Atlantic Mobile, Inc. (Bell Atlantic Mobile)
BellSouth Corp. (BellSouth)
Billing Reform Task Force (BRTF)
Bills Project
Cable and Wireless USA, Inc. (C&W)
California Public Utilities Commission and the People of the State of California (California Commission)
Cellular Telecommunications Industry Association (CTIA)
Century Telephone Enterprises, Inc. (Century)
Coalition to Ensure Responsible Billing (Billing Coalition)
CommNet Cellular Inc. (CommNet)
Commonwealth Telephone Company (Commonwealth)
Competitive Telecommunication Association (CompTel)
DETECON, Inc. (Detecon)
Education and Library Networks Coalition (ELNC)
Electronic Commerce Association (ECA)
Irene A. Etzkorn
Excel Communications, Inc. (Excel)
Federal Trade Commission (FTC)
Florida Public Service Commission (Florida Commission)
Frontier Corp. (Frontier)
Georgia Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs (Georgia)
Global Telecompetition Consultants, Inc. (GTC)
GST Telecom Inc. (GST)

GTE Service Corp. (GTE)
GVNW Inc./Management (GVNW)
Independent Telephone & Telecommunications Alliance (ITTA)
Kansas Corporation Commission (Kansas Commission)
Liberty Cellular, Inc. (Liberty)
Maine Public Utilities Commission (Maine Commission)
MCI Telecommunications Corp. (MCI)
Media One Group, Inc. (Media One)
Minnesota Office of Attorney General (Minnesota OAG)
Mississippi Public Service Commission (Mississippi Commission)
Missouri Public Utilities Commission (Missouri Commission)
National Association of Attorneys General (NAAG)
National Association of Consumer Agency Administrators (NACAA)
National Association of State Utility Consumer Advocates (NASUCA)
National Consumers League (NCL)
Nevadacom, Inc. (Nevadacom)
New Networks Institute (NNI)
New York State Consumer Protection Board (NYCPB)
New York State Department of Public Service (NYDPS)
Nextel Communications, Inc. (Nextel)
Northwestern Indiana Telephone Company, Inc. (NITCO)
Omnipoint Communications, Inc. (Omnipoint)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
Personal Communications Industry Association (PCIA)
Petroleum Communications, Inc. (Petroleum)
Pilgrim Telephone, Inc. (Pilgrim)
Primeco Personal Communications, L.P. (Primeco)
Project Mutual Telephone Cooperative Association (PMT)
Public Service Commission of West Virginia (West Virginia Commission)
Public Service Commission of Wisconsin (Wisconsin Commission)
Public Utilities Commission of Ohio (Ohio Commission)
Public Utility Commission of Texas (Texas Commission)
Quality Communications Inc. (QCI)
Qwest Communications Corporation (Qwest)
Rural Cellular Association (RCA)
Rural Telecommunications Group (RTG)
Rural Telephone Coalition (RTC)
SBC Communications, Inc. (SBC)
Small Business Alliance for Fair Utility Regulation (Small Business)
Southern Communications Services, Inc. (SCS)
Sprint Corporation (Sprint)

Telecommunications Resellers Association (TRA)
Teligent, Inc. (Teligent)
Texas Citizen's Action (TCA)
Texas Office of Public Utility Counsel (TOPC)
Time Warner Telecom, Inc. (Time Warner)
United States Cellular Corporation (US Cellular)
United States Telephone Association (USTA)
U S WEST Communications, Inc. (U S WEST)
USP&C
Utility Consumers' Action Network (UCAN)
Vermont Public Service Board and Vermont Department of Public Service (Vermont Commission)
Washington Utilities & Transportation Commission Staff (Washington Commission Staff)
Wyoming Public Service Commission (Wyoming Commission)

PARTIES FILING REPLY COMMENTS TO *NOTICE OF PROPOSED RULEMAKING* RESPONSIVE PLEADINGS CC DOCKET NO. 98-170

American Public Communications Council (APCC)
Americatel Corporation (Americatel)
Ameritech
Asian Pacific Islander American Consumer Coalition (APIACC)
AT&T
Bell Atlantic Mobile, Inc. (BAM)
BellSouth Corporation (BellSouth)
Billing Reform Task Force (BRTF)
Cellular Telecommunications Industry Association (CTIA)
Century Telephone Enterprises, Inc. (Century)
Coalition to Ensure Responsible Billing (Billing Coalition)
Comcast Cellular Communications, Inc. (Comcast)
Commonwealth Telephone Company (Commonwealth)
GVNW Inc./Management (GVNW)
MCI Telecommunications Corp. (MCI)
National Association of State Utility Consumer Advocates (NASUCA)
Nextel Communications, Inc. (Nextel)
Paging Network, Inc. (Paging Network)
Personal Communications Industry Association (PCIA)
Pilgrim Telephone, Inc. (Pilgrim)
PrimeCo Personal Communications, L.P. (PrimeCo)
Rural Utilities Service (RUS)
SBC Communications, Inc. (SBC)
Sprint Corporation (Sprint)
Texas Office of Public Utility Counsel (TOPC)
United States Telephone Association (USTA)
U S WEST Communications, Inc. (U S WEST)

Separate Statement
of
Commissioner Susan Ness

Re: Truth-in-Billing and Billing Format

Ignorance is *not* bliss. Confusing or misleading bills from communications carriers are *not* good for consumers, or for competition. This agency *does* have a role to play in making sure that bills are fair, reasonable, and intelligible.

When we initiated this proceeding last September, I expressed my hope that the Notice would enable us to work with carriers, consumers, and other governmental entities to improve the billing process. I have been encouraged by the progress that has resulted. Many in industry have stepped up to their responsibility to improve their bills to make them more intelligible, more consumer-friendly. Slamming and cramming will be easier to detect, and therefore will be less likely to occur in the first place.

At the same time, the rules we are adopting have sufficient flexibility to allow for individualized experimentation by carriers. As new services and bundles are brought to market, we need not -- and do not -- prevent carriers from crafting their bills in creative ways that meet their competitive needs, so long as consumers' fundamental rights are protected.

I remain concerned about the prospect for misleading line items. Additional changes lie ahead in universal service and access charges, and we have already seen how some carriers have exploited the occasion of change to confuse consumers and, in some instances, to increase aggregate charges even as aggregate costs are declining. Competition should go a long way to ensuring that consumers get more, and pay less. But continued vigilance on billing practices will be essential to ensure that consumers are not misled or mistreated.

Finally, I see no inherent reason why *wireless* carriers should not be subject to the same general obligation as wireline carriers to render bills that are fair, clear, and truthful. But I am mindful that the billing practices of wireless carriers have generated only an incredibly small number of complaints. Given that any rules -- even flexible ones -- impose some costs (which ultimately are paid by consumers), I am reluctant to establish any requirements to cure a non-existent problem. For this reason, at this time, I am inclined to forbear from applying most of the specific rules we promulgate today to wireless carriers.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL, CONCURRING

Re: Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Truth-in-Billing and Billing Format (CC Docket No. 98-170).

When we initiated this proceeding several months ago, I wrote separately to express my firm support for the Commission taking steps to ensure that customers have accurate, meaningful information in a format they can understand. I underscored that the proper functioning of a competitive market depends on consumers having such information. On those bases, I was pleased that we had initiated this proceeding, just as I am now pleased that we are taking additional steps in this *Order* to address the egregious problems of slamming, cramming and related consumer confusion. I also support our decision here that, to the extent we impose requirements in this area, they will for the moment be broad and flexible in form, so as to allow carriers to minimize compliance costs and to differentiate their billing practices for competitive purposes.

As a devout advocate of vigorous enforcement, I am convinced that the government – whether this agency, another federal agency or the states – can play a significant, beneficial role in protecting consumers from demonstrable harms such as slamming, even in the context of competitive telecommunications markets. Although policymakers may disagree about the extent, form or timing of consumer protection efforts, I believe it is entirely appropriate for government to become concerned if carriers engage in abusive practices, particularly where competitive choices by consumers and voluntary actions by the industry cannot effectively stem such abuses.

Some of These Requirements Seem Unnecessary or Ill-Suited to Achieve Their Stated Purposes

Regrettably, however, I am not fully convinced of the necessity or value of some of the rules we adopt in this *Order*. I fail to understand, for example, why we feel the need to require carriers to put their names on bills when the carrier bills directly for its own services, a practice that occurs among both wireline long distance companies and wireless companies. Is there any factual or logical reason to think that a carrier would send a bill to a consumer without indicating whom the consumer should pay? It is difficult to dispute the value of such information, but equally difficult to imagine the omission of such information in a commercial enterprise, absent this federal requirement.

I am similarly troubled by our proposal to adopt uniform labels for line items that carriers include on their bills to recover their federally-mandated payments, such as access charges and contributions to universal service. In contrast to the celebrated flexibility of most of the requirements adopted in this *Order*, the Commission proposes to require that specific words and phrases be used when a carrier chooses to recover its government-mandated universal service and other charges explicitly,[1] as we allow them to do. The *Order* offers two justifications for diverging from the reasonable flexibility it permits with respect to the other rules, neither of which seems convincing. First, the *Order* states that the line item labeling proposal will enable consumers to use the labels to "comparison shop" among carriers, so as to obtain the best deal with respect to the recovery of those federal mandates.[2] Yet our rules also allow carriers to recover their federal charges by burying the amounts passed on to consumers in their interstate rates.[3] Thus, even if we adopt uniform labels for line items, consumers will remain powerless to compare the manner in which carriers that use explicit line items to recover their federal charges against carriers that essentially hide such recovery in their other rates.

Second, the *Order* states that the line item labeling proposal will prevent such labels from becoming false or misleading. Yet I fail to understand why, if the purpose of uniform line items is truly to avoid false or misleading characterizations of these charges, the Commission refuses to make clear that carriers may indicate that their own contributions to universal service and other federal requirements *are* mandatory, and that the Commission *allows* carriers to recover the amounts associated with these requirements directly from consumers. Although some may *prefer* that carriers simply conceal recovery of their required contributions in their rates, it is beyond question that the previous Commission *expressly allowed* carriers to do so, as we recently acknowledged.[4] In any event, I remain concerned that we avoid formalisms and semantic hair-splitting regarding the extent to which the Commission is or is not responsible for the appearance of politically-unpopular line items on consumers bills. Carriers would not be putting these line items on their bills if we were not requiring them to pay the underlying charges or if we did not allow carriers to recover these charges from end users. Thus, try as we might, we cannot escape the fact that these line items do result, at bottom, from actions taken by the government to preserve and advance universal service, and to achieve other valid goals pursuant to the 1996 Act.

The *Order* Relies on Flawed Premises Regarding the Role of Competition in Consumer Protection

But the strongest of my misgivings about this *Order* centers around the flawed premises justifying our imposition of these requirements. First, these premises include faulty, poorly supported assertions and implicit assumptions that competitive markets are categorically and in all circumstances unable to protect consumers from the types of harms we address in this *Order*.[5] Second, I fear that these underlying premises, when juxtaposed with Congress' mandate that the Commission eliminate and forbear from unnecessary regulation, are either inconsistent with the provisions and purposes of the 1996 Act or would require the Commission to adopt requirements from which we will almost immediately forbear, a result that I find nonsensical.

---

1 *Order* at ¶ 54.

2 *Id.*

3 *See, e.g., Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9209, ¶ 851 (1997) (*Universal Service Order*)).

4 *Virginia State Corp. Comm'n v. MCI Telecommunications Corp.,* 1999 WL 152543, FCC 99-42, File No. E-99-01 (rel. Mar. 22, 1999), ¶ 19 (allowing carrier to recover universal service contributions from end users via line items on bills because "[t]he *Universal Service Order* generally *permits, but does not require,* carriers to recover the cost of their universal service contributions from their 'customers of interstate services'") (emphasis added) (citing *Universal Service Order*, 12 FCC Rcd at 9209, ¶ 851).

5 *See, e.g., Order* at ¶ 7 ("Even in competitive markets, however, disclosure rules *are needed* to protect consumers.") (emphasis added); *id.* at ¶ 7 n.17 ("Because mature markets also require disclosure rules, we disagree with ALTS' argument that any confusion over billing formats that exists today is merely the result of the transition to fully competitive telecommunications markets."). The erroneous notion that competitive markets are unable to protect consumers is also implicit in our apparent decision to seek comment on whether to forbear *only* from the requirements the *Order declines* to impose on CMRS carriers, rather than forbearing from all of these truth in billing requirements with respect to these carriers. *Order* at ¶ 68 ("[W]e believe that all consumers expect and should receive bills that are fair, clear, and truthful. However, absent evidence that there is a problem with wireless bills, it might not be necessary to apply the *remaining* rules in the wireless context.") (emphasis added).

Markets and Competitive Choice Provide the Most Fundamental Mechanisms for Protecting Consumers

It is axiomatic that one of the most important benefits of competition is that it gives consumers the ability to change providers to obtain the best rates, terms and conditions for their individual needs. As such, competition *empowers* consumers to leave their provider and find another if their current provider does not treat them fairly. Furthermore, the threat of consumer churn and the related downward pressure on profitability6 provides an important *in terrorem* effect that encourages providers to do everything possible to avoid losing customers to the competition, including avoiding inaccuracies and misleading information in their bills. Simply put, the risk to providers of engaging in fraudulent practices in a competitive market is that consumers will soon discover these practices and cease to generate revenues for those providers. Of course, some minority of providers may choose, nonetheless, to misbehave in a competitive market in ways that are not easily rectified through voluntary actions by the industry. It is for this reason that, even in a competitive market, government enforcement may be necessary to stop certain companies from continuing to engage in harmful practices.

Despite these truisms of competition, the *Order* suggests in a number of places that requirements like those we adopt here will *always* be needed in *every* market, no matter how competitive.7 These unsupported, blanket assertions are troubling for their unstated, paternalistic judgment that consumers are ill-suited to protect themselves even when they are empowered to escape harm by choosing a new provider. Indeed, these assertions ignore the likelihood that market forces may generally be *more* effective in eliminating harms to consumers than government intervention. Recent events suggest that this likelihood is indeed real. Several major carriers (including Ameritech, Bell Atlantic and Bell South) have unveiled or will soon unveil simplified new bills that will help them to retain customers and respond to the competitive pressures imposed by billing innovations introduced by new entrants.8 And these carriers are doing so for the most part without government mandate. I agree that we should celebrate these competitive benefits to consumers but, in the parlance of this item, it would not be "truthful or non-misleading" to suggest that these actions have resulted primarily from the actions of regulators. Rather, market forces are largely responsible for the improvements we are seeing and will continue to see.

Even worse, the *Order*'s assertions that government intervention is always necessary to protect consumers ignore the clear evidence on the record indicating that the problems of slamming, cramming and consumer confusion may not be significant in certain telecommunications markets, such as wireless, and among certain carriers, such as those that bill consumers directly only for their own services. Although complaints on these issues from wireline customers number in the tens of thousands annually, for example, complaints from wireless customers number only in the dozens – an order of magnitude fewer even if one controls for the smaller number of total wireless customers relative to wireline customers. This record suggests that it is unnecessary to impose these requirements on some carriers in order to ensure that consumers have access to useful and accurate information.

---

6 *See generally* Frederick F. Reicheld & Thomas A. Teal, *The Loyalty Effect: The Hidden Force Behind Growth, Profits, and Lasting Value* (Harvard Business School Press) (1996) (documenting quantitative research demonstrating that firms that retain customers dramatically improve their profitability by improving revenue growth, learning and productivity).

7 *See supra* note 5.

8 *See, e.g.*, Kathy Chen, *Miracle of the Bells: the Simplified Phone Bill*, Wall St. J., Apr. 12, 1999, at B1.

The *Order*'s Assertion That These Requirements Are Necessary in All Circumstances is Inconsistent With the Act's Mandate That the Commission Eliminate and Forbear From Unnecessary Regulation

Given the record evidence that market or other factors appear to be sufficient to protect consumers in some instances, the big question that remains is: whether and to what extent companies will provide useful information *voluntarily* or whether government *intervention* will become necessary. Unlike some, I believe that Congress has already answered that question for us. Specifically, Congress has commanded that we look in the first instance to the market to determine what carriers provide their customers, and only when it is clearly demonstrated that the absence of regulation will harm consumers should we intervene.

The statute makes clear (through mandatory section 10 forbearance, biennial review, and the "pro-competitive, de-regulatory national policy framework" of the Act) that *Congress* has decided that markets should replace regulation except where actually necessary to protect consumers or to maintain just, reasonable and nondiscriminatory rates, terms and conditions.[9] As such, I feel strongly that we should only be imposing new regulations – however general or flexible – where necessary to correct well-supported, identifiable harms to consumers or "just and reasonableness" problems. Thus, I can support the application of these new requirements on certain wireline companies. I cannot, however, support imposing these same conditions on CMRS providers. Because CMRS carriers are excluded from equal access obligations, CMRS customers are less likely to experience slamming with respect to that service.[10] Further, CMRS customers also are unlikely to experience cramming with respect to that service, because CMRS carriers generally only bill for their own services, thus making one of the requirements we adopt here largely inapplicable.[11] In addition, the record clearly lacks substantial evidence that there are problems that need correcting in the CMRS context, as the *Order* also concedes. Although there appears to be some lack of clarity in how inquiries by CMRS customers are categorized, there is a huge magnitude of difference in the number of slamming, cramming and universal service complaints for wireless, relative to wireline.

I also reject any notion that we should allow enforcement to degenerate into imposing broadly rules with the understanding that we might forbear in the future. If the Act means anything, it means that we should not impose regulations just for the sake of uniformity or to enact some grand regulatory plan. Sure, we could impose regulations and then wait for parties to petition for forbearance, but why impose unneeded rules just so we can remove them later? Notwithstanding these shortcomings, I applaud the majority's thoughtful decision not to impose the requirement adopted here regarding descriptions of billed charges on CMRS carriers.[12]

Enforcement and Consumer Protection Should Not Provide an Excuse for Additional Regulation

Since taking office, I have spoken often about the importance, in promoting competition and deregulation, of shifting regulatory resources from drafting complex prophylactic rules to vigorous enforcement. The term "enforcement," like "competition" itself, has taken a prominent place in telecom regulatory rhetoric; no one would be caught dead saying that they did not support strong enforcement. It's like Mom and apple pie.

But we should be careful what we mean by enforcement. To be consistent with the Act, enforcement cannot become a means of extending regulation, a sort of "full employment" regulatory approach for an agency concerned about making sure it continues to play an active role as we transition to competitive markets. Rather, enforcement must be targeted so that government intervenes – only *when* and only to the *extent* – the record demonstrates that there are real, identifiable harms that the market participants' voluntary actions will not correct.

It is critical to the process of regulators ceding control to the market that enforcement not become a solution in search of a problem that has not yet been *identified*. Neither should we suggest that we do not *need* a problem to solve in order to justify imposing additional regulatory burdens on market participants, simply because we believe those requirements may benefit consumers. If such an unprincipled approach were valid, there would be no limit to the requirements we could impose on carriers in the name of consumer protection. Indeed, the sad irony of imposing such unnecessary requirements is that doing so would thwart Congress' directive that we use competitive markets and deregulation to benefit consumers.

Having expressed these reservations, I look forward to working with my colleagues to ensure that consumers have access to knowledge that will truly help them make more informed buying decisions.

---

9 Congress was unmistakably clear in its judgment that the Commission must rely on markets and competition, rather than regulation, to oversee the development of communications and information services markets. *See* 47 U.S.C. § 160 ("[T]he Commission *shall* forbear from applying any regulation or any provision of this Act . . . if the Commission determines that . . . enforcement of such regulation or provision is *not necessary* to ensure that . . . charges, practices, classifications, or regulations . . . are just and reasonable . . . ; enforcement of such regulation or provision is not necessary for the protection of consumers; and forbearance . . . is consistent with the public interest.") (emphases added); 47 U.S.C. § 161 (requiring the Commission to review "all regulations" every two years to "determine whether *any* such regulation is no longer necessary in the public interest as the result of meaningful *economic competition* between providers of such service"); Joint Manager's Statement, S. Conf. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (conference report indicating that purpose of 1996 Act is "to provide for a *pro-competitive, de-regulatory* national policy framework designed to accelerate rapidly *private sector* deployment of advanced telecommunications and information technologies and services *by opening all telecommunications markets to competition* . . .") (emphases added).

10 *Order* at ¶ 16.

11 *See cf. Order*, Appendix A, 47 C.F.R. § 64.2001(a)(2) (limiting requirement of clear and conspicuous notification of new service providers to situations "where charges for two or more carriers appear on the same telephone bill").

12 *Order*, Appendix A, 47 C.F.R. § 64.2000(b). The *Order* also declines to impose the requirements pertaining to changes in service providers, as well as to "deniable" and "non-deniable" charges, on CMRS carriers. *Id*. These rules, however, would be largely inapplicable to CMRS carriers anyway, given the nature of the charges billed and the fact that CMRS carriers generally bill directly and only for their own services.

DISSENTING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: First report and Order and Further Notice of Proposed Rulemaking, Truth-in-Billing and Billing Format; (CC Docket 98-170).

I dissent from the adoption of this item and write separately to express my many concerns about this agency's direct involvement in commercial billing issues. I have deep reservations about the extent of the Commission's authority over the commercial relationship between carriers and their customers. In particular, I am not convinced that the Commission possesses specific statutory authority to regulate a bill's description of that commercial relationship, or even the truthfulness of that communication. Apart from the question of statutory authority, I also view this exercise as an unwise use of limited Commission resources.

With particular respect to regulation of federal charges, I noted in the original Notice of Proposed Rulemaking my apprehension that carriers might be pressured, even indirectly, to remove or alter current line items or charges. I also objected to any suggestion that carriers had actually misrepresented any facts related to federal charges. Indeed, as I have stated before, while the government does not require a particular method of recovery, it has mandated payment of the underlying contributions by the carriers.1 Regrettably, today's Order assumes that some carriers have misrepresented facts on bills and that the Commission thus must take prescriptive action to address those misrepresentations. I disagree with the premise that any carrier has acted to mislead its consumers.

In fact, it is this agency's attempt to distance itself from certain federal charges that qualifies as misleading. Despite its best efforts, the Commission cannot deny that the underlying charges to the carriers are mandated by the federal government, even if the method of recovery has not been regulated. A "full and non-misleading" "Truth-In-Billing" Order would recognize the rights of carriers to inform their customers that these charges are indeed federal requirements adopted by the FCC, and that the Commission expressly allows carriers to recover these charges directly from consumers. As described below, it is this Commission's desire to hide that very fact from consumers that has precipitated this "Half-Truth in Billing" Order.

Regulation of descriptions for charges when there is nothing factually inaccurate about the carriers' statements -- but their description does not reflect the government's preferred explanation of the charges -- raises grave First Amendment questions. This Order's attempt to regulate speech regarding the universal service charges involves, in my view, censorship of speech integrally related to a political dispute over social policy and taxation. Given the lack of clear statutory authority to adopt these regulations, the prudent course would have been to avoid -- and not to create -- these constitutional problems.

I. The Legal Authority for These Billing Requirements Is Questionable, And The Order's Underlying Assumptions Contradict The Telecommunications Act's Deregulatory Mandate.

I have serious questions about the extent of the Commission's legal authority to regulate the commercial relationship between carriers and their customers, as well as the wisdom of this use of limited Commission resources. The majority relies in part on its authority under section 258 of the Act to adopt verification requirements to deter slamming. The majority contends that these requirements are "intended to function as a critical component of the Commission's verification procedures." *Supra* at para. 23. But the Commission only recently adopted verification procedures, along with liability rules, that have only recently started to take effect.2 Before enacting these additional burdens on carriers, perhaps the Commission should have tried to determine the adequacy of its existing verification requirements.

Moreover, as the majority acknowledges, the Commission has even less statutory authority for the regulations regarding standardized federal labels than it does for its verification rules. *Id.* at para. 21 ("We recognize, however, that the standardized label guideline rests exclusively on our statutory authority under section 201(b) and therefore is limited to interstate services.") Section 201(b) simply provides: "All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable . . . ." The majority explains that the "principles and guidelines established in this Order are intended to define more specifically what would constitute a violation of section 201 in the billing context for the covered carriers." *Supra* at para. 24. But with regard to the various federal line items, it is not clear to me that any of the cited line items or their corresponding charges are either unjust or unreasonable.

For example, the majority states that carriers have labelled the fee related to universal service as "Universal Connectivity Charge," "Federal Universal Service Fee," "Carrier Universal Service Charge," and "Local Service Subsidy." *Id.* at para. 51. The Commission does not claim that any of these labels are inherently unjust or unreasonable; indeed, it does not even claim that any of the labels in the record are actually misleading. Neither does the Commission assert that the corresponding charges, which have ranged from $.93 per bill to 5% of the customers net interstate and international charges, are unjust or unreasonable. Given the utter failure to find either the labels or the charges "unjust or unreasonable," it is difficult to see how the regulations concerning standardized labels could be adopted since section 201(b) is the sole source of authority cited by the Order.

In addition, I disagree with the premise of the Order that "[e]ven in competitive markets, . . . disclosure rules are needed to protect consumers." *Id.* at para. 7; s*ee also id.* at para. 6 ("[A]t this time, competitive pressures alone do not ensure that consumers receive clear, informative and consumer-friendly telephone bills from certain carriers."). I do not believe that increased competition can ever be the impetus for further regulatory action by this agency. Indeed, Congress intended just the opposite. Both the Section 10 forbearance requirements and the Section 11 biennial review provisions are founded on the assumption that as

---

1 "[N]o carrier should have its billing information restricted or limited by the Commission. The Commission has explicitly provided carriers with the flexibility to decide how to recover their payments, including as charges on consumers bills, and I am concerned by implications that such charges are fraudulent or misrepresentations." *Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579*, rel. May 8, 1998.

2 *See 1998 Slamming Order and Further Notice*, CC Docket No. 94-129 (Rel Dec. 23, 1998).

competition increases, the need for regulation decreases.[3] Through these and other provisions of the 1996 Act, Congress made clear its intention that the Commission remove regulations as competition develops. We are not supposed to increase regulation in response to competition, as this Order does.

II. This "Truth-in-Billing" Order is Internally Inconsistent, Arbitrary, and Misleading.

This Order is riddled with internal inconsistencies, arbitrary distinctions, and misleading statements. For example, I am still confused as to which billing requirements apply to wireless carriers and which do not. These requirements, of course, are not a small matter. The Order states that the "*broad principles* that we adopt to promote truth-in-billing should apply to all telecommunications carriers, *both wireline and wireless.*" *Supra* at para. 12 (emphasis added). The majority explains that these "principles" apply to all carriers because they "represent fundamental statements of fair and reasonable practices." *Id*. The majority concludes that "[l]ike wireline carriers, wireless carriers also should be fair, clear, and truthful in their billing practices. Consumers deserve no less." *Id.* Thus, the majority concludes that these principles are enforceable as just and reasonable practices under section 201(b). *Supra* at para. 24 ("The principles and guidelines established in this Order are intended to define more specifically what would constitute a violation of section 201(b) in the billing context for the covered carriers.")

Comparison of the principles with the actual rules is an interesting exercise. The Commission's second principle, clearly applicable to wireless carriers, requires "that bills contain full and non-misleading descriptions of charges that appear therein." *Id.* at para. 5. The rule implementing that principle, technically applicable only to wireline carriers, requires that "[c]harges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered." The principle is, of course, virtually indistinguishable from the rule; it is hard to see how the obligations could differ. But, wireless carriers are expressly *exempted* from the rule. *See id.* at Appendix A ("[R]ule 64.2001(b) . . . shall not apply to providers of Commercial Mobile Radio Service."). Is that some indication these obligations should not, under any circumstances, apply to wireless providers? These conflicting statements make it unclear whether the bills of wireless providers must contain full and non-misleading descriptions, or not. While full and non-misleading description are not required of wireless providers under the rule itself, it appears that wireless carriers would be in violation of a fundamental fair and reasonable practices if they nonetheless failed to provide them. But if the descriptions are required in any event, why has the Commission bothered to exempt wireless carriers from the implementing regulation?

In short, when one compares the text of the "principle" with the text of the "rule" based on that principle, it is clear that they are almost identical. Yet, the majority apparently gives this distinction some meaning, as it chooses to apply the principle to wireless carriers but simultaneously exempts wireless carriers from the rule. At the same time, the majority refuses to explain exactly what effect, if any, this exemption will have. Are wireless carriers required to provide full and non-misleading descriptions of charges on their bills or not? Can a consumer file a complaint against a wireless carrier for failing to provide such a description or not? *These are not unreasonable questions, the answers to which should be readily apparent from a "clear and non-misleading" FCC Order.* Wireless carriers, and their consumers, are entitled to know what requirements are being placed on them by this agency.

The only real distinction that I can discern between the principle applicable to wireless carriers and the rule that exempts them is a practical one relating to the proper pleading of a complaint against a wireless carrier. A consumer who objects to a wireless carrier's failure to include full and non-misleading descriptions of the charges on his bill and who files a complaint under rule 64.2001(b) will be denied relief. The same complaint filed against a wireless carrier as an unreasonable practice pursuant to section 201(b)[4], however, would necessarily succeed, as the Commission has already determined that including full and non-misleading descriptions of the charges on a bill is "fundamental to a carrier's obligation of reasonable charges and practices." *Supra* at para. 37. The majority goes even further in stating that "we find it difficult to imagine any scenario where payment could be lawfully demanded on the basis of inaccurate, incomplete, or misleading information." *Id*.

Neither does this essentially ephemeral distinction between principles and rules alter the burden of proof. The majority has already determined that its billing principles are based on fundamental fairness and, as such, always apply. How could the Commission allow wireless carriers to fail to provide fair and reasonable practices? Could the Commission decide that wireless consumers "deserve less" than "fundamental[ly] fair and reasonable practices?" I doubt it. Would a defending wireless carrier instead need to demonstrate that the provision of full and non-misleading descriptions is not necessarily a fundamentally fair and reasonable practice? If a carrier could ever make such a showing, then the provision of "full and non-misleading descriptions" would not always be necessary to maintain fair and reasonable practices. But the majority's very justification for adopting these principles is that they are "fundamental principles of fairness to consumers and just and reasonable practices by carriers." *Id.* at para. 5. Admitting that such a showing could be made would thus undermine the justifications for adopting the principles in the first place. By refusing to clarify that such a complaint against wireless carriers must be accepted and instead maintaining the exemption for wireless carriers, the Commission signals that -- at least in the wireless context -- consumers indeed could "deserve less" than "fair, clear, and truthful . . . billing practices." *Id.* at para. 12.

I am astonished that the majority would go to such extremes to exempt an industry from a particular rule, while still requiring compliance with an identical "principle" as a reasonable practice. For what purpose are they making this distinction? The problem appears to be, in part, the result of the Commission's vague use of the word "principles" to describe specific requirements. Moreover, these "principles" are not voluntary, but enforceable as fair practices under section 201(b). *Supra* at n. 14. For all practical purposes, then, these principles are rules of conduct, and materially indistinguishable from the actual rules adopted.

I am left to conclude that this Order is more than just confusing due to its internal inconsistencies; it is intentionally "misleading," at least to the extent that it implies that some of these requirements do not actually apply to wireless carriers. Either that, or it has simply failed to be "full and non-misleading" in informing wireless consumers that their rights under section 201(b) have been diminished and that a complaint alleging that a carrier has failed to conform to

[3] For a fuller discussion of my view on some of these requirements, for example, see my *Report on Implementation of Section 11 by the Federal Communications Commission* (Dec. 21, 1998), which can be found on the FCC WWW site at <http://www.fcc.gov/commissioners/furchtgott-roth/reports/sect11.html>.

[4] The majority expressly states that "such [CMRS] providers remain subject to the reasonableness and nondiscrimination requirements of section 201 and 202 of the Act, and our decision here in no way diminishes such obligations as they may relate to the billing practices of CMRS carriers." *Supra* at para. 19.

practices that the Commission has declared fundamentally fair may be denied on its face. Surely consumers, and all of the industries to which these regulations apply, deserve more than the "half truths" and doublespeak of this Order.

Similarly, it seems arbitrary for the majority to conclude that wireless carriers should be subject to one of the rules implementing the second principle -- namely, that the requirement of standardized labels for charges resulting from federal regulatory action, *supra* at para. 18 -- while at the same time exempting them from the guideline/rule that merely repeats the general principle. *Compare id.* at para. 18 *with* Appendix A. If the general "principle of full and non-misleading descriptions also extends to carrier charges purportedly associated with federal regulatory action," *id.* at para 49, and wireless carriers must use standardized labels in the interest of "full and non-misleading descriptions," then how can the Commission simultaneously exempt wireless carriers from rule 64.2001(b)'s implementing requirement that bills contain "brief, clear, non-misleading, plain language descriptions"? Should not a carrier be subject to a more general requirement before it is subject to a specific rule implementing the requirement? Again, this Order is at best "confusing" and at worst arbitrary in its application and justification of its regulatory scheme.

Finally, I believe that this Order is "misleading" -- and certainly not "full and non-misleading" -- in refusing to recognize the rights of carriers to inform their customers that the underlying federal charges are indeed federal requirements, mandated by the FCC. The Commission expressly allows carriers to recover the amounts associated with these charges directly from consumers. Despite its claims to the contrary, the charges appearing on consumers' bills *are* the result of *this* agency's requirement that carriers "contribute" to the universal service fund at a specified level. Recognizing our own role in these charges, now appearing on consumers' bills, would be the truly "non-misleading" approach.

In sum, I can only conclude that the Commission has been arbitrary either: (i) in the adoption of these requirements, since it refuses to apply its understanding of "fundamentally fair and reasonable practices" across the board to all carriers; or (ii) in the application of its rules only to particular carriers, while requiring all other carriers to abide by identical principles. Either way, it appears that the Commission has acted arbitrarily and capriciously in adopting and applying these binding principles and rules. Moreover, this Order is at least as "misleading" and "confusing" as many of the charges and practices about which the Commission complains. It is ironic indeed, that this agency's "truth-in-billing" initiative could not even pass its own standard for "brief, clear, non-misleading, plain language description[s]" with regard to the regulations that it imposes.

III. The History of the Universal Service Program and "Truth-In-Billing"

What disturbs me most about this Order are the Commission's underlying motives for regulating carriers' descriptions of federal charges: namely, that the majority does not want to be associated with the taxes they themselves have established, and that they are angry with carriers who have informed consumers about the tax and the majority's involvement with it. As one high ranking Commission official warned at the time these taxes were originally imposed, "Carriers better sharpen their pencils and think twice about what they're putting on customers' bills and attributing to government action." *Some MCI Customers Seeing Surge in Phone Bills*, Washington Post, January 31, 1998 at page H-3.

This story begins with the Commission's development of the schools and libraries program. In a May 1997 Order, the Commission "requir[ed] phone companies [to] make . . .[a universal service] 'contribution' for the social good of wiring schools and libraries to the internet. . . . [T]he companies will have to hand over $2.25 billion in extra charges for the wiring cause." *New Phone Tax*, Wall Street Journal, December 9, 1997.

In December of 1997, I first noted my concern that the Commission was pressuring carriers not to place line-items for these charges on their consumers' bills.[5] At the time, it was widely reported that the "Commission prefers that [universal service costs] be rolled into rates,"[6] and that the FCC was irate with companies that planned to pass this tax through to consumers:

> The FCC is angry at companies that plan to disclose those costs to customers as a line item on the monthly bill. "They don't want us to call it a tax," [said one industry representative]. "But that's what it is."

A New Tax for the New Year, The Washington Post, December 2, 1997.

I objected to the Commission's efforts to hide this tax from consumers, making clear that "I do not share such a preference or endorse such efforts. . . . No carrier should have its billing information restricted or limited by the Commission."[7] Indeed, I believe that consumers have a right to know when they are paying federal charges; the Commission should not discourage companies from placing federal universal service charges on their bills. Line items for new taxes are a means of letting customers understand why rates are not lower than they would have been absent the new taxes. These line items are not a means of promoting "hidden rate increases," as some have called it. To the contrary, the only "hidden rate increases" here are those that result from obscured and unexplained taxes.

For consumers, the issue is not just whether prices have gone up or down. The question is whether prices would have been lower without the new tax. Only in Washington could explicit disclosure of this new tax be considered deceptive. Depriving consumers of information about new taxes demoralizes a democratic society.

---

[5] *In the Matter of Federal-State Joint Board on Universal Service*, Third Order on Reconsideration, CC Docket No. 96-45, 12 FCC Rcd. 22801, 22814 (1997) (Dissenting Statement of Commissioner Furchtgott-Roth).

[6] Monday December 8, *Communications Daily*.

[7] *In the Matter of Federal-State Joint Board on Universal Service*, Third Order on Reconsideration, CC Docket No. 96-45, 12 FCC Rcd. 22801, 22814 (1997) (Dissenting Statement of Commissioner Furchtgott-Roth).

Despite the benefits of fully informing consumers about government-mandated charges, "[t]he administration, which has touted the [schools and libraries] program as the centerpiece of President Clinton's education goals, would rather that customers not know." *Itemized list of phone fees hotly debated*, USA Today December 15, 1997 at B-12. So, it was reported, "the FCC . . . had been pushing hard to get major long-distance carriers to agree not to put line-item charges on residential phone bills at least until July." *FCC Postpones Ruling on Internet Connections*, Washington Post, December 13, 1997 at F-9. These efforts were designed to "mask [the tax] for a while, to take some pressure off from the Hill." *Id*. For the first few months of the program, the Commission even "decided to reduce the [initial universal service] charges after the carriers said the fee could lead to higher rates and after AT&T and MCI threatened to specify the charge on the bills they send to customers." *Fund to Aid Technology in Schools Facing Big FCC Cuts*, New York Times, December 15, 1997 at D-1. Apparently, "the agency worried that if millions of Americans began seeing such fees on their bills, popular support for deregulating the telecommunications industry could begin to erode." *Id*. At this point, most large carriers began to place the line items only on bills for commercial customers, declining to specify the charges on bills for residential customers.

Last spring, the general issue of line items for schools and libraries "contributions" arose again when the Commission began to consider raising the funding level for the schools and libraries program. By then, many carriers had announced that they would recover these costs through separate line items on individual consumers, such as residential customers. Again, these announcements angered some at the Commission. *See, e.g.*, *Statement of Chairman William E. Kennard on AT&T Long Distance Announcement*, May 28, 1998 ("AT&T's announcement is premature, unwarranted and inconsistent with their own public proposals to the FCC. This announcement suggests that AT&T will raise rates to pay for universal service."); "*AT&T adding surcharges; FCC Furious*," USA Today, May 29, 1998 at 2 ("The FCC is livid.").8

Immediately after carriers announced their intent to place line items on residential bills, the Commission announced its plan to initiate the instant "truth-in-billing" proceeding. *Schools, Libraries, Health Care Discounts Program Faces More Scrutiny*, Washington Report, June 15, 1998 (Commissioners "said they plan to adopt a notice of proposed rulemaking to help clear up consumer confusion about new rates and fees attributed to the discount programs").

Even worse, in the view of some at the Commission, opponents of the tax were blaming not just the Commission for the imposition new consumer charges, but also the current Administration, which strongly supported the schools and libraries program. As one news magazine reported:

> [The Vice President's] biggest high-tech achievement to date is a program to wire every classroom and library in the country. . . . But right now the program is under assault from congress as an out of control entitlement engineered by an out-of-control bureaucracy. Which does not do much for Gore's reputation as the architect of reinventing government. Even more ominous is another threat: starting this summer phone companies that were ordered to pay for the program are threatening to add a new charge to the long distance bills of residential consumers. Critics are already calling it the Gore Tax.

TIME, Karen Tumulty & John Dickerson, *Gore's Costly High Wire Act*,at 52, May, 25 1998.9 Others even claimed the schools and libraries program had been initiated in order to enhance the chances of possible presidential candidates, arguing that it was

> nothing less than a stealth campaign to enhance Gore's presidential prospects. "This was not to be a political cash-grant program so that Al Gore can run for President, [one Congressman] complain[ed]."

Id. at 55.

Toward the end of 1998, an investigation by the United States House of Representatives confirmed the Commission's attempt to prevent carriers from

---

8 *See also FCC Caught in Middle on Rate Rise*, June 11, 1998 at C-3 ("The FCC had hoped that long distance carriers would absorb the costs of the program, . . . But AT&T Corp., MCI Communications Corp. and other carriers plan to levy new charges, . . . "). *See Generally*, *Some MCI Customers Seeing Surge in Phone Bills*, Washington Post, January 31, 1998 at page H-3 ("FCC officials are upset about being blamed by MCI for the new charges. The agency maintains that the universal service fees are technically charged to local phone companies, . . . which are authorized to seek compensation from long distance carriers. It's up to MCI and other long-distance companies to decide how to pay, the FCC contends.").

9 *See also*, *id.* ("The blame inevitably finds its way to Gore, whose hands many see in virtually everything the FCC does."); *A New Tax for the New Year*, The Washington Post, December 2, 1997, ("The Internet in-the-schools idea was hatched by Vice President Gore and his friend Reed Hundt, the recently departed FCC chairman. They consistently tout the benefits of the program, but not its costs."); *Senators tell FCC "Gore tax" too costly*, The Washington Times, June 11, 1998 at B-9 ("Lawmakers said the FCC overreached its mandate by setting up a $2.25 billion fund to wire schools and libraries, which critics have dubbed the "Gore tax" because of Vice President Al Gore's vigorous support of the program. The issue came to a head this week after long-distance companies said they would start adding about $1 a month to consumers' bills to fund the program."); *Phone Wars leave FCC in a Political Combat Zone*, The New York Times, August 13, 1998 at D-1 ("When a dispute arose over the commission's plan to raise money to subsidize internet connections for schools and libraries, the fees were immediately labeled the "Gore tax" on Capital Hill.").

associating the federal government with these charges:

> It is clear that the FCC pressured and threatened long distance carriers in an inappropriate manner from taking action regarding how long distance carriers would recover their contributions to universal service from their telephone subscribers. The FCC was apparently motivated to exert such pressure to fulfill the Administration's political agenda to connect every classroom in the United States to the Internet by the Year 2000, and to do so while hiding the costs of their agenda from the American public.

Hill Report Finds FCC Threats, political Acts Against AT&T and MCI, Communications Daily, November 30, 1998.10

At bottom, I fear that this agency has only decided to regulate the description of federal charges because many carriers went "against the FCC's wishes and itemiz[ed] the phone tax." *New Phone Tax*, Wall Street Journal, December 9, 1997. That is not a legitimate reason for regulation, as either a policy matter or from a First Amendment perspective. I turn to the First Amendment issues below.

IV. The Standardized Labeling Requirements for Universal Service Charges Raise Grave First Amendment Questions.

I believe that the "standardized labeling" regulations for universal service charges, in particular, raise serious questions under the First Amendment. These regulations involve censorship of speech integrally related to a political dispute over social policy and taxation. As such, I believe they govern speech that is not merely commercial but political as well, and that they are thus presumptively unconstitutional. In any event, contrary to the Order's assertions, the standardized labeling regulations do not pass muster under the test for regulation of purely commercial speech.

A.

At the outset, some important facts must be clarified. The Commission repeatedly emphasizes in this Order that it has "not mandated or limited specific language that carriers utilize to describe the nature and purpose of [universal service] charges." *Supra* at para. at 56. The Commission has done *precisely* that, however, with respect to the labeling of the charges. It issues today a proposed list of acceptable words for characterizing the charges on line items and presumably will issue a final list in the future. *See supra* at para. 71. In addition, this Order appears to prohibit any line items that indicate the charge is federally-mandated or federally-imposed.11 Surely, this action "limit[s]" the "specific language" that carriers may use when speaking about the charges. Conversely, and by necessary implication, the Commission bans all words other than those on the approved list, including wholly truthful and non-misleading speech.

To be sure, the Commission will permit carriers to use additional language to describe the charge (so long as that description is not "misleading," a limitation discussed below). But that does not erase the fact of the restriction on permissible labels. As the Commission acknowledges by its direct regulation of the line item as opposed to other text on the bill, consumers tend more to focus on the line items than on footnoted material at the bottom of the page.

Moreover, the Supreme Court has rejected the argument that limitations on commercial speech are permissible just because the government leaves open alternative modes of communication. *See Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 93-94 (1977) (applying strict scrutiny to ban on commercial speech notwithstanding fact that other modes of communication were unaffected by the ban); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). The Court has also rejected the argument that content-based restrictions -- which these regulations undoubtedly are -- become permissible when speech alternatives exist. *See Consolidated Edison Co. v. New York*, 447 U.S.530, 541 (1980) ("[W]e have consistently rejected the suggestion that a government may justify a content-based prohibition by showing that speakers have alternative means of expression.") (citing cases).

It is also plain from today's Order that any additional language that carriers may wish to include must be "non-misleading" in the Commission's eyes. *See supra* at para. 55. If the Commission believes that it would be "deceptive" to tie the charge to the Commission or the federal government, as it apparently does,

---

10 Finally, I note that the timing of this Order is curious. It is no coincidence that the majority seeks to strengthen its ability to keep these taxes at arms-length at the same time that the Commissions is considering raising this tax by an additional $1 billion. *See, e.g., FCC Mulls Boosting Internet Funding for Schools, Libraries*, Wall St. Journal, May 5, 1999, at B6. Association with this tax becomes increasingly damaging, as a political matter, the higher the tax is. Also, the act of substantially increasing the schools and libraries charge might well reinvigorate the debate over who should be blamed for this entire matter. *School Internet Discount Slated For More Money - and Dissension*, Washington Post, May 6, 1999 at E-3 ("Yesterday's announcement may generate new controversy among telephone companies and Republican lawmakers who have called the program the "Gore Tax" because it is the vehicle for Vice President Gore's promise to wire all of America's classrooms to the Internet.").

11 Although the Order discusses the prohibition on terms such as "federally-mandated" in the specific context of the additional language that carriers may include, *supra* at para. 56., the underlying assumption of the Order seems to be that such a description would be equally unlawful if used as a label on a line-item. Under the reasoning of this Order, which concludes that a description of universal service charges as mandated by the federal government is misleading, it would seem that a line item conveying the same message would be an unreasonable practice in violation of section 201(b).

then the companies have been afforded no meaningful outlet at all. *See id.* ("We would not consider a description of [the universal service] charge as being 'mandated' by the Commission or the federal government to be accurate."). It is undeniable, as a matter of fact, that the charge has been "mandated" by the Commission. The only *possible* question could be upon whom the Commission directly levied the charges. Thus, the Commission's argument seems to hang on the slim reed that omission of the fact that the charges were directly levied on carriers, as opposed to being levied directly on consumers, is "misleading" in that it does not expressly tie accountability for the charges to the carriers. Indeed, it is not even clear from the face of this Order that carriers could simply state that they were recovering from consumers charges imposed upon them by the Commission -- an entirely accurate statement, even on the Commission's theory of the charges.

To my mind, the assignment of responsibility for these consumer charges seems less a question of pure fact or "truth" than opinion. As with most questions of opinion, it is one about which reasonable people can disagree.12 Some carriers possess a reasonable belief that the Commission, by levying a fee on carriers, was the "but-for" cause of the appearance of these charges on consumers' bills. In a competitive market, they say, costs are by definition passed through to consumers, and so the imposition of new regulatory charges on carriers is tantamount to a charge on consumers. As long as the carriers are subject to the Commission's understanding of "misleading" statements with respect to the charges, however, they will presumably be forbidden by this agency from expressing to consumers their view that the fees imposed in connection with the universal service fund are the result of government action and that ultimate responsibility for these charges rests with the government. By choosing the very words that may be used to label federal charges, these regulations "attempt to give one side of a debatable public question" -- here, the government view's about who should be held responsible for these charges -- "an advantage in expressing its view to the people." *City of Ladue v. Gilleo*, 512 U.S. 43, 50 (1994).

Indeed, given that carriers who highlight the charges must employ terms that prevent them from disclaiming responsibility for the charges, carriers have every incentive to omit the line-item altogether. Faced with a choice between expressly identifying the charges on bills in the government's terms and not raising the issue at all, carriers "might well conclude that, under these circumstances, the safe course is to avoid controversy, thereby reducing the free flow of information and ideas that the First Amendment seeks to promote." *Pacific Electric & Gas Co. v. California*, 475 U.S. 1, 14 (1986) (internal citation and quotation omitted). In this way, the regulations discourage speech about the charges altogether.

In sum, these regulations undoubtedly constitute a limitation on the speech that may appear on line items in bills: legally permissible language is confined to that which appears on the Commission's list. Conversely, these regulations prohibit all line-item speech regarding the charges that does not appear on the list. While the Commission loudly proclaims that carriers are "free" to provide descriptions of the charges in addition to the standardized labels, it is clear that those descriptions will be subject to rejection by the Commission on the basis that they "untruthfully" point the finger of blame for the charges at the federal government. Finally, given that speaking about the charges on line items requires the use of the government's terminology, the scheme deters carriers from speaking in the first place. For the reasons that follow, this approach to the regulation of carriers' speech is in significant tension with the First Amendment.

B.

In this Order, the Commission applies the First Amendment test for limitations on commercial speech first established in *Central Hudson*.13 That test, however, has been further developed and strengthened in subsequent cases. As I read commercial speech doctrine, the regulations are of dubious validity.

1.

"It is well established that '[t]he party seeking to uphold a restriction on commercial speech carries the burden of justifying it.' "*Edenfield v. Fane*, 507 U.S. 761, 770 (1993) (quoting *Bolger v. Youngs Drug Products Corp*., 463 U.S. 60, 71 n. 20 (1983)). Specifically, the government must "*demonstrate* that the harms it recites are *real* and that its restriction will *in fact* alleviate them to a *material* degree." *Edenfield v. Fane*, 507 U.S. 761, 771 (1993) (emphasis added). The Supreme Court has expressly "cautioned that this requirement [is] critical; otherwise, '[government] could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression." *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995) (quoting *Edenfield v. Fane*, 507 U.S. at 771).

Here, there is no proof sufficient to meet the standard set in *Edenfield*. To the contrary, this Order contains nothing more than unsupported assertions of a theoretical link between the Commission's action and its effect on the beliefs and resultant behavior of consumers. Consider the entirety of the Order's reasoning on this point:

> The proposed regulation will ensure that the labels assigned to charges related to federal regulatory action are consistent, understandable, and do not

---

12 In the 1980s, for instance, President Reagan and the Democratic Congress disagreed over whether his tax plan represented a cut in spending, as opponents of the plan thought, or merely a cut in the increase of spending, as he argued. Reasonable people could, and did, disagree about how the plan should be characterized. And yet what if government had restricted parties impacted by the proposal from calling it one thing or the other -- requiring, for instance, that the plan only be referred to in certain documents as "a cut in the increase of spending"? That seems unthinkable, yet all too similar to the instant situation.

13 By applying the three-part test from *Central Hudson*, the Order appears to presume that the speech at issue is not inherently but only potentially misleading. I think it open to challenge whether the speech at issue -- *i.e.*, labels or descriptions such as "FCC-mandated" -- are indeed potentially misleading. *See generally infra* at Section III. By assuming that the relevant speech is *at most* only *potentially* misleading, however, the Order does not deny that it is protected by the First Amendment.

confuse or mislead consumers. In addition, the regulatory scheme will encourage carriers to provide consumers with information that will enable them to understand their telecommunications bills, and prevent carriers from misleading consumers into believing they cannot "shop around" to find carriers that charge less for fees resulting from federal regulatory action.

Supra at para. 61. This paragraph is composed of a string of conclusions -- not a demonstration of real harm or an explanation of the ways in which the regulatory scheme will
actually and materially remedy that harm.14

Specifically, where is the evidence that telephone customers will be perplexed by a description of the charge as an FCC-mandated, or federally-required, fee?15 (I suspect the American consumer would understand this explanation all too well.) In fact, there is no record that any carrier has even *used* such a label. *See id.* at para. 51. What is the basis for the assertion that any confusion resulting from the use of the banned labels would result in consumers' belief that the fee is nonvariable from company to company? Further, what proof is there that any such belief that materialized in the minds of consumers would prevent them from comparing long distance companies on the basis of price? Finally, what proof is there that the agency's hand-picked words will in fact, not just in theory -- and materially -- alleviate the posited harm?

Moreover, the Order does not even attempt to tie these various conclusions back to the "ultimate goal" of the regulation, "ensur[ing] that consumers pay fair and efficient rates." *Id.* at para. 60. Even if one assumed the soundness of each of the foregoing steps in the Commission's chain of logic, there is no explanation of how unfair or inefficient prices for telephone service would result from a consumer propensity not to shop on the basis of universal service charges. Does the Commission intend to suggest that it is "unfair" for consumers to pay rates that include these charges *in toto*, or that such rates would be "inefficient"? The Commission cannot mean that, however, because it expressly permits carriers to pass the charges on in full. *See Federal-State joint Board on Universal Service*, 12 FCC Rcd 8776, 9209 (1997). Also, the prices charged by these long distance carriers have been deregulated and are thus by definition efficient; the Commission itself states that "competition should ensure that [these charges] are recovered in an appropriate manner." *Supra* at para. 54. I cannot discern any connection in this Order between consumers' tendency to price shop on the basis of these charges and the ultimate fairness of rates.

In short, there is no record to support any of the Commission's suppositions regarding the way in which these regulations advance its posited goal of fair and efficient prices. The notion of consumer confusion from putatively misleading labels, and of the harms resulting from any such confusion, is entirely conjectural. The idea that the words selected by the Commission will cure that confusion is unfounded by any empirical reality. Nor is there any nexus between the consumer behavior that the Commission asserts will result from the use of certain labels and the ultimate goal of ensuring fair prices.

As explained above, the "direct advancement" prong "is not satisfied by mere speculation or conjecture." *Edenfield v. Fane*, 507 U.S. at 770; *see also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 506 (1996) (lead opinion) (rejecting State's argument than ban on alcohol price advertising advanced its interest in temperance because State adduced "no findings of fact, or indeed any evidentiary support whatsoever"); *Ibanez v. Florida*, 512 U.S. 136, 146 (1994) ("If the protections afforded commercial speech are to retain their force, we cannot allow rote invocation of the words 'potentially misleading' to supplant the [government's] burden [of proof]"); *Zauderer v. Ohio*, 471 U.S. 626, 648 (1985) (rejecting State's asserted interest in ban on illustrations in advertising by attorneys because "[t]he State's arguments amount to little more than unsupported assertions; nowhere does the State cite any evidence or authority of any kind for its contention")*; Linmark Assoc., Inc. v. Willingboro*, 431 U.S. at 95-96 (holding that record did not support respondents' "fears" that certain behavior would result if speech were permitted and did not confirm the "assumption that proscribing" speech would have the government's presumed effect).

The standardized labeling regulations bear other inadequacies under the "direct advancement" prong of *Central Hudson*. Close examination of the entire scheme reveals that it is structured so as to preclude direct advancement of the Commission's posited goal.

The Commission does not require line items for universal service charges, even for carriers that choose to recover these charges from end-users.

---

14 This same explanation is repeated for purposes of the first prong (the substantiality of the government's interest), and there it is phrased entirely in the conditional. "Line item charges are being labeled in ways that *could* mislead consumers by detracting from their ability to fully understand the charges that are appearing on their monthly bills, thereby reducing their propensity to shop around for the best value." *Supra* at para. 60 (emphasis added). "Consumers who are misled into thinking the charges are federally mandated . . . *could* decide that such shopping would be futile." *Id.* (emphasis added). "Lack of standard labeling *could* make comparison shopping infeasible." *Id.* (emphasis added). The theoretical *possibility* of harm, of course, is not sufficient to justify a restriction on commercial speech, as noted above. The substantiality of the government's asserted interest is thus also quite vulnerable to attack.

15 To the extent the Commission seeks to rely on the number of phone calls received from consumers as proof of "confusion," *see supra* at para. 48 & n.29, that reliance is misplaced. The summary of complaints received does not distinguish between consumers who were confused by unclear charges and those disputing charges. My experience is that these consumers were not "confused" by the charges, nor were they under the misimpression that they could not shop around. Rather, they were angry about the imposition of what they perceived as a new federal tax. Moreover, this evidence does not adequately differentiate complaints about "cramming" and "slamming" from complaints about universal service charges.

Carriers who wish to include the entirety of these charges in their general rates, without breaking them out separately, are free to do so. *See supra* at para. 54 (carriers may decide "whether to include these charges as part of their rates, or to list the charges in separate line items"). Carriers who take this approach, however, would be just as able to "mislead" consumers into deciding not to shop around for providers that absorb more of the cost of the charges; their customers will *never know* that the charges are being passed on to them. Likewise, there would be no way for these customers to contrast the cost of these charges with those imposed by other carriers, since their bills would not specify the amount of the charges *at all*. If the Commission truly means to further uniformity and accuracy with respect to universal service charges so that consumers can compare the charges across bills and shop on that basis, then it makes no sense to permit carriers to conceal the charges in their general rates. This critical aspect of the regulations "directly undermine[s] and counteract[s] [the] effect of" the entire scheme. *Rubin v. Coors Brewing Co.*, 514 U.S. at 489.

Functionally, the lack of a requirement that carriers break out universal service charges in a separate line item allows any carrier that wishes to opt out of the labeling scheme. To qualify for this wholesale exemption, carriers must simply encompass the charges in overall rates. There is no requirement of disclosure regarding the existence or nature of the charges for carriers who elect this course, and there is nothing in the regulations that would prevent all carriers from doing so. As a general matter, broad exceptions that appear unrelated to the government's asserted interest create serious obstacles to an affirmative finding under the "direct advancement" prong. *See, e.g.*, *Rubin v. Coors Brewing Co.*, 514 U.S. at 488 (holding that exceptions to labeling ban on malt beverage alcohol content for other kinds of alcohol rendered scheme irrational); *Valley Broadcasting v. FCC*, 107 F.3d 1328, 1334 (9th Cir. 1997) (holding that exceptions to casino advertising ban for other kinds of gambling undermined purpose of ban). It could easily be argued that this functional exception, which could easily swallow the rule itself, renders the regulatory support for the Commission's purposes "ineffective [and] remote." *Edenfield v. Fane*, 507 U.S. at 769.16

In the specific context of potentially misleading speech, the law also requires that "the record indicate[] that a particular form or method of advertising has in fact been deceptive" before it can be regulated consistent with the First Amendment. *In re R.M.J.*, 455 U.S. 191 (1982) (citing *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)). As explained above, there is no record proof that the use of labels such as "FCC-mandated" or "governmentally-required" has actually caused consumers to be misled into thinking that the amount of universal service fees charged to them was set by law. I am not aware of any instance of such labels actually being used -- and the Order certainly does not point to any -- and thus it hard to see what evidence there could be of actual deception. In contrast to other commercial speech cases, the record before us contains no "substantial and well-demonstrated" practice of misuse of certain titles for the charges. *Friedman v. Rogers*, 440 U.S. 1, 15 (1979).

For these reasons, I do not think that it can be said that the government has carried its burden of showing that these regulations will directly and materially advance the goal of ensuring that consumers will engage in price comparison on the basis of universal service charges among telephone carriers. Accordingly, the regulations appear vulnerable to invalidation by a reviewing court on this ground alone.17

2.

Since *Central Hudson*, the Supreme Court has also expanded upon the fourth prong of commercial speech analysis, the question whether the regulation is more extensive than necessary to serve the asserted interest. In *City of Cincinnati v. Discovery Network, Inc.*, the Court explained that although "[a] regulation need not be 'absolutely the least severe that will achieve the desired end,' . . . if there are numerous and obvious less-burdensome alternatives to the restriction on commercial speech, that is certainly a relevant consideration in determining whether the "fit" between ends and means is reasonable." 507 U.S. 410, 417 n. 13 (1993) (quoting *Board of Trustees v. Fox*, 492 U.S. 469, 480 (1989)).18 Recently, the D.C. Circuit extended the strict evidentiary standard of *Edenfield v. Fane*,

16 "[E]xemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risks of viewpoint and content discrimination: They may diminish the credibility of the government's rationale for restricting speech in the first place." *City of Ladue v. Gilleo*, 512 U.S. at 52. *See infra* n. 7 (discussing weaknesses in substantiality of Commission's posited interest).

17 Respectfully, I submit that the actual purpose of these regulations -- and a theory on which the entire plan hangs together perfectly -- is to discourage consumers from blaming this agency in particular or the federal government generally for this increase in telephone charges. *See generally infra* at Section III. Carriers who insist on breaking out the charges and listing them on a separate line, thereby bringing them to the attention of their customers, may only apply certain, government-approved labels to the charges, which discourages speech about the charges in the first instance. Other carriers, by simply including the charge in general rates, are free not to mention it at all. Either way, public discussion of the charges in bills is kept to a minimum; and, when the charges are discussed, they may not be closely tied to the federal government.

18 Although the Commission relies on *Fox* in its Order, the interpretation of the fourth *Central Hudson* prong in that case was clarified in *City of Cincinnati,*as noted above. Moreover, in the subsequent case of *44 Liquormart, Inc. v. Rhode Island*, which produced no opinion for the Court, two Justices interpreted the fourth prong in an especially restrictive way, and one Justice would have jettisoned it altogether. *See* 517 U.S. 484, 524-25 (1996) (Thomas, J., concurring) (noting that application of fourth prong by Justices Stevens and O'Connor was stricter than traditional application and that, if their approach were adhered to, it would invalidate "restrictions on speech whenever a direct regulation . . . would be an equally effective method" of advancing the government's end).

which dealt with the "direct advancement prong," to this fourth and final prong. *See Pearson v. Shalala*, 164 F.3d 650, 659 n. 9 (1999) ("[W]e see no reason why the government's evidentiary burden at the final step of *Central Hudson* should be any less than at the direct advancement step.").

The standardized labeling regulations are susceptible to constitutional doubt under this last part of *Central Hudson* as well. In arguing that these regulations are narrowly tailored, the Commission asserts: "[W]e only prescribe that these charges be presented using a standardized label." *Supra* at para. at 62. This characterization overlooks entirely the burdens on speech imposed by the regulations. *See generally* Part IV. A. The regulations mandate not just standardization, as the Commission claims, but require carriers to use government-approved adjectives and nouns to characterize the charges in line items. By necessary implication, the regulations outlaw the use on line items of any and all other words, including accurate ones. Additional language that carriers include elsewhere on bills to explain the charges are subject to the Commission's limitation on "misleading" statements. Contrary to the assertion of the Order, the regulations clearly "limit[] specific language that carriers utilize to describe the nature and purpose of the charges." *Id.*[19] In terms of their impact on speech, the regulations are quite broad.

Yet, if ensuring that consumers can compare universal service charges across bills is the goal here, that aim could be fully achieved by a rule requiring standardization and nothing more. For instance, industry could agree to a certain phrase, and the Commission could simply require or encourage uniform usage of that phrase. Indeed, the Commission takes just that sort of non-interventionist approach to speech with respect to charges for services rendered. *See supra* at para. 42 ("Although we decline to formulate standardized descriptions, we encourage carriers to develop uniform terminology. . . We believe industry is better equipped than the Commission to develop . . . standardized descriptions that are compatible with the character limitations for text messages and other operational restrictions. . . .").[20] Given the stated goal of price comparison, there is no ostensible reason -- other than suppression of the point of view that the charge is a federal fee or even tax for which the government should be held accountable -- that the Commission itself would need to select or approve the words that can be used to describe universal service charges. That extra step is simply not necessary to serve the putative goal of uniformity.

To the extent that the Commission is concerned that certain characterizations of the charges (specifically, those suggesting the charges are required by the government) will in fact "mislead" consumers into the decision not to price shop, the regulations are more burdensome than necessary to serve that goal as well. Instead of forbidding all speech except that which appears on its final list, the Commission could have allowed carriers to speak but prohibited misleading statements; that is, the presumption could have been in favor of speech, not against it. Case-by-case adjudication of the "truthfulness" of specific phrases used to describe the charges would be vastly less intrusive than the expansive, prophylactic rules adopted in today. The Commission's selection of a particular label or labels necessarily excludes a vast category of entirely truthful, nonmisleading ways of describing the charges on line items. *See generally Pearson v. Shalala*, 164 F.3d at 655 (explaining that government "may not place an absolute prohibition on ... potentially misleading information ... if the information also may be presented in a way that is not deceptive") (citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)); *see also Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. at 648-649 (holding that State's "unsupported assertions" were insufficient to justify prohibition on attorney advertising and that "broad prophylactic rules may not be so lightly justified if the protections afforded commercial speech are to retain their force").

In addition, the Commission has chosen to suppress speech instead of permitting the carriers to cure whatever confusion might be created by a label such as "federally-imposed" with more detailed disclosures regarding the nature and purpose of the fee. *See supra* at para. 59 (expressly "declin[ing] to specify any periodic notification to consumers providing additional explanation of any charges resulting from federal regulatory action" because "requiring standard labels" was sufficient action). As the D.C. Circuit has ruled, however, "[i]t is clear . . . that when government chooses a policy of suppression over disclosure -- at least where there is no showing that disclosure would not suffice to cure misleadingness -- government disregards a 'far less restrictive' means." *Pearson v. Shalala,* 164 F.3d at 658 Even assuming that it is potentially "misleading" to apply the words "FCC-mandated" to universal service charges on a line item, that would seem remediable by inclusion in the bill of a more complete explanation of the technical details of the charges. And the Commission cannot justify its rejection of disclosure on the grounds that it has already adopted the more restrictive approach; rather, the Commission must explain why requiring such periodic notification would not suffice to cure the alleged problem of misleadingness. Requiring more speech about the nature of the charges, instead of banning even potentially misleading short-hand names for them, is "a far less restrictive means" of combatting consumer "confusion" over the variability of the charges as among carriers.

Moreover, the direct approach of regulating the underlying conduct -- as opposed to the indirect approach of regulating speech about the conduct -- is also presumably available to the Commission. If the Commission believes that the cost of the universal service program should be borne by carriers alone, or that any charges that are passed on should be allocated equitably, then it could (assuming statutory authority) have regulated carriers' recovery of the cost of these charges. *Cf. 44 Liquormart v. Rhode Island*, 517 U.S. at 507 (holding that State failed to "satisfy the requirement that its restriction on speech be no more extensive than necessary" because "higher prices can be maintained . . . by direct regulation"). But the Commission has expressly declined to regulate recovery of the charges, *see supra* at para. 49 ("[W]e decline . . . to limit the manner in which carriers recover these costs of doing business"), choosing instead to suppress speech regarding liability for the charges. Under the First Amendment, that is a highly problematic approach. *See generally 44 Liquormart v. Rhode Island*, 517 U.S. at 512 ("The First Amendment directs that government may not suppress *speech* as easily as it may suppress *conduct*, and that speech restrictions cannot be treated as simply another means that the government may use to achieve its ends") (emphasis added); *see also id.* at 520 (Thomas, J., concurring) (noting emphasis in modern commercial speech caselaw on "the dangers of permitting the government to do covertly what it might not have been able to muster the political support to do openly").

Finally, the Commission could have issued public notices or bulletins to increase public awareness of the nature of the charges. It could have explained

---

[19] For these reasons, the Order's attempt to distinguish *44 Liquormart v. Rhode Island*, *see supra* at para. 63 ("[W]e ban no speech, so carriers remain free to develop their own descriptions of the nature and purpose of these charges, subject only to a labelling requirement"), is unpersuasive.

[20] Notably, the Order fails to explain why the reasons that counsel in favor of non-intervention on specific terminology when it comes to charges for services rendered are suddenly inapposite when it comes to universal services charges.

publicly its view that universal service charges are imposed directly on carriers, that transfer of the costs to consumers is a "business choice" for carriers, and that consumers should use this information in evaluating carriers. *Cf. id.* at 507 (suggesting that public educational campaigns to combat the posited problem are less restrictive alternatives to speech restrictions); *see also id.* (citing *Linmark* for proposition that "State [could] use . . . counter-speech, rather than speech restrictions, to advance its interests"). On this record, there is no reason to think that such a educational campaign would be any less effective in terms of its impact on consumers' tendency to engage in price comparison than the scheme adopted in these regulations.

For the above reasons, the labeling regulations impinge on speech to a greater extent than needed to advance either the goal of uniformity or of deception, much less the "ultimate" goal of efficient and fair prices.

C.

While the regulations are highly questionable under commercial speech doctrine, I would dispute the characterization of the speech at issue as purely commercial. As the Court and individual Justices have repeatedly recognized, the commercial is often intertwined with the political. *See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976) (explaining that unless consumers are informed about the operation of commercial markets, they cannot establish "intelligent opinions as to how that system ought to be regulated or altered")*; 44 Liquormart, Inc. v. Rhode Island*, 517 US at 520 (Thomas J., concurring) (observing that "[i]n case after case. . . the Court . . . [has]. . . stress[ed] . . . the near impossibility of severing 'commercial speech' from speech necessary to democratic decisionmaking"). Although the majority struggles to contain the carriers' speech to the commercial category, I submit that speech about the nature and purpose of universal service charges is intensely political.

The facts of this case involve language on a telephone bill and thus, at first blush, might be considered purely commercial. But if one looks closer, it becomes clear that this speech does far "more than propose a commercial transaction." *Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 385 (1973). Nor does it constitute "expression related solely to the economic interests of the speaker and its audience." *Central Hudson*, 447 U.S. at 561. Rather, the speech at issue -- brief descriptions of the origin and purpose of universal service charges -- attempts to identify to the consumer the cause and intended use of these charges. Accountability for charges that some consider a tax is not just a business matter, but a highly political one. Neither the government nor the telephone industry wants to be viewed by the public as the perpetrator or beneficiary of these new federally-related charges: for carriers it may be bad public relations, but for government officials it is bad politics. Few politicians welcome the opportunity to be associated with a new tax.21

The speech at issue may also involve explicit or implicit criticism of the charges by carriers. It may certainly trigger explicit, even vehement, criticism of the charges and the programs that they support by consumers.22 Surely, discussion about the "true" nature of these charges -- whether on a carrier's bill or editorial page -- constitutes discussion of a public issue. As the Supreme Court has made clear: "There is no question that speech critical of the exercise of the [government's] power lies at the very center of the First Amendment." *Gentile v. Nevada*, 501 U.S. 1030, 1033 (1991).

The nub of these regulations is whether it is "misleading" for carriers to say that universal service charges are "FCC-mandated," "federally-imposed," or even that they are simply recovering charges imposed on them by the FCC. With respect to the breadth of the Commission's prohibition on "misleading" speech, the General Counsel of this agency stated publicly that carriers would be flatly prohibited from describing the charges (even uniformly) as "politician X's tax." *Commission Public Meeting*, April 15, 1999. This strikes me as a stunning limitation, from a First Amendment perspective. Referring to a fee, program, or tax as the creation of a particular government official, agency, or entity -- whether to claim credit or cast blame -- is not merely commercial speech. Such references involve core political expression.

Admittedly, the government can regulate the truth of facts in advertising. But, as suggested above, these regulations do not concern the accuracy of an objective, readily verifiable fact, one of the original justifications for regulation of commercial speech. *See Virginia Pharmacy Bd.*, 425 U.S. at 771 &. n. 24. Rather, these regulations involve politically charged speech, *i.e.* statements indicating who should be held responsible for the imposition of this charge on the American telephone consumer. Government assessment of the "truth" regarding its own responsibility for consumer charges is entirely different than government

21 The history of the underlying program and of carriers' billing policies reveals a deeply political debate, ranging from matters such as the importance of internet access in schools and libraries to the impact of the program on potential presidential candidacies. *See generally infra* Part III (documenting background of program and billing policies); *see also* TIME, *Gore's Costly High Wire Ac*t, at 52, May, 25 1998 ("What once seemed an unassailable idea is now ensnared in presidential politics, the byzantine working of phone deregulation and the design flaws of a funding scheme that camouflages the costs of a huge new federal program by putting it on people's phone bills.").

22 *See, e.g.*, USA Today, Shocked by e-taxes, May 5, 1999 at 26-A: "The expenditure for computers is obscene. I want children to read, comprehend, write legibly with correct spelling and be able to add two and two without a calculator. . . . The wondrous part of all this is that a close look at your phone bill shows a charge on your long-distance calls to pay for this boondoggle. This is due to a tax instigated by Al Gore and the Federal Communications Commission. . . . My phone bill has a whole page of various little charges for nonsense. My base rate is $28 before any long distance calls. Thank you, big government."

assessment of the accuracy of, say, a third party's interest rate quotation.23 The incentives for governmental self-dealing and self-protection in the former case, at the expense of free speech about government activity, are obvious.

For the foregoing reasons, I do not believe that this Order "involv[es] *only* commercial speech." *Central Hudson v. New York*, 447 U.S. at 562 n. 5 (emphasis added). To the contrary, the speech governed by the labeling rules involves questions of governmental accountability for charges used to support federal programs. It thus "extends well beyond speech that proposes a business transaction . . . and includes the kind of discussion of 'matters of public concern' that the First Amendment both fully protects and implicitly encourages." *Pacific Electric & Gas Co. v. California*, 475 U.S. at 8 (citation omitted).

Accordingly, strict scrutiny -- rather than the more lenient scrutiny of *Central Hudson* -- might well apply to these regulations. Under that standard of review, it is doubtful that these regulations would survive judicial review. *See, e.g., Pacific Gas & Electric Co. v. California*, 475 U.S. 1 (holding that State could not require private company to include in its bills messages with which it disagreed); *Consolidated Edison Co. v. New York*, 447 U.S. 530 (holding that State could not forbid private company from including in its bills inserts discussing issues of public policy).

D.

To sum up, I doubt that these regulations could survive either the third or fourth prong of *Central Hudson*. The Commission has not shown that the posited harms of consumer misunderstanding about the mandatory nature of the charges, and the purportedly consequent decision not to price shop, are real; that these harms have any causal connection to the goal of fair prices; and that regulation of the uniformity and truthfulness of descriptions of universal service charges will actually and materially advance that goal. Moreover, the Order's yawning loophole, which affords carriers the ability to opt out of the labelling rules altogether by not mentioning the charges on bills while still recovering the costs in per-minute rates, severely undermines the goal of allowing consumers to compare universal services charges. Worse, it has the effect of encouraging carriers not to speak about the charges in the first place. Finally, numerous and obvious alternatives to these sweeping, preventative speech restrictions exist.

Assuming for the sake of argument that these regulations are permissible under the *Central Hudson* test, I do not think that the speech governed by these rules can be made to fit in the "commercial" box. The regulated messages, which go to public accountability for these charges, are fraught with political significance. It is entirely possible, if not likely, that these regulations enjoy the full constitutional protections afforded speech regarding public issues. If that protection obtains, these regulations are presumptively violative of the First Amendment.24

---

23 The analogy to the Truth in Lending Act, *see supra* at para. 62, does not prove very much. First, the fact that the Act has not been challenged as violative of the First Amendment does not establish its constitutionality. Second, the question whether that statute possesses the required fit between means and ends is one that turns, in part, on the particular characteristics of that legislative plan; the answer to that inquiry may well be different than the answer here. Last, that Act requires disclosure of objective, readily verifiable information, such as the applicable annual percentage rate for credit transactions and the way in which rates are calculated. Requiring disclosure of that kind of information is a far cry from compelling carriers to convey a politically freighted message that is biased against the carriers' views. *Cf. Pacific Gas & Elec. Co. v. California,* 475 U.S. 1, n. 12 (1986).

24 The labeling regulations are troublesome under other strains of First Amendment precedent. First, they could fall as content-based restrictions, even if the speech at issue were found to be purely commercial. *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377 (1992), suggests that content regulation of speech -- even in the context of speech thought to be otherwise unprotected -- can still invoke strict scrutiny. Specifically, if the government restricts speech not for reasons related to the nature of the speech but in order to impose special restrictions on "those speakers who express views on disfavored subjects," strict scrutiny applies *Id.* at 391; *see also id.*. at 388-89 (suggesting that regulation of advertising would fall within the rule of *RAV* in certain circumstances); *44 Liquormart v. Rhode Island*, 515 U.S. at 512 n. 20 (noting that *RAV* held that "although the government had the power to prescribe an entire category of speech, such as obscenity or fighting words, it could not limit the scope of its ban to obscene or fighting words that expressed a point of view with which the government disagrees"). Here, the Commission has chosen to regulate as "misleading" only one subcategory of commercial speech on carriers' bills -- that relating to universal service charges which suggests the charges are federally required -- thus limiting the scope of its ban to those who express a point of view about the nature of the charges with which the Commission disagrees.

These rules also might be thought to impose a prior restraint on the speech of telephone companies. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). Through this on-going rulemaking, companies must collectively "pre-screen" and vet their selection of line item descriptions with this agency, and those selections will ultimately be approved or rejected by the agency. In the D.C. Circuit, the applicability of prior restraint doctrine to

The Supreme Court has explained that "the First Amendment directs us to be skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good." *44 Liquormart v. Rhode Island*, 517 U.S. at 503. We should be even *more* skeptical of the instant regulations: here, the government seeks to keep people in the dark not for their own good, but to protect its own vested interests. Governmental self-insulation from public criticism and accountability, by regulation of the "misleading" nature of private speech that seeks to attach responsibility for certain developments to the government, is antithetical to the values embodied in the First Amendment.

---

commercial speech is an open question, *see Pearson v. Shalala*, 164 F.3d at 660, and it clearly applies to core speech.

In addition, these regulations could be void for overbreadth. *See generally Bigelow v. Virginia*, 421 U.S. 809 (1975). Because the Commission has chosen to restrict speech to the descriptions on its final list, it has by negative implication prohibited an entire class of descriptions that, while not on the approved list, are nonetheless truthful and non-misleading.

Finally, the regulations could be unconstitutionally vague. *See NEA v. Finley,* 118 S.Ct. 2168, 2179 (1998) (" The First and Fifth Amendments protect speakers from arbitrary and discriminatory enforcement of vague standards.") (citing *NAACP v. Button*, 371 U.S. 415, 432-433). The standard for speech prohibited as "misleading" is speech that "state[s] or impl[ies] that the carrier has no choice regarding whether or not such a charge must be included on the bill or the amount of the charge." *Supra* at para. 56. Needless to say, this standard is subjective, undefined, and vague, making it very difficult for regulated entities to know *ex ante* how they can safely describe the charges.