

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Empowering Consumers to Avoid Bill Shock)	CG Docket No. 10-207
)	
Consumer Information and Disclosure)	CG Docket No. 09-158

**COMMENTS OF THE CENTER FOR MEDIA JUSTICE, CONSUMER ACTION,
CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION, FREE PRESS,
MEDIA ACCESS PROJECT, NATIONAL CONSUMERS LEAGUE, NATIONAL
HISPANIC MEDIA COALITION AND NEW AMERICA FOUNDATION OPEN
TECHNOLOGY INITIATIVE IN RESPONSE TO NOTICE OF PROPOSED
RULEMAKING**

January 10, 2011

The Center for Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, Free Press, Media Access Project, National Consumers League, National Hispanic Media Coalition and New America Foundation Open Technology Initiative (together, “Commenters”) hereby submit the following comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”) adopted by the Commission in the above-captioned dockets.¹

I. INTRODUCTION

This proceeding goes to the heart of resolving an increasingly widespread consumer issue: shockingly high bills for wireless communications services. As the Commission noted in the *NPRM*, three studies of the problem have shown that unexpectedly high charges affect millions of consumers.² Immediate consumer protections are needed to minimize further harm. Consequently, Commenters applaud the Commission for taking up this issue in an *NPRM* that envisions a baseline of consumer protection from such charges. We urge the Commission to adopt in large part its proposed rules, requiring wireless providers to supply automatic and free alerts when subscribers are in danger of incurring additional charges, whether due to incurring domestic or international roaming charges, exceeding allotments of voice minutes, text messages, or data, or other reasons.

Strong “bill shock” regulations reflect a common-sense approach to protecting consumers in an increasingly complex and frequently confusing wireless marketplace. As Chairman Genachowski noted in a recent speech:

Today technology offers ways to empower consumers with timely, relevant information that they can use to make the market work. Many carriers already offer some of these tools to help consumers. For example, iPad users are automatically signed up for text

¹ *In the Matter of Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 10-180 (rel. Oct. 14, 2010) (“*NPRM*”).

² *See, e.g., FCC Survey Confirms Consumers Experience Mobile Bill Shock And Confusion About Early Termination Fees*, News Release and Survey, 2010 WL 2110749 (rel. May 26, 2010) (“*Bill Shock Survey*”); *see also* GAO Report to Congressional Requesters – FCC Needs to Improve Oversight of Wireless Phone Service (rel. November 2009) (“*GAO Report*”), <http://www.gao.gov/new.items/d1034.pdf>; “5 ways to avoid cell-phone ‘bill shock,’” *Consumer Reports* (rel. Sept. 2010), <http://www.consumerreports.org/cro/magazine-archive/2010/september/money/cell-phone-bills/overview/index.htm>.

*alerts from AT&T when they are about to incur overage charges. These are smart tools to help consumers make smart decisions, but they are the exception, not the rule. They're not yet helping consumers consistently, as evidenced by the tens of millions of bill shock victims.*³

Since the publication of the Commission's initial *Bill Shock Public Notice*,⁴ significant new research has emerged that further supports Commenters' position that sensible Commission rules of the type proposed in the *NPRM* are necessary and appropriate at this time. Specifically, *Consumer Reports* surveyed more than 58,000 wireless subscribers and found that approximately one in five subscribers had received a bill that was significantly higher than they had expected.⁵ Half of those who reported such bills said the bill was at least \$50 higher than expected, and one in five of those who experienced such bill shock reported that the bill was \$100 more than expected.⁶

Commenters support the Chairman's goal of requiring mobile service providers to offer subscribers clear information, in a manner in which those subscribers can best use such information to avoid bill shock. As our comments reflect, Commenters believe that clear rules of the road will enable consumers to manage their wireless services effectively without falling victim to punitive penalty fees that drain their limited budgets for communications services.

In its current state, however, the Commission's proposal does not go far enough to protect consumers fully. Commenters therefore urge the Commission additionally to establish rules requiring that wireless carriers obtain a subscriber's affirmative "opt-in" agreement to such penalty fees before they can be charged. Should a subscriber decline such charges or fail to respond to notifications of potential charges, wireless carriers should be required to discontinue service until such time as the subscriber agrees to the penalty rates or purchases an additional allotment of regularly priced minutes, text messages or data, or until the subscriber's monthly

³ Julius Genachowski, "The FCC's Consumer Empowerment Agenda," Center for American Progress, Washington, DC (Oct. 13, 2010). Online: <http://reboot.fcc.gov/fcc-s-consumer-empowerment-agenda>

⁴ *Comment Sought on Measures Designed to Assist U.S. Consumers to Avoid "Bill Shock,"* CG Docket No. 09-158, Public Notice, 25 FCC Red 4838 (2010) ("*Bill Shock Public Notice*").

⁵ "CR Survey: One in five hit by cellular bill shock," ConsumerReports.org Electronics Blog (Oct. 13, 2010). Online: <http://blogs.consumerreports.org/electronics/2010/10/fcc-consumer-reports-survey-cell-phone-bill-shock-expensive-monthly-wireless-cost-overcharges-fees-overages-cellphone.html>

⁶ "'Bill shock' is common," *Consumer Reports* (Jan. 2011). Online: <http://www.consumerreports.org/cro/magazine-archive/2011/january/electronics/best-cell-plans-and-providers/cell-phone-bills/index.htm>

allotment for the service in question is replenished. In no situation, however, should the subscriber be prevented from using her mobile device to contact emergency services (such as by dialing 9-1-1) or contacting her wireless carrier to restore service.

Should the Commission find that such an automatic shut-off mechanism would not provide the greatest protection and net benefits for consumers, Commenters would support a requirement that wireless service providers make available free of charge customizable usage control mechanisms that would allow subscribers to elect to discontinue service rather than incur penalty fees – a well-disclosed “opt-out” option to avoid paying fees. Ongoing disclosure of the availability of such usage control mechanisms should be made in a clear and conspicuous manner to ensure that users are made aware of the tools available to avoid incurring penalty fees.

Commenters further urge the Commission to apply “bill shock” regulations to prepaid mobile service providers, and also to regional and/or rural providers. Commenters recognize that such mobile service providers may face unique circumstance and that appropriate accommodations with regards to implementation of the Commission’s rules may be necessary. However, Commenters believe suitable accommodations can be made without obviating the purpose and value of applying bill shock rules that will protect customers of all wireless providers.

II. DISCUSSION

Notifications should be provided in “real-time,” at 80 and 100 percent usage thresholds of an allotted service (voice, text, or data) to all lines associated with an account. Commenters believe that notifications work best to help consumers avoid penalty fees when such alerts are provided in a time and context that allows consumers to make an informed decision. Notifications provided free of charge via both text message and e-mail as the standard delivery options. Adequate accommodations for people with disabilities (such as customizable voice alerts for visually impaired customers) also should be required, and the same customization options should be available to all subscribers (so that any subscriber could choose to receive voice alerts rather than text messages, for example). Providers also should tailor disclosures for non-English speaking customers. At the very least, if a provider advertises or markets to

customers in a language other than English, it should be required to offer notifications and alerts in that language.

We also recommend that the Commission encourage an industry best practice of providing additional customizable triggers via wireless carriers' Web interfaces. We do not recommend requiring automatic notifications in addition to the notifications at the 80 and 100 percent thresholds. Too many automatic notifications could run the risk of confusing or inuring consumers and potentially causing them to ignore important alerts.

Carriers should be required to provide alerts to subscribers when their device connects to a domestic or international network the use of which would result in roaming charges at rates higher than standard rates. Many of the examples of extreme bill shock cited in the record arose from international or domestic roaming usage where the subscriber was unaware of the high rates charged for roaming.⁷ Prior notification in real-time that usage of a subscriber's device on these networks will incur roaming charges would make consumers aware of the cost of such use. In addition, we urge the Commission to require that wireless carriers send a second notification when the device has reconnected to a non-roaming network. This would allow consumers to postpone high-cost roaming usage until they have returned to a network whose use would incur standard monetary or volume charges.

Alert messages should list the applicable rates at which further usage of the service in question will be charged. Alerts that do not simultaneously provide cost information would be less effective at preventing unexpected charges than alerts that clearly disclose penalty fees. Giving consumers the information they need to make an informed choice regarding usage that would incur penalty fees is critical to helping them avoid bill shock. Commenters support Commission rules requiring such cost disclosures as part of alert messages. To further empower consumers, Commenters strongly encourage (and ask the Commission to encourage) the development of industry best practices to permit subscribers to purchase additional fixed allotments of voice minutes, text messages, or data at standard rates, rather than paying typically

⁷ See Comments of Consumer Action and the National Consumers League, CG Docket 09-158 (filed July 6, 2010) at 2.

higher overage penalty rates. Ideally, notice of the option to purchase such additional allotments to maintain service should be provided in the alerts, in addition to information regarding overage penalty fee amounts.

Alert notifications should include an opt-in mechanism that requires carriers to cease provision of a particular service unless the subscriber affirmatively agrees to the penalty fees. Subscriber consent to such penalty fees could be obtained via free reply text message or oral consent via a voice prompt. A strong opt-in mechanism would empower consumers to signal their assent to incurring penalty fees. In the absence of a response to the opt-in alerts described above, service should be discontinued when the subscriber reaches the allotment limit for the service (voice, text or data) in question, subject to a few exceptions. First, the service should continue to be usable for emergency communications. Second, subscribers always should be able to contact their service providers in order to restore service by purchasing an additional allotment of voice minutes, text messages, or data, or by purchasing additional usage on the basis of well-disclosed per-use overage fees. Subscribers therefore should be permitted to use their devices following a discontinuation of service for the purpose of contacting their provider in order to opt-in to reconnect service. Naturally, service should also be restored when the voice minutes, text message or data allotment in question is replenished as part of a subsequent billing cycle. The Commission should ensure that service providers are prohibited from charging disconnection or reconnection fees as part of such a process, as these fees would effectively defeat the practical ability of consumers to choose not to pay penalty fees and save money.

Mobile service subscribers should be provided with usage control mechanisms to allow for discontinuance of service before penalty fees are incurred. Should the Commission find that the automatic shut-off mechanism described above would not allow subscribers to derive the greatest benefits from bill-shock prevention notifications, Commenters suggest that mobile service subscribers should at least be required to provide usage control mechanisms that would allow subscribers to affirmatively choose to have their service temporarily discontinued before penalty fees are incurred. Such a mechanism should take multiple forms, including well-disclosed website or account options allowing a subscriber to opt-out of paying overage fees,

options in customer service calls and automatic menus to opt-out of overage fees, and options to respond to alert notifications via e-mail or text message to opt out of paying overage fees by discontinuing service for the remainder of the billing cycle. In such a case, service should be reestablished upon request or when the subscriber's monthly allotment of voice, text or data is replenished as part of a subsequent billing cycle, without incurring any fees for service disconnection or reconnection.

Mobile providers should provide ongoing disclosure of usage management tools in a clear and conspicuous manner. Without clear disclosure of consumer abilities to customize their alerts and other options, such tools will have little practical value. Disclosures of usage management tools should therefore be provided at the point of sale, on a regular basis on consumers' bills (such as via a bill insert) and via a prominent link on the front page of a mobile provider's website. Disclosure materials should not include marketing information and should clearly note applicable costs, if any, for using particular usage management tools – although as noted above, Commenters believe that such usage management tools and alerts generally should be provided to subscribers free of charge.

Prepaid mobile services should not be excluded from the “bill shock” rules. Commenters appreciate the differences between postpaid and prepaid mobile services, but do not accept the proposition that bill shock affects only postpaid subscribers. Therefore, we do not believe that prepaid subscribers should be excluded from the benefits of these consumer protections. We believe that prepaid mobile service providers should provide notice when subscribers have reached 80% of their current allotment of minutes, text, or data. This will enable prepaid mobile service users to more accurately budget their limited resources rather than being surprised by the need for an unexpected purchase to “top up” their available allotments. Moreover, if roaming charges or other higher rates apply to certain uses of a prepaid subscriber's mobile device, any such usage that effectively will deduct minutes, messages, or allotted data usage at a rate higher than the standard rate should trigger an alert.

In addition, several mobile service providers are currently offering mobile broadband plans on a prepaid basis. These plans are generally marketed as providing service up to

suggested tiers (or usage levels). Should the consumer reach these levels, the carrier reserves the right to reduce access speeds.⁸ For customers of such services, notification that they are approaching their data allotment would allow them to adjust usage so as not to have their service speeds throttled.

Subscribers of regional and/or rural mobile providers also should be protected from bill shock and receive the benefits of the Commission’s consumer protection regulations.

Commenters, therefore, do not support an exemption from bill shock regulations for regional and/or rural mobile providers. Commenters recognize that some regional and/or rural mobile service providers may have financial limitations and that some minimal accommodations may be appropriate to reflect these differences. For example, rural/regional providers may require more lenient implementation schedules for bill shock prevention requirements. Minor deviations in implementation schedules, or other appropriate accommodations for such carriers that do not substantially limit consumer benefits from bill shock rules, would pose few or no concerns.

III. CONCLUSION

Commenters strongly support the Commission’s efforts to guarantee greater transparency for wireless service consumers and establish baseline consumer protections from bill shock. We believe that timely usage alerts, roaming notifications, a strong opt-in mechanism, customizable usage controls and ongoing disclosures would do much to address the problem of wireless bill shock. These regulations also should apply to prepaid, regional and rural wireless carriers to enable consumers to better control their communications budgets and avoid unnecessary service disruptions.

Respectfully submitted,

⁸ For example, Cricket Communications, Inc. currently offers three tiers of mobile broadband service at 2.5 GB (“Basic”), 5 GB (“More”) and 7.5 GB (“Premium) levels. Accessed Online December 13, 2010: <http://www.mycricket.com/broadband/plans>.

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