

**Before the  
Federal Communications Commission  
Washington, D.C. 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

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: October 14, 2010**

**Released: October 14, 2010**

**Comment Date: (30 days after date of publication in the Federal Register).**

**Reply Comment Date: (60 days after date of publication in the Federal Register).**

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker  
issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking, we propose rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills.<sup>1</sup> The Commission's data, including both complaint and survey results, indicates that many mobile consumers experience sudden, unexpected increases in their monthly bills that are not caused by intentional changes in their service plans.<sup>2</sup> The Commission's recent survey confirms that as many as 30 million Americans have experienced such unexpected increases in their wireless bills, commonly referred to as "bill shock."<sup>3</sup> Bill shock can result from a number of causes such as an unexpected increase that comes from high roaming fees or exceeding a monthly allotment of voice minutes, texts, or data consumption. This type of bill shock can be prevented by timely and easily accessible usage information.<sup>4</sup> As mobile service is the fastest growing segment of the communications market, with more and more consumers taking advantage of the convenience and capabilities of mobile

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<sup>1</sup> As discussed below, we seek comment on the scope of mobile service providers that may be covered by the proposed requirements discussed herein. *See infra* Sec. IV.

<sup>2</sup> *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*).

<sup>3</sup> *See Bill Shock Survey*. As discussed further below, many state and consumer groups confirm that bill shock remains a significant problem for consumers. *See, e.g.* Consumer Action Bill Shock Comments at 3-4; Consumers Union Bill Shock Comments at 4-6; Mass. AG Bill Shock Comments at 6-8; Montgomery County Bill Shock Comments at 1; NASUCA Reply Bill Shock Comments at 2-3.

<sup>4</sup> We note that unexpected charges can also occur for reasons that extend beyond a lack of timely and easily accessible usage information, such as confusion about the underlying terms and conditions of the service plan. Such forms of bill shock are beyond the scope of this proceeding. As noted below, the Commission intends to address these broader disclosure issues at a later date. *See infra* note 6.

services, these unexpected charges result in significant expenditures of time, effort, and money for many American consumers each year.<sup>5</sup>

2. The record developed in response to the *Consumer Information NOI*<sup>6</sup> and *Bill Shock PN*<sup>7</sup> and *Bill Shock Survey* persuades us that consumers face significant challenges in monitoring mobile usage and protecting themselves from substantial roaming charges or overage charges for exceeding their monthly allotments of voice minutes, text and data. In addition, we have found that usage alerts offered by mobile providers vary widely between service providers and by type of service covered. For example, AT&T offers no alerts for voice usage and provides alerts only after text overages are incurred.<sup>8</sup> Data usage alerts are provided by AT&T before or after overages depending upon the service plan.<sup>9</sup> As another example, Sprint will send text or email alerts to certain subscribers on data plans before they reach their data limits, but will call subscribers by phone only after they “significantly” exceed their voice or text allotments<sup>10</sup> Verizon Wireless provides alerts if a consumer is trending or has exceeded an allotment on or about the 20<sup>th</sup> day of a billing cycle.<sup>11</sup> Other service providers have similar inconsistencies.<sup>12</sup> Thus, providers are not consistent in the kinds of alerts they offer, or in the types of overages that are covered by these alerts.<sup>13</sup> While several mobile providers offer voluntary tools for consumers to set limits on their usage, consumers are often unaware of how to access these tools, or even that such tools are available.<sup>14</sup> As a result, the protections against bill shock that are currently afforded by providers have proven

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<sup>5</sup> As of December 2008, the Commission estimated that there were 277 million mobile wireless subscribers in the United States. See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407 (2010) (*14<sup>th</sup> Annual Wireless Report*).

<sup>6</sup> See *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158; CC Docket No. 98-870; WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380 (2009) (*Consumer Information NOI*). We note that the *Consumer Information NOI* sought comment on a multitude of broader disclosure issues including whether such requirements should apply to other services such as broadband Internet access service and subscription video services. The Commission will address these disclosure issues at a later date.

<sup>7</sup> *Comment Sought on Measures Designed to Assist U.S. Consumers to Avoid “Bill Shock,”* CG Docket No. 09-158, Public Notice, 25 FCC Rcd 4838 (2010) (*Bill Shock PN*).

<sup>8</sup> See AT&T Bill Shock Comments at 4-8.

<sup>9</sup> See AT&T Bill Shock Comments at 7.

<sup>10</sup> See Sprint Bill Shock Comments at 5-6.

<sup>11</sup> See Verizon Wireless Bill Shock Comments at 3.

<sup>12</sup> See, e.g., CTIA Bill Shock Comments at 6-7; Consumer Action Bill Shock Reply Comments at Att. A.

<sup>13</sup> See, e.g., Consumer Action Bill Shock Reply Comments at Att. A; CTIA Bill Shock Comments at 6-7. See also Letter from Grant B. Spellmeyer, U.S. Cellular, to Marlene Dortch, FCC dated Sept. 30, 2010 (announcing a new service that prevents voice overage charges from exceeding \$50 for a National Single Line Belief Plan or \$150 for a Family Belief Plan. U.S. Cellular also has Overage Protection, which sends customers a text message when they reach 75 percent of their allotted minutes or text messages, and again at 100 percent).

<sup>14</sup> See *infra* note 87.

insufficient for many consumers. That conclusion is evidenced by the record compiled in this proceeding and the Commission's own complaint data which indicate that large numbers of mobile consumers continue to experience bill shock each month.<sup>15</sup> We note, for example, that approximately 10 percent of all wireless billing rate complaints filed at the Commission relate to voice, text, or data overages, along with overages due to roaming. In addition, the U.S. Government Accountability Office (GAO) found that 34 percent of wireless subscribers had experienced unexpected charges on their wireless bills.<sup>16</sup>

3. The costs to consumers resulting from these unexpected charges can be significant. For example, two-thirds of bill shock complaints received by the Commission in the first half of 2010 were for amounts of \$100 or greater, and a few bill shock complaints even exceeded \$10,000 in disputed charges.<sup>17</sup>

4. Consumers are entitled to baseline information that allows them to control the costs they incur for mobile services.<sup>18</sup> Bill shock often results from the challenges faced by consumers in monitoring ongoing usage, the substantial charges incurred for exceeding monthly allotment limits, and a general lack of awareness of the technological tools that allow consumers to control usage.<sup>19</sup> Therefore, we propose requirements that will provide consumers with timely information about their usage, such as voice or text alerts when a subscriber is approaching or begins incurring overage or roaming charges, and clear disclosure of the available tools subscribers can use to limit usage and review their usage history.

5. By undertaking these measures, we hope to empower consumers to avoid incurring unexpected costly charges. We believe our proposals will allow consumers to understand the costs associated with use of their mobile service plans and take advantage of safeguards against bill shock by providing them

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<sup>15</sup> Commission staff has conducted numerous *ex parte* meetings with industry and consumer groups to gain a better understanding of the causes of and current protection against bill shock. *See, e.g.*, Letter from Sarah F. Leibman, T-Mobile, to Marlene H. Dortch, FCC dated June 3, 2010; Letter from Charles W. McKee, Sprint Nextel, to Marlene H. Dortch, FCC dated July 8, 2010; Letter from Kathleen Grillo, Verizon Wireless, to Marlene H. Dortch, FCC dated June 23, 2010; Letter from Matthew F. Wood, Media Access Project to Marlene Dortch, FCC, dated Aug. 20, 2010.

<sup>16</sup> *See* GAO Report to Congressional Requesters – FCC Needs to Improve Oversight of Wireless Phone Service at 11 (2009) (GAO Report): <http://www.gao.gov/new.items/d1034.pdf>. As discussed, unexpected charges may result in some cases for reasons other than lack of adequate usage information. GAO does not distinguish between the underlying causes of the unexpected charges reported in their findings.

<sup>17</sup> Consumer and Governmental Affairs Bureau, Federal Communications Commission, *White Paper on Bill Shock*, at 3 (Oct. 13, 2010). *See also supra* note 3.

<sup>18</sup> *See, e.g.*, Oren Bar-Gill & Rebecca Stone, *Mobile Misperceptions*, 23 Harv. J.L. & Tech. 49, 116 (2009). “The challenge of keeping track of cumulative use has increased with the invention of multiple-limits plans. To help consumers avoid this, carriers could be required to notify their subscribers when they are about to exceed the plan limit.”

<sup>19</sup> Most postpaid mobile plans price their service offerings using a three part structure: 1) a monthly charge; 2) a fixed amount of monthly allotted usage for which the subscriber incurs no additional charge; and 3) an overage charge for any usage that exceeds the monthly allotment limit. *Id.* at 73. In most cases, charges for overage use will substantially exceed that for regular plan use. For example, Consumer Reports indicates that overage fees for exceeding the monthly allotment of voice minutes are charged “at least four times the regular per-minute plan rate.” *See* <http://www.consumerreports.org/cro/magazine-archive/2010/september/money/cell-phone-bills/overview/index.htm>.

with timely information to better manage those costs and thereby avoid incurring unexpected charges on their bills.

## II. BACKGROUND

### A. Consumer Information NOI

6. On August 27, 2009, the Commission adopted the Consumer Information and Disclosure Notice of Inquiry to explore ways to protect and empower consumers in determining their best choices among the array of options available to them in the rapidly-evolving marketplace for communications services and plans.<sup>20</sup> In relevant part, the *Consumer Information NOI* sought comment on potential opportunities for protecting and empowering American consumers by ensuring access to relevant information about communications services.<sup>21</sup> Among other things, the Commission noted that advances in technology, including usage alerts delivered via text message, other usage controls, and online comparison tools, offer “new opportunities to improve the kind and degree of information available to consumers.”<sup>22</sup> On the issue of usage alerts, the Commission asked whether consumers can be provided with “more useful information about their service usage once they are using a plan to prevent them from incurring unexpected charges, or to adjust their plan as their usage patterns change.”<sup>23</sup> The Commission also sought information concerning how widespread the practice of usage alerts is and, where such controls are used, and whether the consumer is alerted prior to incurring additional charges, or only after the consumer has exceeded some threshold level of charges or minutes.<sup>24</sup>

7. In response to the *Consumer Information NOI*, comments were filed by a broad range of companies, state and consumer groups, and individual consumers. In relevant part, industry commenters generally contend that the marketplace is competitive, creating incentives for providers to make available consumer information and usage tools without regulatory mandates.<sup>25</sup> In contrast, state and consumer representatives argue that consumers are not receiving adequate information to make informed decisions.<sup>26</sup> Rather, they contend that most consumers are overpaying for service or paying for services they don’t want or need because they lack clear and readily available information to help them manage the costs of their mobile service plans.<sup>27</sup> Further, organizations representing consumers with disabilities

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<sup>20</sup> See generally *Consumer Information NOI*.

<sup>21</sup> *Consumer Information NOI*, 24 FCC Rcd at 11382, para. 3.

<sup>22</sup> *Id.* at 11381, para. 3.

<sup>23</sup> *Id.* at 11394, para. 44.

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., AT&T NOI Comments at 5; CTIA NOI Comments at 2; Sprint NOI Comments at 9; Verizon NOI Comments at 6; T-Mobile NOI Reply Comments at 1.

<sup>26</sup> See, e.g., David Austin NOI Comment at 3-5; Cal. PUC NOI Comments at 5-6; Consumer Federation NOI Comments at 7; DC PSC NOI Comments at 6; Senator Franken NOI Comments at 1; 25 State AGs NOI Comments at 7-8.

<sup>27</sup> See, e.g., BillShrink.com NOI Comments at 4 (80 percent of Americans are overpaying for wireless service); CUB NOI Comments at 2 (average Illinois consumer is overpaying on local, long-distance and wireless bills by more than \$500 per year). See also *Mobile Misperceptions*, 23 Harv. J.L. & Tech. at 52 (noting that wireless consumers frequently both overestimate and underestimate their actual usage needs by substantial amounts). The

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strongly urge that information not only be clear and conspicuous but also be accessible to and usable by consumers with disabilities.<sup>28</sup>

### **B. Government Accountability Office (GAO) - Report on Wireless Service**

8. On November 10, 2009, GAO released a report to Congress that addressed consumer satisfaction and problems with wireless phone service.<sup>29</sup> The report also discussed the FCC's and state utility commissions' efforts to oversee that service.<sup>30</sup> GAO cited billing, terms of the service contract, carriers' explanation of their service at point of sale, call quality, and customer service as key aspects of wireless phone service.<sup>31</sup> Based on a GAO survey of adult wireless phone users, an estimated 84 percent of users indicated that they are "very or somewhat satisfied."<sup>32</sup> However, approximately 10 percent indicated they are "very or somewhat dissatisfied" with their wireless phone service.<sup>33</sup> In particular, GAO identified specific areas of concern that included bills that contain unexpected charges.<sup>34</sup> GAO estimates that 34 percent of wireless phone users received unexpected charges on their bills.<sup>35</sup>

### **C. Bill Shock Public Notice and Survey**

9. On May 11, 2010, the Consumer & Governmental Affairs Bureau released a Public Notice seeking to gather additional information on the feasibility of instituting usage alerts and cut-off mechanisms similar to those required under the European Union (EU) regulations. These tools would provide wireless voice, text, and data consumers in the United States a way to monitor, on a real-time basis, their usage of a wireless communications service, as well as the various charges they may incur in connection with such usage (*e.g.*, charges for roaming services, and overage charges for voice, text, or data plans).<sup>36</sup> Specifically, the Commission sought comment on whether technological or other

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authors' data showed that two percent of subscribers used their minute allowances exactly. Seventeen percent of subscribers exceeded their minute allowances, while 81 percent of subscribers used less than their minute allowances. Moreover, subscribers generally exceeded or underutilized their minute allowances by substantial amounts. Those who exceeded their minute allowances did so by an average of 33 percent. Those who did not, on average, only used 47 percent of their allowances. While these conclusions are based on data from 2001-2003, we have seen no evidence that they are disproved by more recent data on these issues.

<sup>28</sup> See, e.g., Coalition of Organizations for Accessible Technology (COAT) NOI Comments at 3; TDI NOI Comments at 2-3.

<sup>29</sup> See GAO Report to Congressional Requesters – FCC Needs to Improve Oversight of Wireless Phone Service (2009) (GAO Report): <http://www.gao.gov/new.items/d1034.pdf>

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 8-9.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 9.

<sup>35</sup> *Id.* at 11. As noted above, GAO does not distinguish between underlying causes of these unexpected charges.

<sup>36</sup> See *Bill Shock PN*.

differences exist that would prevent wireless providers in this country from employing usage alerts similar to those now required by the EU. The EU Regulations require that an alert be sent free of charge and without undue delay to a roaming customer informing them of the fact that they will be subject to roaming charges when making or receiving a call or when sending an SMS message when entering a Member State other than their home network, including basic pricing information on the roaming charges.<sup>37</sup> The EU Regulations also require providers to send a notification when data roaming services have reached 80% of an agreed financial or volume limit.<sup>38</sup> When this financial or volume limit is exceeded, a notification must be sent to the customer indicating the procedure to be followed if the customer wishes to continue provision of this service.<sup>39</sup> If the customer does not respond, the provider must cease to provide and charge the roaming customer for regulated data roaming services until the customer requests the continued provision of service.<sup>40</sup> In addition, Commission staff has conducted extensive *ex parte* meetings with representatives of the wireless industry to gain a better understanding of the currently available technological tools to address the issue of bill shock.<sup>41</sup>

10. In response to the *Bill Shock PN*, industry commenters contend that mandatory usage alerts and cut-off mechanisms are unnecessary because the wireless industry provides consumers with an array of tools to avoid bill shock. These include usage controls, online tools to monitor and set limits on usage, text messages, and dialing shortcuts from mobile devices to check usage history and account balances.<sup>42</sup> Some providers note that they also offer various usage alerts for certain services.<sup>43</sup> In addition, industry commenters believe that an industry-wide regulation will harm consumers by limiting choice and diminishing incentives to develop additional tools.<sup>44</sup> Finally, the industry contends that it would be costly to adjust existing billing systems to implement any new usage alert requirements.<sup>45</sup> However, state and consumer commenters contend that bill shock remains a significant problem for consumers despite the

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<sup>37</sup> See generally Regulation (European Communities) No. 544/2009, Art. 6, of the European Parliament and of the Council of 18 June 2009, amending Regulation (EC) No. 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (EU Regulation).

<sup>38</sup> EU Regulation, Art. 6a.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See, e.g., Letter from Sarah F. Leibman, T-Mobile, to Marlene H. Dortch, FCC dated June 3, 2010; Letter from Charles W. McKee, Sprint Nextel, to Marlene H. Dortch, FCC dated July 8, 2010; Letter from Kathleen Grillo, Verizon Wireless, to Marlene H. Dortch, FCC dated June 23, 2010.

<sup>42</sup> See, e.g., AT&T Bill Shock Comments at 2-8; CTIA Bill Shock Comments at 3-9; Sprint Bill Shock Comments at 3-7; T-Mobile Bill Shock Comments at 3-7; Verizon Wireless Bill Shock Comments at 2-12.

<sup>43</sup> See, e.g., AT&T Bill Shock Comments at 2 (smartphone data plan users receive usage alerts); CTIA Bill Shock Comments at 6-7; Sprint Bill Shock Comments at 5 (customers receive a courtesy call the first time they incur substantial overages); Verizon Wireless Bill Shock Comments at 3 (customers that have exceeded or are trending to exceed their monthly allotments by the 20<sup>th</sup> day of the billing cycle receive a text message).

<sup>44</sup> See, e.g., CTIA Bill Shock Comments at 13; Sprint Bill Shock Comments at 15; Verizon Wireless Bill Shock Reply Comments at 3.

<sup>45</sup> See, e.g., RCA Bill Shock Comments at 5-6; Verizon Wireless Bill Shock Reply Comments at 3-4.

availability of some usage and monitoring tools.<sup>46</sup> These commenters argue that the currently available tools for addressing bill shock are limited by additional fees, self-enrollment requirements, active monitoring requirements that require subscribers to continually check usage balances online or via the handset device, and inconsistent application across mobile providers and plans.<sup>47</sup> They believe mandatory requirements should be adopted to protect consumers from unexpected charges. Specifically, these commenters contend the Commission should require all wireless providers to supply free message alerts to consumers notifying them if they are approaching the limit of their plan's voice minutes, text messages, or data usage; free message alerts to consumers notifying them once they exceed their monthly allotment; and free alerts including pricing information if a customer roams onto another provider's network and will incur additional charges.<sup>48</sup>

11. On May 26, 2010, the Commission released the findings of an agency survey on the consumer mobile experience. The survey indicated that 30 million Americans have experienced a sudden increase in their monthly bill that is not caused by a change in service plan.<sup>49</sup> Of these 30 million consumers, 84 percent said their mobile carrier did not contact them when they were about to exceed their allowed minutes, text messages, or data downloads and 88 percent said their carrier did not contact them after their bill suddenly increased.

#### **D. Voluntary Wireless Industry Standards**

12. In 2003, CTIA – an industry trade group representing wireless communications providers – and a number of wireless carriers voluntarily adopted a “Consumer Code” to facilitate the provision of accurate information to consumers by wireless service providers.<sup>50</sup> The CTIA Consumer Code requires, among other things, that signatory carriers agree to take certain steps to disclose rates and terms of service to consumers.<sup>51</sup> Carriers that sign the Code are allowed to display a “Seal of Wireless Quality/Consumer Information” if they certify each year that they are in compliance with the Code.<sup>52</sup>

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<sup>46</sup> See, e.g. Consumer Action Bill Shock Comments at 3-4; Consumers Union Bill Shock Comments at 4-6; Mass. AG Bill Shock Comments at 6-8; Montgomery County Bill Shock Comments at 1; NASUCA Reply Bill Shock Comments at 2-3.

<sup>47</sup> See, e.g., Consumer Action Bill Shock Comments at 3-4; Consumers Union Bill Shock Comments at 5; Montgomery County Bill Shock Comments at 1; Consumer Action Bill Shock Reply Comments at 4-5.

<sup>48</sup> See, e.g., Consumer Union Bill Shock Comments at 7-9; Mass. AG Bill Shock Comments at 11; UCAN Bill Shock Comments at 13; Consumer Mark Gaber at 1-2.

<sup>49</sup> See *Bill Shock Survey*.

<sup>50</sup> See <http://www.ctia.org/content/index.cfm/AID/10352> (*CTIA Consumer Code*).

<sup>51</sup> *CTIA Consumer Code*, Item One. These disclosures include: calling area; monthly access fee; number of airtime minutes; any nights and weekend minutes or other differing charges for different time periods; charges for excess minutes; per-minute long distance charges; per-minute roaming charges; whether additional taxes, fees or surcharges apply; amount or range of any such fees that are collected and retained by the carrier; whether a fixed-term contract is required and its duration; any activation or initiation fees; and any early termination fee and the trial period.

<sup>52</sup> As of April 19, 2010, there were thirty-one CMRS providers listed as *CTIA Consumer Code* participants.

13. In July 2010, CTIA announced updates to the Code which will become effective on January 1, 2011.<sup>53</sup> These include disclosure of data allowances offered in a service plan, whether there are any prohibitions on data service usage and disclosure of whether there are network management practices that will have a material impact on the customer's wireless data experience. The Code also states that prepaid service providers must disclose the period of time during which any prepaid balance is available for use.<sup>54</sup> However, the updated code does not include any requirement that carriers provide their customers with usage alerts or ways to set limits on their usage voluntarily.

### III. DISCUSSION

#### A. The Need for Improved Usage Information

14. The record in this proceeding shows that consumers will benefit from receiving baseline usage alerts and information that allows them to avoid unexpected roaming and overage charges.<sup>55</sup> In proposing to require that providers disclose this information to consumers, our goal is to ensure that all consumers have access to baseline information to help them manage the costs associated with mobile service in an informed and timely way to avoid unexpected charges. Mobile service providers remain free to tailor additional transparency efforts to their subscribers' needs as they see fit.

15. The record shows that bill shock affects millions of American users of mobile services. As discussed above, the Commission's recent *Bill Shock Survey* found that 30 million Americans have experienced unexpected increases in their monthly bills that are not caused by changes in their service plans.<sup>56</sup> The recent GAO Report cited above confirms that large numbers of wireless consumers continue to experience unexpected charges on their bills.<sup>57</sup> Further, that report found that one in five customers who contacted customer service was dissatisfied with their carriers' efforts to resolve the problem.<sup>58</sup> Comments in this proceeding from state and consumer groups confirm that bill shock continues to be a substantial problem despite the availability of certain tools offered by some providers.<sup>59</sup> Moreover, the Better Business Bureau received more complaints relating to the wireless industry than any other industry in 2009.<sup>60</sup> Even in those instances where the unexpected charge is eventually credited or refunded, either

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<sup>53</sup> See <http://www.ctia.org/content/index.cfm/AID/10549>.

<sup>54</sup> *Id.*

<sup>55</sup> See *infra* Sec. III.B.

<sup>56</sup> See *Bill Shock Survey*. Specifically, the Bill Shock survey found that 17% of American adults with a personal cell phone said that at one time their cell phone bill increased suddenly from one month to the next, even though they had not changed their calling or texting plans. As noted above, unexpected increases in wireless bills may occur for a variety of reasons, some of which extend beyond the scope of this proceeding.

<sup>57</sup> See GAO Report at 9, 11.

<sup>58</sup> The GAO survey found that 21 percent of wireless users were very or somewhat dissatisfied with how the carrier handled problems. *Id.* at 11.

<sup>59</sup> See, e.g. Consumer Action Bill Shock Comments at 3-4; Consumers Union Bill Shock Comments at 4-6; Mass. AG Bill Shock Comments at 4-8; Montgomery County Bill Shock Comments at 1.

<sup>60</sup> See Better Business Bureau 2009 Annual Report.

by the service provider or via our complaint process, consumers may expend substantial time and face potential credit risks, legal costs, or service interruptions before resolving the disputed charges.<sup>61</sup>

16. The record supports a finding that mobile service providers are not providing consumers with complete information concerning the tools available to manage their usage and control their costs.<sup>62</sup> To the extent that providers offer methods to monitor and cap usage to avoid bill shock, consumers are often unaware of these tools.<sup>63</sup> Usage alerts that are currently provided vary substantially between service providers and are inconsistent in application among various types of mobile services and plans.<sup>64</sup> In many cases those alerts may be sent only after the consumer has incurred overage charges.<sup>65</sup> We believe consumers will benefit from automatic notifications that will empower them to make informed decisions regarding their mobile usage prior to incurring substantial overage or roaming charges.

17. Although voluntary industry efforts such as the CTIA Consumer Code provide for certain disclosures from its signatory providers, they lack full industry participation, objective oversight, and enforceability, and do not, even with updates to become effective on January 1, 2011, include some key tools that can be effective in preventing bill shock.<sup>66</sup> Because many consumers continue to experience bill shock, it appears that voluntary efforts alone have proven insufficient to address the problem. Nor do we believe the recent updates to the CTIA Consumer Code, the first since its formulation in 2003, significantly alter this finding, since they do not address the provision of usage alerts and controls or other tools to address bill shock specifically.<sup>67</sup> Although we acknowledge CTIA's efforts to improve consumer disclosure practices, for the reasons noted, we believe the record supports the conclusion that voluntary efforts have proven insufficient thus far to adequately protect consumers from bill shock.

## **B. Baseline Usage Information**

### **1. Usage Alerts**

18. In both the *Consumer Information NOI* and *Bill Shock PN*, the Commission sought comment on advances in technology, including usage alerts delivered via text message, other usage controls, and online comparison tools that may offer new opportunities to improve the kind and degree of information

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<sup>61</sup> See, e.g., Mark P. Gaber Bill Shock Comments at 1 (“when ‘bill shock’ occurs, it can be very disruptive to consumers’ finances and require considerable time on the phone trying to resolve the issue”); David K. Schandler Bill Shock Comments at 1.

<sup>62</sup> See *infra* Sec. III.B.2.

<sup>63</sup> See, e.g., Consumer Action Bill Shock Comments at 3 (many users will be unaware that the service exists or how to enroll); Consumers Union Bill Shock Comments at 6 (noting that many consumers have no idea that usage information is available); Montgomery County Bill Shock Comments at 1 (indicating that consumers are rarely aware of their ability to set blocks and limits on accounts).

<sup>64</sup> See, e.g., Consumer Action Bill Shock Reply Comments, Att. A (describing several different notification options available from national wireless providers). See also *infra* para. 19.

<sup>65</sup> See *supra* para. 2.

<sup>66</sup> See, e.g., Consumer Federation NOI Comments at 17-20; NASUCA NOI Comments at 33-38; NASUCA Reply NOI Comments at 31-33.

<sup>67</sup> See, e.g., *Consumer Information NOI*, 24 FCC Rcd at 11381, para. 3; *Bill Shock PN*.

available to consumers. Specifically, the Commission sought to gather information on the feasibility of instituting usage alerts similar to those required under the EU regulations<sup>68</sup> that would provide wireless voice, text, and data consumers in the United States a way to monitor, on a real-time basis, their usage of a wireless communications service, as well as the various charges they may incur in connection with such usage.<sup>69</sup> In response to those requests, a number of commenters indicate that such technological tools are not only feasible, but are currently being utilized by a number of American wireless providers - albeit in an inconsistent manner.<sup>70</sup> These tools are offered not only by the four largest carriers but by some smaller ones as well. For example, U.S. Cellular sends its customers a free text message alert when either their voice minutes or text messages are near or at the point where they will incur overage charges.<sup>71</sup> Although industry and consumer groups diverge in their opinion as to whether usage alerts should be mandated, there is no known technological limitation on record that would prohibit mobile providers from implementing usage alerts.<sup>72</sup>

19. As discussed above, the record developed in response to the *Consumer Information NOI* and *Bill Shock PN and Survey* persuades us that consumers face significant challenges in monitoring wireless usage and protecting themselves from substantial overage charges for exceeding their monthly allotment of voice minutes, text, and data. Although some wireless providers offer technological tools that allow consumers to limit usage, the effectiveness of these offerings is limited by opt-in requirements and, in some cases, additional fees for such offerings.<sup>73</sup> As discussed, many consumers are also unaware of such tools or how to access them. In addition, notification alerts currently available in the market today vary widely between service providers and by type of service covered.<sup>74</sup>

20. We propose that mobile providers actively provide consumers with notification messages to assist them in managing the costs of using their service and ensure that subscribers are not shocked by overage or roaming charges. Specifically, we propose that mobile providers provide notification when a subscriber is approaching their plan's allotted limit for voice, text, or data usage. We seek comment on whether such notifications should be provided in "real time," including any technical limitations or other considerations that should be taken into consideration when reviewing this issue. How should such notifications be provided in the case of multi-line family plans? We seek comment on the most effective

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<sup>68</sup> See generally EU Regulation, Art 6.

<sup>69</sup> See *Bill Shock PN* at 2.

<sup>70</sup> See, e.g., Acision Bill Shock Comments at 1; AT&T Bill Shock Comments at 4 and 7; Bridgewater Bill Shock Comments at 1; Mass. AG Bill Shock Comments at 10; Ericsson Bill Shock Comments at 4; Sprint Bill Shock Comments at 5; T-Mobile Bill Shock Comments at 4-5.

<sup>71</sup> See U.S. Cellular website describing overage protection at <http://www.uscellular.com/uscellular/common/common.jsp?path=/overage-protection/index.html>.

<sup>72</sup> See, e.g., Acision Bill Shock Comments at 1 (no major technological or other differences that would prevent wireless providers from implementing usage alerts); Bridgewater Bill Shock Comments at 1 (introduction of these tools is technically feasible with solutions that are available today) Ericsson Bill Shock Comments at 4 (offers solutions that can generate real-time alerts based on billing or usage criteria).

<sup>73</sup> See, e.g., Consumer Action Bill Shock Comments at 3-4; Consumers Union Bill Shock Comments at 5; Montgomery County Bill Shock Comments at 1; Consumer Action Bill Shock Reply Comments at 4-5.

<sup>74</sup> See, e.g., Consumer Action Bill Shock Reply Comments, Att. A (describing several different notification options available from national wireless providers).

way to provide this notification to consumers, including methods such as providing voice or text alerts.<sup>75</sup> In addition, we seek comment on whether we should establish a precise usage level at which this initial notification message would be triggered. For example, the new EU regulations require that wireless providers notify a consumer using a data roaming service when the consumer has reached 80 percent of an agreed upon limit.<sup>76</sup> Would a single notification at the 80 percent usage mark be sufficient to provide consumers with reasonable notice that they are approaching a limitation for voice, text, or data usage or should additional notifications be sent to the consumer at the 90 or 95 percent mark of their monthly allotments? In reviewing this issue, we seek comment on the utility of providing multiple usage alerts to the consumer against the potential burdens to the wireless providers – particularly smaller providers - who must supply them. As noted below, several mobile providers currently provide customers with tools to block overage use.<sup>77</sup> We seek comment on whether there are aspects of the existing usage alert systems or other tools that have proven particularly helpful to consumers in avoiding bill shock that we should consider incorporating in any rule we adopt to reduce bill shock. Alternatively, are there aspects of those tools that have reduced their effectiveness for consumers and should not be adopted? We also seek comment on what we can learn from the experience with bill shock regulation in the European Union.

21. In addition, we propose that mobile providers supply a notification message to consumers once they reach their monthly allotment limit and begin incurring overage charges. Thus, when a consumer is about to exceed the established monetary or volume limit for a voice, text, or data plan, the provider would be required to send a one-time notification explaining that the consumer is beginning to incur charges for service in excess of their normal rates. Consumers receiving such a notification can then decide to use some alternative method of communication, such as a wireline phone, to complete the communication or postpone until a later date when they may avoid the overage charge, perhaps by changing to a plan with a higher limit.<sup>78</sup> A few commenters have suggested that this message contain specific information conveying the exact cost consumers will incur once they exceed their monthly allotment and ask the subscriber to opt-in before allowing the subscriber to continue using the service.<sup>79</sup> We seek comment on whether it is sufficient to notify consumers that they have begun incurring overage charges or whether specific cost information and cut off mechanisms such as these would also be useful to consumers or create additional challenges. In that regard, we seek to balance consumer protections and expectations with the costs and technical limitations that might arise by imposing any additional

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<sup>75</sup> We note that section 227(b)(1)(A) of the Act prohibits certain categories of automated calls absent an emergency or the “prior express consent” of the called party. Specifically, this provision prohibits the use of automatic telephone dialing systems (autodialers) or artificial or prerecorded messages when calling: emergency telephone lines, health care facilities, *telephone numbers assigned to wireless services*, and services for which the called party is charged for the call. Currently, the Commission’s rules allow such calls where the caller has an established business relationship with the called party. In an effort to harmonize our rules with the FTC, the Commission has sought comment on whether “prior express consent” should be obtained in writing from the consumer. However, the Commission has issued no final rule which changes the current interpretation. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Notice of Proposed Rulemaking, 25 FCC Rcd 1501 (2010).

<sup>76</sup> EU Regulation, Art. 6(a)(2).

<sup>77</sup> *See infra* para. 24.

<sup>78</sup> *See Mobile Misperceptions*, 23 Harv. J.L. & Tech. at 119.

<sup>79</sup> *See, e.g.*, Consumer Action Bill Shock Comments at 6; Consumers Union Bill Shock Comments at 7-9; Mass. AG Bill Shock Comments at 10; UCAN Bill Shock Comments at 13.

requirements. In this regard, are there concerns or issues we should consider with respect to smaller, regional and/or rural mobile providers? Moreover, we do not intend for any alert system to hamper the ability of consumers to complete critical voice or data communications such as access to E911, and we seek comment on how to avoid such effects. In addition, we seek comment on whether consumers should be allowed to opt-out if they determine that they do not want to receive these mandatory usage alerts from their mobile service provider.

22. Similarly, we propose that mobile service providers supply a notification message to consumers when they are about to incur international or other roaming charges in excess of their normal rates. The record in this proceeding indicates that many service providers make available information on how to avoid international roaming charges, but few provide direct alerts to inform customers when they are incurring international roaming charges.<sup>80</sup> We seek comment on the technical feasibility of providing such international alerts, including whether such alerts require, in any way, the international provider's cooperation or any changes to its network. How often should such international alerts be provided? For example, should an alert be provided every time a consumer is about to incur international roaming charges? Should we also require mobile providers to better disclose how to turn off any mobile device function that cause them to incur roaming charges?<sup>81</sup> Several industry commenters contend that domestic roaming in the United States presents fewer difficulties to consumers because there is little or no domestic roaming for many subscribers.<sup>82</sup> To what extent, if any, should this factor into our analysis? For example, should any roaming notification requirement be limited to international situations? Or should notification also be required for regional providers that use partners for domestic roaming? In addition, we seek comment on whether such notifications should include the applicable rates and associated charges for international or roaming charges, including any technical limitations – particularly for smaller providers – of providing this level of information in real time.

23. We recognize that mobile providers may need to revise their existing systems to comply with a mandatory usage alert requirement that may differ from their current practice. We therefore seek comment on the length of time that would be required for mobile providers to implement any such usage alert requirement based upon a proposal that requires providers to notify subscribers when they are approaching and then reach the 100 percent threshold mark of their monthly usage allotment. Based on the comments received in response to the *Bill Shock PN*, it may be easier for the national providers to start providing alerts.<sup>83</sup> As a result, we seek comment on whether there are concerns, issues or cost considerations to implement such usage alerts that we should consider with respect to smaller, regional and/or rural mobile providers. Is there a need for varying implementation schedules between the larger and smaller, regional and/or rural providers to alleviate the burden for smaller providers? If so, what are

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<sup>80</sup> See, e.g., Consumer Action Bill Shock Reply Comments at 8; CTIA Bill Shock Comments at 6-7 (noting that AT&T, Sprint, and U.S. Cellular do not provide international roaming alerts).

<sup>81</sup> See, e.g., EU Regulation, Art. 6a (“providers shall explain to their customers, in a clear and easily understandable manner, how to switch off these automatic data roaming connections in order to avoid uncontrolled consumption of data roaming services”).

<sup>82</sup> See, e.g., AT&T Bill Shock Comments at 8; Sprint Bill Shock Comments at 10-11; Verizon Wireless Bill Shock Comments at 22. See also *14<sup>th</sup> Annual Wireless Report*, 25 FCC Rcd at 11489, para. 124 (“From a customer perspective, many service plans now include nationwide roaming at no additional cost to subscribers”).

<sup>83</sup> See, e.g., AT&T Bill Shock Comments at 7-8; CTIA Bill Shock Comments at 5; RCA Bill Shock Comments at 5; Sprint Bill Shock Comments at 5; T-Mobile Bill Shock Comments at 4-5; Verizon Wireless Bill Shock Comments at 8.

the exact timeframes by which providers could modify their existing systems to comply with this requirement? Alternatively, should the Commission consider exempting smaller, regional and/or rural providers from any usage alert or roaming requirement due to the costs such a requirement might impose on them? If so, what size providers should this exemption apply to?<sup>84</sup>

## 2. Methods for Reviewing and Capping Usage

24. Some mobile providers currently offer technological tools that allow consumers to monitor usage balances and set limitations on usage. For example, several providers offer tools that enable consumers to review online or from their handset itself usage history over time and balances in the current month.<sup>85</sup> In addition, several providers offer consumers the ability to set limits on voice, text or data usage either for the entire plan or for individual members of a family plan to preclude incurring overage or other charges.<sup>86</sup> However, consumers are often unaware of how to access these tools or even that such tools are available.<sup>87</sup> The record compiled in this proceeding confirms that consumers face significant challenges in monitoring mobile usage and protecting themselves from substantial overage charges for exceeding their monthly allotment of voice minutes, text, and data. Therefore, we propose that mobile providers make clear, conspicuous and ongoing disclosure of any tools they offer which allow subscribers to either limit usage or monitor usage history.<sup>88</sup> We seek additional information about the methods available for monitoring usage balances and ways to limit usage available to subscribers of smaller, regional, and rural mobile providers. Specifically, we seek comment on the best methods to ensure that consumers are made aware of the available tools for monitoring usage balances and limiting usage, how to access these tools and any applicable charges.<sup>89</sup> For example, should mobile providers be required to provide this

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<sup>84</sup> See, e.g., the Small Business Administration definition which deems a wireless business “small” if it has 1,500 or fewer employees. 13 C.F.R. § 121.201, NAICS Code 517210. See also *Revision to the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 1484 at para. 7 and 14847-48 at paras. 22-23 (defining categories of “Tier II” and “Tier III” wireless carriers).

<sup>85</sup> See, e.g., AT&T Bill Shock Comments at 6 (customers can dial \*MIN# to check remaining minutes); CTIA Bill Shock Comments at 6-7; Sprint Bill Shock Comments at 5 (customers can dial \*4 from their handset to check minutes, texts, and data used).

<sup>86</sup> See, e.g., CTIA Bill Shock Comments at 6-7.

<sup>87</sup> See, e.g., Consumer Action Bill Shock Comments at 3 (many users will be unaware that the service exists or how to enroll); Consumers Union Bill Shock Comments at 6 (noting that many consumers have no idea that usage information is available); Montgomery County Bill Shock Comments at 1 (indicating that consumers are rarely aware of their ability to set blocks and limits on accounts).

<sup>88</sup> We note that in the context of the Commission’s truth-in-billing rules that “clear and conspicuous” is defined as “notice that would be apparent to the reasonable consumer.” See 47 C.F.R. § 64.2401(e).

<sup>89</sup> The record in this proceeding confirms that customers of the four largest wireless carriers can access usage history via their handset devices and online accounts for free. See AT&T Bill Shock Comments at 6; Sprint Bill Shock Comments at 5; T-Mobile Bill Shock Comments at 5-6; Verizon Wireless Bill Shock Comments at 4-6. However, there is often a monthly charge associated with capping usage. See, e.g., Consumers Action Bill Shock Comments at 4; Verizon Wireless Bill Shock Comments at 7.

information on their bills or in annual bill inserts?<sup>90</sup> What would be the most cost effective way to better ensure that consumers have access to this information and make full use of the currently available tools that can protect subscribers from bill shock? In particular, we seek comment on these issues as they relate to consumers with disabilities. What is the best method to minimize costs for smaller, regional and/or rural mobile providers while ensuring their customers have access to this information? We seek comment on how effective the existing usage controls have been in helping consumers avoid bill shock. We also seek comment on the extent to which the effectiveness of usage controls is impacted by the conditions under which they are provided to consumers. To the extent that existing usage control tools have proven effective in addressing bill shock, we seek comment on whether we should explore the possibility of mandating that all mobile service providers offer consumers the means to set their own usage limits. For example, should consumers be allowed to cap their usage in advance at a level specified by the customer (either for individual users or the entire account) or allowed to opt-out entirely of certain services (e.g. text messages) so that they cannot incur charges for any service that they don't want.<sup>91</sup> Would such a requirement be overly burdensome for smaller, regional and rural providers?

### 3. Prepaid Services

25. We seek comment on whether prepaid mobile services should be exempt from any usage alert requirements that might evolve from this proceeding to address consumer bill shock. In contrast to a postpaid service, in which customers pay their phone bills after they have incurred charges, a prepaid service requires customers to pay for service in advance.<sup>92</sup> This approach generally alleviates the need for a service provider to extend credit to its prepaid customers. In some cases, providers have tailored prepaid offerings to suit segments of the market that do not or cannot get a traditional postpaid service plan, particularly the youth segment.<sup>93</sup> Prepaid services include traditional, pay-as-you-go services, in which customers buy minutes ahead of time on a card, as well as unlimited prepaid services, in which customers pay in advance for unlimited voice and/or data services each month with no long-term contract. A few commenters in this proceeding assert that with the prepaid service option there are, by definition, no sudden increases in the total consumer bill, and therefore that prepaid service providers should not be subject to any obligations aimed at preventing bill shock.<sup>94</sup> In contrast, some consumer groups have commented that usage alerts would help traditional prepaid customers manage their usage and avoid the need to pay for additional minutes once they reach their prepaid limit.<sup>95</sup> We seek comment on these analyses, including those situations in which prepaid service users might benefit from receiving usage alerts. We ask that parties distinguish between traditional, pay-as-you-go and unlimited prepaid services in their comments.

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<sup>90</sup> See, e.g., 47 C.F.R. § 64.1200(g)(1) (requiring annual notice, via an insert in the bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database).

<sup>91</sup> As noted above, we do not intend for any user cap to hamper the ability of consumers to complete critical communications such as access to E911.

<sup>92</sup> See, e.g., Leap/Cricket Bill Shock Comments at 2; MetroPCS Bill Shock at 3.

<sup>93</sup> *14th Annual Wireless Report*, 25 FCC Rcd at 11473-75, paras. 98-101.

<sup>94</sup> See, e.g., CTIA Bill Shock Comments at 12; Leap/Cricket Bill Shock Comments at 2; MetroPCS Bill Shock 3.

<sup>95</sup> See, e.g., NASUCA NOI Reply Comments at 37-38.

#### IV. SCOPE OF COVERED ENTITIES AND SERVICES AND LEGAL AUTHORITY

26. We seek comment on the types of wireless services that should be covered by our proposals. Should any rules we adopt apply to all communications services provided by mobile wireless providers, including voice, text, and data services? Should providers of mobile data services that do not also offer Commercial Mobile Radio Service (CMRS) be included? Although mobile data services may be provided by companies that are also CMRS carriers, such services may also be provided by entities that do not offer any CMRS. Therefore, we seek comment on whether the scope of covered entities should be broader than CMRS providers. On the other hand, are there services for which these rules are not necessary?

27. Next, we seek comment on the best sources of authority for the Commission to adopt bill shock related obligations for the different types of mobile wireless services. As noted in the *Roaming Order*,<sup>96</sup> several provisions of Title III provide the Commission authority to establish license conditions in the public interest. For example, Section 301 provides the Commission with authority to regulate “radio communications” and “transmission of energy by radio.”<sup>97</sup> Under Section 303, the Commission has the authority to establish operational obligations for licensees that further the goals and requirements of the Act if the obligations are in the “public convenience, interest, or necessity” and not inconsistent with other provisions of law.<sup>98</sup> Section 303 also authorizes the Commission, subject to what the “public interest, convenience, or necessity requires,” to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.”<sup>99</sup> Section 307(a) likewise authorizes the issuance of licenses “if public convenience, interest, or necessity will be served thereby.”<sup>100</sup> Section 316 provides a similar test for new conditions on existing licenses, authorizing such modifications if “in the judgment of the Commission such action will promote the public interest, convenience, and necessity.”<sup>101</sup> Application of these provisions is not affected by whether the service using the spectrum is a telecommunications service or information service under the Act.<sup>102</sup>

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<sup>96</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4212, paras. 65-66 (seeking comment on the proposition that if roaming arrangements are telecommunications services, they are subject to our authority under Title II and Title III. If they are information services, the Commission has the authority to promulgate roaming requirements under Title III and other provisions).

<sup>97</sup> See 47 U.S.C. § 301.

<sup>98</sup> See 47 U.S.C. § 303(b) (stating that if the “public convenience, interest, or necessity requires” the Commission shall “(r) . . . prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act”).

<sup>99</sup> 47 U.S.C. § 303(b).

<sup>100</sup> 47 U.S.C. § 307(a).

<sup>101</sup> 47 U.S.C. § 316(a).

<sup>102</sup> See, e.g., *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5915, para. 36 (*Wireless Broadband Internet Access Clarification Order*). Thus, in the *Wireless Broadband Internet Access Clarification Order*, the Commission found that wireless broadband Internet access, although an information service, continues to be subject to obligations promulgated pursuant to Title III. *Id.*

28. In addition, to the extent that some of the mobile services covered by the rules promulgated in this proceeding are common carrier or telecommunications services, what other provisions of the Act, in Title II or elsewhere, would provide the Commission additional authority to impose bill shock-related obligations? What other authority-related issues should the Commission consider?

## V. PROCEDURAL MATTERS

### A. *Ex Parte* Presentations

29. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>103</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.<sup>104</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.<sup>105</sup>

### B. Filing of Comments and Reply Comments

30. 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 and reply comments on or before the dates indicated on the first page of this document. When filing comments or reply comments, please reference **CG Docket No. 10-207**. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- Paper Filers: 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 appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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<sup>103</sup> 47 C.F.R. §§ 1.200 *et seq.*

<sup>104</sup> *See* 47 C.F.R. § 1.1206(b)(2).

<sup>105</sup> 47 C.F.R. § 1.1206(b).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

31. Persons with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This *Notice of Proposed Rulemaking* also can be downloaded in Word and Portable Document Formats (PDF) at [www.fcc.gov](http://www.fcc.gov). Contact the FCC to request reasonable accommodations for filing comments (e.g., accessible format documents) by e-mail at: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: 202-418-0530; or TTY: 202-418-0432.

### C. Initial Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document.<sup>106</sup> The IRFA is set forth in Appendix C. 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 Notice provided on or before the dates indicated on the first page of this Notice.

### D. Paperwork Reduction Act

33. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.<sup>107</sup> In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>108</sup> we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>109</sup>

## VI. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-2, 4, 201, 258, 301, 303, 332 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-152, 154, 201, 258, 301, 303, 332 and 403, this Notice of Proposed Rulemaking IS ADOPTED.

35. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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<sup>106</sup> See 5 U.S.C. § 603.

<sup>107</sup> Pub. L. No. 104-13.

<sup>108</sup> Pub. L. No. 107-198.

<sup>109</sup> 44 U.S.C. § 3506(c)(4).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules for Public Comment

The Federal Communications Commission proposes to amend Part \_\_ of Title 47 of the Code of Federal Regulations as follows:

§ \_\_ Usage Alerts and Information for Mobile Services.

(a) This rule shall apply to providers of mobile services as defined in paragraph (b) of this section. The purpose of this rule is to require mobile service providers to provide consumers with timely, baseline information relating to their monthly usage so that consumers can avoid unexpected overage charges.

(b) [Reserved for definition of *mobile service provider* for purposes of this section].

(c) *Usage Notifications.*

Mobile service providers shall provide notification alerts when:

(1) subscribers are approaching an allotted limit for voice, text, and data usage.

(2) subscribers have reached their monthly allotment limit and begin incurring overage charges for any subsequent use of that service.

(3) subscribers will incur international or roaming charges that are not covered by their monthly plans, and notification if they will be charged at higher than normal rates.

(d) Mobile service providers shall make clear, conspicuous, and ongoing disclosure of any tools or services they offer which allow subscribers to set usage limits or monitor usage balances, including any applicable charges for those services. This information should be made available in a manner that is accessible to and usable by consumers with disabilities, in accordance with section 716 of the Communications Act of 1934, as amended (Act), and the Commission's rules implementing sections 255 and 716 of the Act.

## APPENDIX B

**Consumer Information and Disclosure Notice of Inquiry  
List of Commenters**

The following parties have filed comments in response to the August 28, 2009 Consumer Information and Disclosure Notice of Inquiry:

<u>Commenter</u>	<u>Abbreviation</u>
American Association of People with Disabilities	AAPD*
<b>American Council of the Blind</b>	<b>American Council</b>
AT&T Inc.	AT&T*
David Austin	David Austin
Billing Concepts, Inc.	Billing Concepts*
BillShrink.com	BillShrink.com
California Public Utilities Commission	Cal. PUC
Citizens Utility Board	CUB
City of Chicago – Dept. of Business Affairs	Chicago
Comcast Corporation	Comcast*
Consumer Federation of America, Free Press et al.	Consumer Federation*
CTIA – The Wireless Association	CTIA
DirectTV, Inc.	DirectTV
Dish Network L.L.C.	Dish Network*
District of Columbia Public Service Commission	D.C. PSC
<b>Federal Trade Commission</b>	<b>FTC</b>
<b>Senator Al Franken</b>	<b>Senator Franken</b>
Independent Telephone & Telecommunications Alliance	ITTA
Individual Consumer	Consumer (name)
Iowa City	Iowa City
Massachusetts Department of Telecommunications and Cable	Mass. DTC
MetroPCS Communications, Inc.	MetroPCS
Minnesota – Office of the Attorney General	Minn. AG
Mobile Marketing Association	MMA
Montgomery County – Office of Consumer Protection	Montgomery County
National Association of State Utility Consumer Advocates	NASUCA*
National Cable & Telecommunications Association	NCTA*
<b>National Telecommunications Cooperative Association</b>	<b>NTCA</b>
Open Technology Initiative/New America Foundation	Open Technology
<b>Oregon Public Utilities Commission</b>	<b>Oregon PUC</b>
Organization for Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Qwest Communications International, Inc.	Qwest*
Rural Cellular Association	RCA
<b>Speech Communications Assistance by Telephone</b>	<b>Speech Com</b>
Southern Communications Services, Inc.	SouthernLINC Wireless
Sprint Nextel Corporation	Sprint
State Attorneys General	25 State AGs
STi Prepaid	STi*
<b>T-Mobile USA, Inc.</b>	<b>T-Mobile</b>
Telecommunications for the Deaf and Hard of Hearing et al.	Telecom for Deaf

Telogical Systems	Telogical
Texas Office of Public Utility Counsel	Texas PUC
Time Warner Cable, Inc.	Time Warner*
United States Telecom Association	USTA
Utility Consumers' Action Network	UCAN
Validas	Validas
Verizon and Verizon Wireless	Verizon*
Virginia State Corporation Commission	Virginia SCC
Voice on the Net Coalition	VON
Wireless Communications Association International	WCAI

\* filing both comments and reply comment (bold - reply comments only)

**Bill Shock Public Notice  
List of Commenters**

The following parties have filed comments in response to the May 11, 2010 Bill Shock Public Notice:

<u>Commenter</u>	<u>Abbreviation</u>
Acision Innovation Assured	Acision
AT&T Inc.	AT&T*
Bridgewater Systems	Bridgewater
Consumers Union, Media Access et al.	Consumers Union
Consumer Action League and National Consumers League	Consumer Action*
CTIA – The Wireless Association	CTIA
Ericsson, Inc.	Ericsson
Leap Wireless and Cricket Communications, Inc.	Leap/Cricket
Massachusetts Office of the Attorney General	Mass. AG*
MetroPCS Communications, Inc.	MetroPCS
Montgomery County – Office of Consumer Protection	Montgomery County
<b>National Association of State Utility Consumer Advocates</b>	<b>NASUCA</b>
Rural Cellular Association	RCA
Sprint Nextel Corporation	Sprint
T-Mobile USA, Inc.	T-Mobile
Utility Consumers' Action Network	UCAN
Verizon Wireless	Verizon Wireless*

\* filing both comments and reply comment (bold - reply comments only). In addition, several individual consumers filed comments in these proceedings.

## APPENDIX C

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). 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 NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### 1. Need for, and Objectives of, the Proposed Rules

2. The record compiled in response to the Consumer Information NOI and Bill Shock PN indicates that mobile consumers receive inadequate usage-related information to manage the costs associated with their mobile service plans. Recent reports from both GAO and the Better Business Bureau confirm that wireless consumers continue to experience problems with unexpected charges appearing on their bills.<sup>4</sup> In many cases, these charges result from consumers unknowingly exceeding a monthly allotment limit and incurring substantial overage charges. These charges can result in significant expenditures of time, effort, and money for more than 270 million American consumers that use mobile services. In this NPRM, we seek comment on proposals designed to empower consumers to avoid bill shock by ensuring that they receive baseline information about their monthly usage balances in a timely and consistent manner to make informed decisions regarding the costs associated with their mobile service.

#### 2. Legal Basis

3. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1-2, 4, 201, 258, 301, 303, 332 and 403 of the Communications Act of 1934, as amended 47 U.S.C. §§ 151-152, 154, 201, 258, 301, 303, 332 and 403.

#### 3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> See *supra* paras. 8 and 15.

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> 5 U.S.C. § 601(6).

same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> Under the Small Business Act, a “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 Small Business Administration (SBA).<sup>8</sup> Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>9</sup> The NPRM seeks comment generally on mobile providers of voice, text and data services. However, as noted in Section IV of the NPRM, we are seeking comment on the scope of entities that should be covered by the proposals contained therein.<sup>10</sup>

5. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>11</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>12</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>13</sup> Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>14</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>15</sup> For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>16</sup>

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<sup>7</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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.”

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

<sup>10</sup> See *supra* Sec. IV.

<sup>11</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”;  
<http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>12</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”;  
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”;  
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>13</sup> 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>14</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>15</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>16</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>17</sup> Thus, we estimate that the majority of wireless firms are small.

6. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>18</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>19</sup> According to FCC data, 434 carriers report that they are engaged in wireless telephony.<sup>20</sup> Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees.<sup>21</sup> Therefore, we estimate that 222 of these entities can be considered small.

#### **4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

7. In this NPRM, we propose requirements that would require mobile service providers to offer notification alerts to consumers regarding their usage balances. Specifically, we propose that mobile service providers offer notification alerts to consumers when: (1) subscribers are approaching their plan's allotted limit for voice, text, and data usage; (2) subscribers have reached their monthly allotment limit and begin incurring overage charges for any subsequent use of that service and (3) subscribers will incur international or roaming charges not covered under their monthly plans. In addition, we propose that mobile service providers shall make ongoing disclosure of any tools or services they offer which allow subscribers to set usage limits or monitor usage balances including any applicable charges for those services. Many mobile service providers already offer some of these services. However, mobile service providers may have to review and adjust their current alert systems to ensure compliance with these requirements. In addition, our proposed rules may require mobile providers to include information regarding how to request and use any usage controls and monitoring tools that they currently offer in the service providers' bills or in annual bill inserts. This would necessitate providing additional information to consumers via the monthly bill or an annual bill insert.

#### **5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

8. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather

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<sup>17</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>18</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>19</sup> *Id.*

<sup>20</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5-5 (Aug. 2008) ("*Trends in Telephone Service*"). This source uses data that are current as of November 1, 2006.

<sup>21</sup> "*Trends in Telephone Service*" at Table 5.3.

than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>22</sup>

9. In this NPRM, we seek comment on the costs for small providers to implement usage alerts including whether there is a need for varying implementation schedules between the larger and smaller providers to alleviate the burden for smaller providers.<sup>23</sup> In addition, we seek comment on whether the Commission should consider exempting the smaller providers from any usage alert or roaming notification requirement due to the costs such a requirement might impose on them.<sup>24</sup> In reviewing the frequency of mandatory usage alerts, we seek comment on the utility of providing multiple usage alerts to the consumer against the potential burdens to the wireless providers – particularly smaller providers - who must supply them.<sup>25</sup> Finally, we seek comment on the best methods to minimize costs for smaller, regional and/or rural mobile providers while ensuring their customers have access to information relating to any methods to monitor or set limits on usage offered by their service provider.<sup>26</sup>

#### **6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

10. None.

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<sup>22</sup> 5 U.S.C. § 603(c).

<sup>23</sup> *See supra* para. 23.

<sup>24</sup> *See supra* para. 23.

<sup>25</sup> *See supra* para. 20.

<sup>26</sup> *See supra* para. 24.

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket No. 10-207, CG Docket No. 09-158.

Today we tackle a widespread and costly problem for mobile consumers: bill shock. What's bill shock? It's when wireless subscribers experience a sudden, unexpected increase in their monthly bills that is not caused by a change in service plan.

We've heard from consumers who have been stunned by bills for hundreds and even thousands of extra dollars as a result of voice, text or data usage exceeding their plan allotments without any alert from their provider. One consumer got a \$35,000 cell phone bill for data and texting charges incurred while visiting her sister in Haiti after the earthquake even though her provider had advised that a courtesy plan would be extended to those affected by the disaster.

The facts and data show that this happens all too often. FCC complaint data and our survey results show that consumers can find themselves paying unexpected charges large and small from one wireless bill to the next, with no warning. Our survey estimated that *30 million Americans* have experienced some form of bill shock, with the vast majority having no notice. The GAO tells us that 34% of wireless phone users have received unexpected charges on their bills. Consumers Union released a survey which had similar results.

Now, there's no question that technology has helped create a vibrant mobile ecosystem that delivers tremendous benefits to the public -- benefits that can be measured in terms of innovative new devices, valuable new services, economic activity and jobs.

But like all new technologies, issues emerge. Bill shock is an example. But it's also a case where a simple technology fix can solve a real consumer problem. There are ways to prevent the bill shocks easily and inexpensively, using technology widely available today.

Many carriers already offer some of these tools to help consumers. For example, iPad users are automatically signed up for text alerts from AT&T when they are about to incur overage charges. These and some others are smart tools to help consumers make smart decisions. But they are the exception, not the rule. They're not helping consumers consistently, as evidenced by the tens of millions of bill shock victims.

The rules we propose would require carriers to provide automatic notices -- such as text message alerts -- warning consumers when they're at risk of going over text, voice, or data limits, or incurring roaming charges. These are practical, non-burdensome measures that encourage innovation in the way carriers provide information to consumers.

It's a simple idea: People should be told they're risking extra fees *before* they incur them. These proposed rules would assure that they are.

I know that some will argue this is unnecessary or burdensome. But consider what I heard yesterday from a business executive. He said that a couple of months ago he had incurred \$2,000 in extra data charges while on a trip overseas. Despite buying an "international plan" -- he was billed for "more than 15x what I had expected to pay." He said: "It took hiring a lawyer to get the charges waived -- cost

me almost as much as the charges, but I did it for the principle. Most Americans would not have this luxury.”

This executive mentioned that he was in the technology business, doing work to enable cell phones to pay for on-street parking. He wrote: “I know how easy it is to send a consumer a text message; we send one 10 minutes before a parking meter expires so they don’t get a parking violation ticket; we do it numerous times a day. The only reason not to do it is if you’re trying to take advantage of a customer.”

Harnessing technology to empower consumers has been a high priority for me, and will continue to be. Companies should compete on the basis of value, price and services, not consumer confusion. Technology allows new forms of transparency and disclosure -- clear and relevant information, delivered easily to consumers, and at the right time – in practical, non-burdensome, efficient ways.

All consumers should be protected from bill shock. The measures we propose today will bring real benefits for consumers, empowering them to manage their families’ wireless budgets, saving them substantial amounts of money, and avoiding disputes with service providers that are expensive and time-consuming for all parties.

The staff has done great work on this item, and great work in general on harnessing technology to empower consumers. Thank you.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket No. 10-207, CG Docket No. 09-158.

It's always great to start an agenda meeting with a consumer item, because these items reflect our fundamental mission—that is to protect consumers. This item makes clear the present Commission's appreciation of its role as a consumer protection agency. There have been too many years in our past, and I don't say this in a partisan way, when this agency has spent more time listening and responding to the interests of big business than to consumers—and consumers were left *literally* paying the bill for that—and it's been an enormous bill. So I thank the Chairman for putting this front-and-center, and I look forward to beginning many more agenda meetings with similarly consumer-friendly items. My thanks also to Joel Gurin and his committed and stellar team in the Consumer and Governmental Affairs Bureau. It's a pleasure working with them.

Who among us has not been shocked with one charge or another that we've received on a bill from a service provider? Just last night, my daughter Claire shared with me a CNN.com story about an American in Haiti who was down there to help the earthquake-ravaged people of that island recover from their awful disaster. Her \$35,000 bill for texting came as a total surprise, apparently because of lack of adequate information outreach by her service provider.

In November of last year, the Government Accountability Office released a report that found more than one-third of all Americans had received unexpected charges on their wireless phone bills during the previous year. It goes without saying that, in these economic times when the next mail delivery might bring a foreclosure notice, consumers need predictability in their bills more than ever. With today's Notice of Proposed Rulemaking, we lay the groundwork to require wireless phone companies to alert customers as they approach their limits on voice, text and data usage. We also examine how to expand the tools available to consumers to monitor and cap their usage.

Today's action is long overdue. Customers throughout the European Union already enjoy protections against bill shock. I am a firm believer in learning—and building upon—the success of international counterparts. To that end, I appreciate the willingness of the Bureau to expand the Notice's discussion of these already-implemented regulations and to seek comment on the lessons of the European experience. When it comes to consumer protection, all nations can learn together—although I would like to see ours first in the ranks of consumer protection.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL**

Re: *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket No. 10-207, CG Docket No. 09-158.

I am voting to approve today's notice of proposed rulemaking regarding unexpected charges on wireless consumer bills. At the same time, I note that some have expressed concern regarding the context of the process as well as the substance. I appreciate such observations. Certainly we all agree on the importance of giving consumers what they need in a timely way. It is equally important, however, to develop a record and allow public comment prior to forming conclusions and implementing any regulations.

With regard to the substance, the white paper released by the Consumer and Governmental Affairs Bureau staff yesterday states that the Commission has received 764 "bill shock" complaints in the first six months of 2010. Although not noted in the white paper, America is home to an estimated 295 million mobile wireless subscribers. The white paper also states that some of the 764 complaints are under review by or are being actively mediated by the Commission. In others, the Commission has served the carrier with a complaint. Furthermore, some cases have been resolved satisfactorily. A more careful review of the totality of the evidence before us tells us that it is important to consider the questions contained in today's notice in the context of *all* of the data that is currently available. Here again, we would all agree that being "data-driven" means more than focusing on only a few facts and figures.

As we move ahead to explore the issues raised in the notice, I hope that we will avoid inadvertently interfering with the host of innovative applications and programs that already exist for the purpose of helping consumers manage their wireless usage. Service providers are innovating to develop and implement useful tools to empower their subscribers. For instance, earlier this month, one mid-sized carrier announced a new consumer program, which includes special phone replacement features, earlier phone upgrades, an overage cap, forgiveness and protection and discounts for paperless billing, even in the absence of a regulatory mandate. One could even say that when it comes to fixing bill shock, "there's an app for that."

Finally, we must not forget about the economic effects of potential new rules. While it may be tempting to shrug off regulatory costs, the reality is that businesses pass on their costs to consumers. We *all* pay for the cost of government mandates. As such, it is important to proceed carefully.

As always, I look forward to learning more from interested parties. Thank you to the Consumer and Governmental Affairs Bureau for its work on this notice.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket No. 10-207, CG Docket No. 09-158.

I am pleased that the Commission has initiated this proceeding to require alerts and other information that could help wireless consumers avoid unexpected charges on their monthly bills. The Commission's job is to ensure that its policies adequately protect consumers, and consequently, that those policies serve the public interest. When a substantial percentage of consumers have complained about overage charges, and their service providers have been slow to adequately respond, then the Commission must take the steps necessary to address those consumer concerns.

Bill shock has been a significant issue for some time. The Government Accountability Office put wireless companies on notice, in November of 2009, when it issued its report indicating that 34 percent of wireless consumers had received unexpected charges on their bills. Wireless providers were also informed, that this Commission was taking the situation seriously, when earlier this year it conducted a comprehensive survey about bill shock. Unfortunately, the industry has not responded in a sufficient and uniform manner to address these issues.

Wireless service providers spend considerable resources differentiating themselves on devices and service offerings, in their efforts to enhance customer support experiences. Given how widespread bill shock appears to be, I encourage all of the providers to earn their customers' loyalty, by offering more effective alerts and management tools than their competitors. Perhaps the action we take today, will spur the industry to adopt the types of protection from bill shock that consumers should reasonably expect. If this happens, then perhaps this could be the silver lining around this bill shock cloud.

Today's item proposes certain requirements for wireless service providers, and allows companies to do more and compete for consumers, based on additional information and usage tools. Thus, this item proposes to better protect consumers from overages, no matter which company they choose, and permits companies to do even more to win customer loyalty.

I applaud the Consumer and Governmental Affairs Bureau, for highlighting these concerns, and thank the Chairman for bringing this item to us for consideration.

**STATEMENT OF  
COMMISSIONER MEREDITH ATTWELL BAKER**

Re: *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket No. 10-207, CG Docket No. 09-158.

The Chairman deserves credit for raising the profile of this consumer issue, particularly as service offerings become more innovative, wireless devices become more complex, and more carriers experiment with tiered pricing. This is a serious issue that deserves our attention as technologies evolve. Many of us can recall a surprise on our mobile phone bills. But as the 97.4 percent complaint resolution rating of the Better Business Bureau and 92 percent approval rating from our own survey in May would suggest, many of us are also satisfied with our provider's response. It is unfortunate that the item is silent on these issues.

Better informed consumers will unquestionably make more informed choices. But we as a Commission must also be wary that even well-intentioned regulation, like this initiative, often imposes unintended costs. If we don't strike the right balance as regulators, we risk imposing costs on providers that could result in higher prices and lower quality of service for consumers. Upgrades to providers' billing systems may be expensive and burdensome for smaller providers and prepaid services and put them at a competitive disadvantage.

I think this issue is well suited to an industry-led solution. Competition on the basis of better customer service already distinguishes and differentiates carriers. Innovation by wireless carriers in this area benefits consumers. Consumers have the ultimate power to manage their "shock." The imposition of static, inflexible rules could undermine the commendable efforts many carriers have already taken and potentially restrict the use of important competitive tools that can serve customers better.

It is incumbent upon the wireless industry to redouble their efforts to educate consumers. They must provide clear information on the available monitoring tools and ensure that they are adequate and comprehensive. The voluntary industry efforts already in the marketplace—like the CTIA Consumer Code, which aims to improve consumer disclosure practices, and individual carrier initiatives—are a first step. My hope is that more industry participation takes place between now and the Commission's ruling on this matter. Ultimately, it's in the wireless industry's best interest to make clear to the consumer all that they're doing to manage expectations and avoid surprises. There is no need to wait for the Commission to act to provide more and consistent types of information. Indeed, if enough progress is made, the Commission may not have to act at all.