



September 2009

Truth-in-Billing: Can Consumers Handle It?

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A decade after the first truth-in-billing rules were adopted, the FCC in late August opened an inquiry to examine whether those rules are working, what more might need to be done to address consumer confusion, and whether, in the age of bundled “triple-play” voice, video and broadband services, cable and Internet service providers should be required to meet truth-in-billing requirements as well as telecommunications providers. But this inquiry is not limited to billing concerns alone – now the Commission is seeking to examine information disclosure and availability at *all* stages of the purchasing process to determine whether consumers get enough useful information to make informed choices about buying and using communications services.

In 1999, the FCC adopted the First Truth-in-Billing Order in an effort to address widespread consumer confusion, as well as to combat slamming and cramming. The 2005 Second Truth-in-Billing Order eliminated earlier exemptions for wireless providers. The rules offer broad principles, rather than detailed mandates, to guide providers in billing practices. Generally, these rules required 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 that appear therein; and (3) contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or to contest charges on the bill.” Noting that it continues to receive thousands of complaints about billing and rates for wireline and wireless services, the FCC, unsurprisingly, wants to know about the effectiveness of these rules and whether more should be done. Additionally, in response to the blurring of the lines – for consumers, at least – between information services, subscription video services, wireless phone services and old-fashioned telephony, the FCC asks whether the reach of the rules should be expanded to these other services.

But the FCC didn’t stop at the monthly bill. Following through on Chairman Genachowski’s promise that his Commission will be focused on competition and consumers, the bulk of the inquiry focuses on whether sufficient information is available

to consumers in useful formats to ensure a well-functioning communications services marketplace. Specifically, the FCC wants to know if it needs to intervene to ensure that information is provided consistently to allow consumers to compare options when they: (1) choose a provider; (2) choose a service plan; (3) manage use of that plan; and (4) decide whether to switch to another provider or plan as their needs change. In these areas, the FCC asks whether “consumer information-related” rules should be imposed, and if so, what they should look like. The inquiry suggests that other areas of information disclosure regulated by the government, such as food product nutrition labeling, credit card bill “Schumer Box” information, and prescription drug inserts, might offer a model for ensuring that consumers have the information necessary to make informed choices in buying and utilizing communications services.

Anticipating the murky legality of such efforts, the FCC also asks commentators to help it out on whether (1) imposing restrictions on speech in non-common carrier billing would pass the *Central Hudson* commercial speech test; and (2) the FCC even has jurisdiction to impose rules on non-Title II providers. The FCC, of course, has its own thoughts about these concerns, noting that it believes truth-in-billing rules, even if expanded, limit regulations to purely factual and uncontroversial commercial speech, which is compatible with the First Amendment under *Central Hudson*. As for the jurisdictional issue, while the basis for truth-in-billing is found in Title II of the Communications Act, the Commission posits that its overarching consumer protection obligations provide a predicate for exercising Title I, or ancillary, jurisdiction over non-Title II services, such as cable and Internet service providers, to ensure just and reasonable practices.

Comments are due October 13; reply comments are due October 28.