

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

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

February 8, 2011

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

INTRODUCTION

The problem of wireless bill shock is one that affects millions of consumers every year. Consumers rely to an ever-greater degree on wireless service providers for voice, text messaging and mobile broadband access. For many such consumers, a wireless phone is their primary means of communications. Unfortunately, the complex nature of various wireless service providers’ billing arrangements has fostered widespread consumer confusion and frustration with the wireless industry. As discussed by Commenters in our initial comments in this proceeding, as well as by a variety of other state governmental agencies and public interest groups,² action by the Commission to establish a clear baseline for bill shock protections is necessary to empower consumers and to provide relevant and timely information that enables them to better control their wireless usage.

The record in this proceeding clearly demonstrates that wireless bill shock is a significant problem requiring government intervention to establish such baseline protections. Multiple analyses of FCC complaint data as well as national consumer surveys indicate that bill shock affects a broad swath of the nation’s wireless users. Despite this preponderance of data, the

¹ *In the Matter of Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket No. 10-207, CG Docket No. 09-158, Notice of Proposed Rulemaking, FCC 10-180 (rel. Oct. 14, 2010) (“*NPRM*”).

² *See, e.g.*, Comments of AARP, CG-Docket 09-158 (filed January 7, 2011); Comments of National Association of Regulatory Utility Commissioners, CG-Docket 09-158 (filed January 10, 2011); Comments of National Association of State Utility Consumer Advocates, CG-Docket 09-158 (filed January 10, 2011); Comments of New England Conference of Public Utilities Commissioners, CG-Docket 09-158 (filed January 10, 2011); Comments of New Jersey Division of Rate Counsel, CG Docket 09-158 (filed January 10, 2011); Comments of California Public Service Commission *et al*, CG Docket 09-158 (filed January 10, 2011).

wireless industry would have the Commission believe that consumers who fall victim to bill shock are guilty of negligence or even serial over-use of their wireless service plans' limits. Industry comments also cite general consumer satisfaction metrics that do not adequately focus on the topic of this proceeding – namely, unexpectedly high charges on wireless service bills. The research cited by those who oppose Commission action suffers from multiple flaws and cannot rebut the Commission's preliminary conclusion that bill shock rules are necessary.³ For example, the single piece of bill shock-specific research cited by industry fails to account for the expected and continued growth in consumers' use of mobile broadband services, and also fails to consider the impact of the industry's shift from unlimited data plans to tiered data plans that typically result in high overage fees.

Furthermore, clear consumer protections are necessary because existing industry efforts have failed to address these problems. As stated in previous comments, the currently available usage management controls are ineffective at preventing widespread instances of bill shock. Industry claims that the usage control mechanisms they offer are sufficient to address the problem of bill shock are outweighed by the evidence that millions of consumers continue to incur large, unexpected charges on their wireless bills. Usage management tools vary greatly from carrier to carrier and from service to service. This makes it difficult for consumers to comparison shop, thus leading to confusion and, ultimately, more incidents of bill shock. The Commission's proposed rules, modified as suggested in Commenters' initial comments, would give consumers the confidence that baseline bill shock protection exists, yet still would allow carriers to compete and differentiate themselves by offering levels of user protection above and beyond the requirement of the regulations.

Contrary to the arguments of some filers, the Commission's proposed rules – as well as enhanced rules suggested by the Commenters here, such as those requiring an opt-in or opt-out mechanism for consumers – are feasible for all carriers to implement. The technology to implement these enhanced usage control mechanisms is currently offered by multiple, competing vendors. To the extent that carriers view consumer disclosures as a competitive advantage, nothing in the Commission's proposed baseline rules or enhanced rules called for by

³ See, e.g., NPRM ¶ 2.

Commenters would prevent a carrier from going beyond the required disclosure and thereby achieving a competitive advantage.

Additionally, bill shock protections must be implemented by all carriers. As Commenters have previously stated, customers of prepaid and smaller carriers deserve the same level of bill shock protection that customers of the larger national carriers do. There is no reason that such carriers should be excluded from the proposed rules. Commenters would not oppose customized rules for such carriers that reflect their unique positions in the industry as long as their subscribers still benefit from baseline bill shock protections.

DISCUSSION

I. THE RECORD CLEARLY DEMONSTRATES THE NEED FOR EFFECTIVE CONSUMER PROTECTIONS FROM BILL SHOCK, AS CURRENT INDUSTRY EFFORTS ARE FAILING TO RESOLVE WIDESPREAD CONSUMER PROBLEMS.

There is clearly a substantial need for the Commission to address the problem of wireless bill shock. Analyses of FCC complaint data, surveys by the FCC and *Consumer Reports* magazine, a Government Accountability Office study and a multitude of media reports⁴ all support Commenters' view that bill shock is an ongoing, industry-wide, and pervasive problem. The scale of the bill shock problem indicates that existing carrier-provided usage management tools have failed to resolve or sufficiently alleviate the issue. The record in this proceeding clearly demonstrates that these tools vary greatly in availability, usefulness, and affordability. As discussed below, the surveys in the record that attempt to rebut these conclusions specifically – as opposed to those that suffer from an over-reliance on general customer-satisfaction data and that do not even deal directly with bill shock problems -- lack credibility due to 1) their failure

⁴ See, e.g., Zimmermann, Stephanie. "\$27,000 to watch a Bears game?!? Team Fixer, AT&T clear up traveling Internet user's headache of a cell bill," *Chicago Sun-Times*, February 23, 2009; Segal, David. "Cellphone Charges, Rung Up by a Thief," *New York Times*, June 25, 2010; Woolhouse, Megan. "Family, Verizon far apart over nearly \$18,000 phone bill," *Boston Globe*, April 30, 2010; Winter, Michael. "Can you hear me? Calif. teen racks up \$21,900 cell bill," *USA Today*, Dec. 11, 2009; Dawson, Greg. "Sorry, wrong number," *Orlando Sentinel*. Dec 2, 2007.

to account for the changing dynamic of the wireless marketplace (particularly the shift to tiered data plans in an increasingly data-hungry environment) and 2) their flawed assumption that lack of consumer use of usage management tools indicates consumer satisfaction with those existing tools. For all these reasons, action by the Commission is urgently needed to provide clear, baseline protections from bill shock.

To elaborate, the multiple surveys conducted by independent and government sources and cited or submitted in the record of this proceeding clearly demonstrate that wireless bill shock is an ongoing and significant problem for millions of consumers.⁵ To counter these analyses, industry commenters generally rely on consumer satisfaction surveys that do not focus on the bill shock question.⁶ Even where bill shock is the specific focus of their research, industry commenters rely too heavily on the findings of the *Nielsen Study*.⁷ The most pertinent finding in the *Nielsen Study* is that 13.5% of wireless users experienced an overage during the course of one year, versus the FCC *Bill Shock Survey*'s finding that 17.5% had experienced an overage.⁸ Whatever the true measure may be, Commenters maintain that even if the Commission gives greater credibility to the *Nielsen Study*, the number of consumers experiencing overages demands action by the Commission.

Commenters further submit that the *Nielsen Study* fails to account for the impact of the changing market for wireless service. The *Nielsen Study* finds that “11.6% or 13.3 million wireless consumers go into data overage once or twice per year,” and that “the typical data overage (median) of consumers that go only once or twice into overage is \$2 and \$3.85

⁵ 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*”); “5 ways to avoid cell-phone ‘bill shock,’” *Consumer Reports* (rel. Sept. 2010); “CR Survey: One in five hit by cellular bill shock,” *ConsumerReports.org Electronics Blog* (Oct. 13, 2010). Available at: <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 See, e.g., Verizon Wireless comments at 13-15.

⁷ The Nielsen Company. “Nielsen Customer Value Metrics: A closer look at overages” (rel. December 17, 2010) (“*Nielsen Study*”).

⁸ See generally: AT&T comments at 26, n. 50.

respectively.” The *Nielsen Study* also states “only the 95% percentile (less than 700,000 customers) are incurring overages that might come close to or exceed twice their average total monthly bill.”⁹ What these statistics fail to account for is the exploding adoption of wireless data plans. Industry analyst eMarketer estimates that by 2013, close to 40 percent of Americans will use mobile data.¹⁰ Between 2009 and 2010 the percentage of cell phone owners reporting use of their phones to access the Internet increased by 13%, according to the Pew Internet & American Life Project.¹¹ At the same time that the number of consumers using mobile data is increasing, mobile data subscribers are increasingly using their smartphones and other mobile broadband-enabled devices for bandwidth-intensive applications. By 2016, it is estimated that average monthly smartphone data consumption per subscriber will reach 6.7 gigabytes.¹²

Many wireless carriers have reacted to increased mobile data penetration and greater data usage by adopting tiered data plans, which typically include expensive overage charges for usage beyond a given data allotment.¹³ The trend of more consumers using ever more data-intensive applications combined with wireless carriers’ trend towards tiered-data plans makes it extremely likely that the numbers of consumers experiencing data overages will increase significantly in the coming years. The *Nielsen Study* does not account for this market evolution, which decreases its usefulness in the context of the Commission’s proposed bill shock rules.

Industry commenters argue that where consumers experience bill shock, existing usage management tools are sufficient to address the issue. The record in this proceeding demonstrates that such usage management tools are inconsistently made available across a range of wireless providers and service types.¹⁴ Commenters do not argue that carriers should not be allowed to

⁹ See *Nielsen Study* at 10.

¹⁰ Butcher, Dan. “AT&T decision to end unlimited data plans threatens mobile content consumption,” *Mobile Marketer*, June 3, 2010.

¹¹ Smith, Aaron. *Mobile Access 2010*. (rel. July 7, 2010) Pew Internet & American Life Project.

¹² Rysavy Research. *Mobile Broadband Capacity Constraints And the Need for Optimization*. (rel. February 16, 2010) at 13.

¹³ Cheng, Roger. “Verizon to Change Mobile-Data Plans,” *Wall Street Journal*, September 24, 2010.

¹⁴ See Comments of New America Foundation *et al*, CG Docket 09-158 (filed July 6, 2010) at 3; Reply Comments of Consumer Action and the National Consumers League, CG Docket-09-158 (filed July 16, 2010) at 4.

compete to provide to most robust and user-friendly usage management tools possible. At a minimum, however, consumers should be able to expect the same basic level of protection from unexpectedly high bills regardless of which carrier they choose.

Unfortunately, the *status quo* for consumers is that the usage control mechanisms offered by wireless carriers vary greatly in usefulness, affordability, and availability. As stated by Commenters previously in this proceeding,¹⁵ industry overage notification practices vary greatly from carrier to carrier and from service to service. This makes it extremely difficult for consumers to accurately compare usage management controls between carriers, and even makes it less likely that current subscribers will take advantage of those controls.

In terms of data beyond the *Nielsen Study* from those opposing new rules here, the American Consumer Institute argues that any failure by consumers to use existing usage management tools is likely attributable to consumer choice.¹⁶ Specifically, the *ACI Study* argues that “only about 1 in 4 checked their usage with any regularity, despite most consumers knowing that these tools were available for their use by their provider.”¹⁷ The *ACI Study* further argues that “[w]hile consumers should know that these tools are available to them, they (and only they) should decide what information is needed to make better market decisions.”¹⁸

Commenters reject the logic of this line of reasoning. Consumer use or non-use of the inadequate tools currently available to them is irrelevant to this proceeding. Indeed, commenters note that 77% of consumers in the *ACI Study* who either never or rarely use existing management tools to check usage indicated that they likely do not find existing usage management tools useful. Furthermore, tools that permit a user to check her balance of minutes or data obviously are of a different character than simple but automatic warnings that an overage is about to occur, as that user gets close to her monthly limits. That the present usage management tools are

¹⁵ See Comments of New American Foundation *et al*, CG Docket No. 09-158 (Filed July 6, 2010) at 3; Reply Comments of Consumer Action and the National Consumers League, CG-Docket 09-158 (filed July 19, 2010) at 4.

¹⁶ See *generally* Reply comments of the American Consumer Institute, CG-Docket 09-158 (filed February 3, 2011) (“*ACI Study*”) at 5.

¹⁷ *Ibid.* at 6.

¹⁸ *Ibid.* at 6.

insufficient to limit bill shock should be self-evident. In place of this ineffective *status quo*, commenters argue that the common-sense alert notifications proposed in the *NPRM* combined with a simple opt-in/opt-out mechanism called for in our initial comments¹⁹ would be tremendously useful for limiting the frequency and severity of bill shock.

Consumer confusion and the bill shock that too frequently results both would be lessened by the implementation of the clear disclosure rules proposed in the *NPRM*. Protected by baseline bill shock preventions, consumers still would be free to compare wireless carriers on the merits of usage controls that go beyond the minimum established by the proposed rules.

II. COMPLIANCE WITH PROPOSED BILL SHOCK PROTECTIONS IS FEASIBLE AND MUTUALLY BENEFICIAL FOR INDUSTRY AND USERS.

Industry comments in opposition to the Commission's proposed bill shock rules generally argue that any benefits of the new rules would be outweighed by the burdensome implementation costs, that the rules would limit competition and innovation in the industry, and that prepaid and rural and regional carriers should be exempted from any final rules. In response, commenters submit that the technology to implement these protections is currently available from multiple vendors who are prepared to compete vigorously to provide solutions that are mutually beneficial to the industry and consumers alike. Second, commenters argue that the rules proposed simply provide a baseline for consumer protection. They in no way limit carriers from competing to provide superior customer service above and beyond the minimum bill shock protection standard to be established by the Commission. Finally, commenters submit that consumers are entitled to benefit from the proposed protections, regardless of the type of wireless carrier they use. In any case, commenters have previously suggested that we would not oppose implementation accommodations that reflect the different economies of scale that prepaid and rural and regional carriers face, as compared to the larger national carriers.

¹⁹ See Comments of Center for Media Justice *et al* at 5.

Industry commenters argue that the costs to the industry of complying with the Commission's proposed bill shock regulations would outweigh the benefits of such rules.²⁰ Conversely, public interest commenters argue that the proposed rules would provide clarity for consumers unsure of the limits of their services, enable users to manage their wireless services more effectively and avoid punitive penalty fees, and encourage consumers to embrace the benefits of wireless telecommunications.²¹

Existing technological solutions to enable carrier compliance with the Commission's proposed bill shock rules are today readily available from multiple competing vendors. Indeed, should the Commission find that rules requiring "real-time" notifications are warranted, there is ample evidence in the record supporting the feasibility of carrier compliance.²²

There is also ample opportunity for wireless carriers themselves to benefit from the bill shock regulations proposed by the Commission. As discussed by several stakeholders in this debate, regulatory pressure in the form of bill shock rules provides an opportunity for differentiation among mobile service providers. As described by Bridgewater Systems:

"While regulatory pressure forces mobile operators to implement bill shock prevention measures, there is also compelling evidence to suggest that operators can turn the fight against bill shock to their advantage. New regulations are an opportunity for differentiation, with operators providing consumers with powerful and transparent tools to manage their mobile data services. Transparency above and beyond the level required to achieve compliance builds the trust and confidence to make full use of mobile data services, which is essential to growth.

²⁰ See e.g., Comments of AT&T at 43; Comments of CTIA at 31; Comments of Sprint-Nextel at 15; Comments of T-Mobile USA, Inc. CG-Docket 09-158 (filed January 10, 2011) at 16; Comments of Verizon Wireless at 45.

²¹ See e.g., Comments of AARP at 4; Comments of the California Public Utilities Commission *et al* at 3; Comments of the Center for Media Justice *et al* at 2; Comments of the National Association of State Utility Consumer Advocates at 4; Comments of the New Jersey Division of Rate Counsel at 5.

²² See e.g., Comments of Sandvine Incorporated, CG-Docket 10-207 and CG-Docket 09-158 (filed December 21, 2010) at ¶¶ 7, 14.

Transparent control over usage also appeals to enterprise customers, enabling organizations to set data usage limits that apply to their employees, with a view to implementing corporate policies that improve productivity and manage costs. In addition, parents want control and transparency over their children’s mobile data usage. this includes setting caps for minors as part of a service plan that allows different caps for different family members.”²³

This view is echoed by billing and charging software solutions provider Redknee, Inc.:

“While this regulatory action primarily focuses on preventing bill shock, the tools that are required to fulfill the mandates also enable CSPs to lift their game by launching new business models, interacting with their customers in real-time and providing a greater level of transparency and control to their customers.

Leveraging real-time data charging and policy solutions that support anti-bill shock measures will also enable service providers to launch flexible pricing plans, identify and respond to up-sell and cross opportunities and provide the ability to incentivize customers to top up or change to a better pricing plan. For customers, they are empowered with greater transparency in the rates and charges they will incur and have the control to set preferences to their account details.”²⁴

As evidenced by these comments, the Commission’s proposed bill shock rules would lead to greater spending control, generating greater consumer trust in their wireless service and subsequently higher usage and service uptake. Consumers who have more control over their

²³ Bridgewater Systems. *Preventing Mobile Bill Shock*. White Paper. Available at: http://www.bridgewater.com/Assets/Downloads/Whitepapers/Preventing_Mobile_Bill_Shock.pdf

²⁴ Redknee, Inc. “New Anti-Bill Shock Moves by FCC Will Deliver Better Customer Experience.” Press Release. October 14, 2010. Available at: http://www.redknee.com/news_events/news_releases/news10141001.aspx

wireless spending may be more likely to purchase higher-cost voice, text, or data plans, particularly if they frequently receive the warning notifications proposed in the *NPRM*.²⁵

Bill shock rules that enable greater consumer control over their wireless usage also may benefit carriers by reducing the number of complaints they receive about unusually high bills. Thanks to a robust alert and opt-out system such as that proposed in the *NPRM*, consumers will have effective control over their spending at the most relevant time – when they are in danger of, but before actually incurring, high overage or roaming fees.²⁶ Such control may reduce carriers’ costs from customers contacting their carriers’ customer service departments to complain about unexpected overages.

The Commission’s proposed rules would create common-sense, baseline protections from unexpected charges on consumers’ wireless bills. Nonetheless, industry commenters argue that the proposed rules are unnecessary because they would dilute the incentives for wireless carriers to compete to provide the highest levels of customer service.²⁷ Commenters submit that the proposed rules would not prohibit wireless carriers from providing their subscribers with customer service benefits beyond the baseline consumer protections envisioned in the *NPRM*. Indeed, the proposed rules could potentially enhance competition in the market by ensuring that consumers are proactively made aware of the potential for high overage fees and given the opportunity to moderate usage or upgrade to a more suitable plan.

Public interest commenters generally agree that customers of prepaid wireless carriers should not be exempted from the benefits of the Commission’s proposed rules.²⁸ Conversely, wireless carriers argue that any bill shock rules the Commission adopts should exempt prepaid wireless plans since users of these services purchase their allotted quantity of services in advance

²⁵ Olsson, Veronika. “‘Bill Shock’ – Regulations, New Opportunities,” Ericsson Newsfeed blog. January 27, 2011. Available at:

<http://www.ericsson.com/campaign/opportunitysupportsystems/newsfeed/posts/10/>

²⁶ For support of this view *see generally* Monzo, Michael. “Reader Forum: Beyond bill shock: The world after FCC regs,” *RCR Wireless News*. January 21, 2011.

²⁷ *See* Comments of AT&T at 8; Comments of CTIA at 6; Comments of Sprint Nextel at 3; Comments of Verizon Wireless at 15.

²⁸ *See e.g.*, Comments of AARP at 4; Comments of Center for Media Justice *et al* at 3; Comments of New Jersey Division of Rate Counsel at 15;

and are thus unable to incur overages.²⁹ As discussed previously in our initial comments in this proceeding, Commenters believe that customers of prepaid wireless providers would benefit from the proposed bill shock rules.³⁰ Alert notifications when subscribers reach 80% of their allotted service thresholds would prevent subscribers from being surprised by an unexpected need to “top up” their available allotments. In addition, because many prepaid mobile service providers may throttle access speeds when a certain data allotment is reached, it is important for consumers to be made aware that they are nearing their limits. Thanks to alerts of the type proposed in the *NPRM*, such users could then moderate their data usage to avoid service degradation. In addition, the Commission’s proposed roaming alert notification rules would give consumers the information they need to avoid depleting minutes at higher-than-expected rates.

Several rural and/or regional wireless carriers also objected to the proposed rules over the disproportionate cost of compliance *vis-à-vis* larger national wireless carriers, who enjoy larger economies of scale.³¹ Commenters submit that wireless consumers would benefit from and should be afforded the protections of the proposed bill shock rules regardless of the size of their wireless provider. Indeed, as discussed previously, there exists a wide variety of competing vendors capable of implementing technological solutions to enable compliance with the Commission’s proposed rules. Nonetheless, Commenters have previously stated that any bill shock rules adopted by the Commission that account for such carriers’ resource limitations pose few or no concerns so long as subscribers to such carriers do eventually benefit from the proposed rules.³²

²⁹ *See generally*: Comments of AT&T at 62; Comments of Cricket Communications, Inc. CG-Docket 09-158 (Filed January 10, 2011) at 21; Comments of MetroPCS Communications, Inc. CG-Docket 09-158 (filed January 10, 2011) at 15; Comments of Nexus Communications, Inc. CG-Docket 09-158 (filed January 10, 2011) at 2; Comments of T-Mobile at 26; Comments of Tracfone Wireless, Inc. CG Docket 09-158 (filed January 10, 2011) at 4.

³⁰ *See generally*: Comments of *Center for Media Justice et al* at 6.

³¹ *See generally*: Comments of Alaska Communications Systems, CG-Docket 09-158 (filed December 27, 2010) at 2; Comments of Blooston Rural Wireless Carriers, CG-Docket 09-158 (filed January 10, 2011) at 2; Comments of National Telecommunications Cooperative Association, CG-Docket 09-158 (filed January 10, 2011) at 3; Comments of Rural Cellular Association, CG-Docket 09-158 (filed January 10, 2011) at 6; Comments of Rural Telecommunications Group Inc. (filed January 10, 2011) at 41.

³² *See generally*: Comments of *Center for Media Justice et al* at 7.

CONCLUSION

The proposed rules would create common-sense consumer protections from bill shock. As evidenced by supportive comments of state government agencies and public interest groups representing millions of consumers, as well as by numerous studies and analyses of the Commission and others, government intervention is strongly warranted. As Commenters demonstrated in our initial comments, enhanced rules including opt-in or opt-out protections would better protect consumers. The rules proposed in the *NPRM* would create tangible benefits, and have already received substantial support, and the Commission should move to adopt them while improving them along the lines suggested in our initial comments. Implementing effective consumer protections is technologically feasible and creates an opportunity to improve the market for both carriers and consumers. Additionally, consumers should not be excluded from the benefits of bill shock protections simply because they subscribe to prepaid wireless services or are customers of rural and regional carriers.

Respectfully submitted,

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