

## FEDERAL COMMUNICATIONS COMMISSION SEEKS COMMENT ON TRUTH-IN-BILLING AND CONSUMER INFORMATION POLICIES

The Federal Communications Commission (FCC) released a Notice of Inquiry (Notice) seeking comment on whether there are ways to protect and empower consumers by developing policies to ensure sufficient access to and disclosure of information by communications providers through billing and other practices. The purpose of the Notice is to refresh the FCC's record on consumer information and truth-in-billing issues in light of developments in the communications marketplace, the passage of time since the FCC has last done so, and in response to recent consumer complaint data that indicate consumers continue to experience confusion relating to their subscription communications services. Comments in response to the Notice are due by October 13, 2009 and reply comments are due by October 28, 2009.

The FCC's existing truth-in-billing rules, which currently only apply to wireline and wireless voice service providers, require that customer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new providers; (2) contain full and non-misleading descriptions of charges; and (3) contain clear and conspicuous disclosure of information needed for the consumer to contest charges or make inquiries related to the bill.<sup>1</sup> While the FCC's existing information disclosure policy has focused on the formatting of consumer bills, which is relevant only after a consumer has selected a service provider, this Notice seeks information available to consumers at all stages of the purchasing process. In addition, the FCC asks whether any existing truth-in-billing rules or rules that may develop out of this proceeding should be applied to providers of broadband Internet access, interconnected Voice over Internet Protocol (VoIP), and video subscription services.

The FCC seeks comment in several key areas with each area consisting of more detailed inquiries. The FCC emphasizes that it is particularly interested in concrete data that is either publicly available or held by private parties. The following is a brief description of each area and a sampling of questions and issues raised in the Notice.

**Brussels**  
+32 (0)2 290 7800

**Denver**  
+1 303.863.1000

**London**  
+44 (0)20 7786 6100

**Los Angeles**  
+1 213.243.4000

**New York**  
+1 212.715.1000

**Northern Virginia**  
+1 703.720.7000

**San Francisco**  
+1 415.356.3000

**Washington, DC**  
+1 202.942.5000

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<sup>1</sup> In addition, the CTIA, an industry trade group representing wireless communications providers, and certain wireless providers have instituted a voluntary "Consumer Code" for wireless service providers whereby signatory carriers agree to take certain steps disclosing rates and terms of service.

## SERVICES ADDRESSED BY THE NOTICE

The FCC's current truth-in-billing rules apply only to wireline and wireless voice service providers. Noting that consumers are increasingly substituting interconnected VoIP for traditional voice telephone service, the FCC asks whether those existing rules and/or any rules that may develop out of this proceeding should be applied to other services, such as broadband Internet access service, interconnected VoIP, and subscription video services. In this vein, the FCC asks how effective the current truth-in-billing rules are in addressing consumer confusion about bills and which specific rules continue to provide important protections or are no longer necessary in the current marketplace.

The FCC also seeks comment on whether certain rules may not be appropriate for some services. For example, Commercial Mobile Radio Service providers currently are exempt from the requirement that carriers separate charges by service provider and identify charges for which non-payment will result in disconnection of basic local service. The FCC asks whether this exemption is still relevant and whether other service providers also should be exempt from such requirements. In addition, the FCC asks, to the extent the rules are extended to other service providers, whether complaints against those carriers should be handled in the same manner as complaints against common carriers. The FCC also asks commenters to address First Amendment issues in their comments.

With regard to services or equipment that fall outside of Title II or other specific statutory grants of authority, the FCC seeks comment on its ancillary authority to impose truth-in-billing and consumer information-related rules. The FCC notes that its jurisdiction to regulate certain consumer equipment and non-Title II services is well established, such as its regulation of broadband Internet access service providers pursuant to its Title I ancillary jurisdiction, and anticipates that it has ancillary jurisdiction to impose consumer protection obligations on certain non-Title II services, such as broadband Internet access and subscription video services.

## IDENTIFYING INFORMATION THAT CONSUMERS NEED

In light of the increasing availability and complexity of telecommunications services choices, the FCC explains that consumers need different kinds of information at all stages of the purchasing process, including (1) selecting a service provider; (2) selecting a service plan; (3) managing use of the service plan; and (4) switching an existing provider or plan. In particular, consumers need information on the availability and quality of network services and equipment, various fees, and disclosure of contractual terms to select a provider; the ability to compare plans across carriers to select a plan; and accurate and transparent bills and contractual disclosures to manage use of the plan. This section raises a series of questions about what kinds of information will be most useful to consumers at each of the stages mentioned above and the current availability of that information.

With regard to choosing a provider, the FCC asks how well consumers understand their contractual commitments and costs for equipment, initiation, and early termination fees; what information helps consumers compare and assess service quality; and whether consumers have the information they need regarding equipment quality. The FCC also seeks comment on what information consumers need when selecting a service plan. For example, the FCC asks whether current advertising and promotional prices are accurate and understandable; whether consumers are receiving adequate point-of-sale disclosures, such as clearly disclosed early termination fees; and which point-of-sale disclosures are most important. It asks whether wireless providers should be required to disclose the cost of any free or discounted handset. In addition, the FCC seeks comment on whether consumers receive adequate information when several services are bundled, such as fees for canceling one of the bundled services.

The FCC also raises a series of questions about the information consumers need to manage the use of service plans they have chosen. This inquiry covers the adequacy of the information consumers currently receive on their bills under

the existing truth-in-billing rules and additional disclosures that may be necessary. The FCC seeks to eliminate confusion in the current marketplace where multiple services are bundled in a single bill and where billing technologies have improved to provide detailed, real-time information to consumers. To this end, the FCC asks whether the existing truth-in-billing rules are working so that consumers can understand their bills, whether there is any recent data describing the extent to which consumers are confused, and whether there are rules that are no longer necessary in the current marketplace or whether additional measures should be adopted. In particular, it asks whether billing practices related to bundling are sufficiently clear. It also asks whether the existing voluntary guidelines have been effective in alleviating consumer confusion. In addition, the FCC seeks information about cramming—placing unauthorized or deceptive charges on consumers’ local telephone bills—and the extent to which cramming remains a problem. The FCC also asks a series of questions regarding the information consumers need and currently obtain for comparing prices and quality of their service plans against alternatives in the marketplace.

### DISPLAY OF CONSUMER INFORMATION

The FCC notes that, in its experience the manner in which providers display information to consumers can impact consumer choices as much as the information itself. As a result, the FCC seeks comment on how providers currently present the types of information discussed above and on best practices for display and formatting of consumer information at all stages, including purchasing and billing. The FCC also asks what it can learn from existing disclosure requirements in other industries, such as nutrition information on food products and the “Schumer Box” regulations that apply to credit cards.

### TECHNOLOGICAL TOOLS

The FCC seeks comment on what technological tools currently are available to consumers or will be in the future to help them compare service options and inform them about ongoing charges. For example, the FCC asks a series of questions about usage controls that allow subscribers to set limits on minutes or time of day and tools that allow providers to display comparisons against other providers.

### RESOLVING DISPUTES

The FCC seeks comment on complaint procedures, such as whether consumers can effectively and efficiently dispute charges on their bills when they call the toll-free number provided on the bill, whether providers track complaints, and what processes are available to dispute a bill or cancel a service.

### CONSUMER EDUCATION

In seeking comment on the general state of consumer awareness about the purchase of communications services, the FCC seeks comment on whether there are additional consumer education initiatives it could undertake to help consumers gain access to information. The FCC asks whether there is additional information that should be included in existing FCC consumer publications or on its website, and what the FCC can do to educate consumers on its informal complaint process.

### DISABILITY ISSUES

With respect to all the issues addressed in the Notice, the FCC seeks comment on any information that is relevant to consumers with disabilities and how the experiences of such consumers might be unique in this proceeding.

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*We hope that you have found this advisory useful. If you have additional questions, please contact your Arnold & Porter attorney or:*

**Stephanie Phillipps**

+1 202.942.5505  
Stephanie.Phillipps@aporter.com

**Maureen Jeffreys**

+1 202.942.6608  
Maureen.Jeffreys@aporter.com

**Stefanie Alfonso-Frank**

+1 202.942.6307  
Stefanie.Alfonso-Frank@aporter.com