

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
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Consumer Information and Disclosure)	CG Docket No. 09-158
Truth-in-Billing Format IP-Enabled Service)	
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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments in response to the *Notice of Inquiry* (the “*Notice*”) in the above-captioned proceeding. For the reasons set forth below, MetroPCS opposes as unnecessary at this time Commission-imposed requirements on wireless carriers pertaining to usage alerts and cut-off mechanisms, especially for wireless carriers which provide pre-paid or unlimited pay-in advance services.² In opposition, the following is respectfully shown:

I. INTRODUCTION

The *Notice* explores ways to “help consumers to avoid receiving higher than expected bills for their wireless communications services.”³ The Commission seeks comment on the advisability of mandating a system of customer alerts and service cut-off mechanisms similar to

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *Effects on Broadband Communications Networks of Damage to or Failure of Network Equipment or Severe Overload*, NOTICE OF INQUIRY, in PS Docket No. 10-92 (April 21, 2010).

³ *Id.* at 2.

that implemented by the European Union about a year ago.⁴ The Commission also asks whether “consumers currently have the means at their disposal to monitor their wireless usage.”⁵

MetroPCS certainly understands the value to post-pay and measured service consumers of avoiding “bill shock,” especially as the use of mobile services continues to increase exponentially.⁶ Indeed, the MetroPCS business model is largely based on the proposition that many consumers need or desire predictable wireless fees for which they can budget effectively. Thus, MetroPCS offers fixed price, unlimited usage plans on a pay-in-advance basis specifically designed to deliver a stable value proposition to its customers. MetroPCS has gone so far as to offer tax inclusive and regulatory fee inclusive plans to eliminate even the small monthly charge variances that could result from adding these variable charges separately to the bill. MetroPCS also has designed its roaming system to ensure that, before receiving a phone call while roaming in an off network location where surcharges apply, the mobile subscriber is made aware, by an audio message, of the exact per minute charges that will be incurred and is given an opportunity not to proceed with the call. MetroPCS also offers MetroConnect, a supplementary usage-based service which allows a customer to put money into an account which the customer can draw against to receive and pay for certain services not included in the plan the customer has selected.

⁴ *Id.*

⁵ *Id.*

⁶ See Alex Mindlin, “Sending a Message, Again and Again,” N.Y. TIMES, Nov. 9, 2009 (the number of text messages transmitted in the United States grew by more than 80 percent over the 12 months ended in June 2009, despite the number of phones capable of texting growing only 7.3 percent year-over-year); *Mobile data: Traffic jam ahead?*, Bank of America Merrill Lynch, February 2010 (on file with Paul, Hastings, Janofsky & Walker) (noting that “[f]or the US and Europe, we project per capita monthly mobile data traffic reaching 600-700MB by 2015E (from 35-40MB in mid-2009) – which could be handled in 20MHz of paired spectrum per operator, on our estimates.”).

As the consumer uses the usage-based services, the amounts are withdrawn from the account. As a result, the customer never ends up paying more than the predetermined amount it set.

In sum, the entire MetroPCS prepaid, fixed price, “all-you-can eat,” tax and regulatory fee inclusive service model is designed to prevent its customers from being surprised at the end of the month by unexpected charges. MetroPCS customers are empowered to customize their mobile experience by selecting from a menu of service features at the beginning of each month. Unless they choose to place additional funds into their accounts for other purposes – such as off-network roaming – customers cannot be charged beyond the previously-agreed-upon price for that month, and they cannot exceed the total amount of funds they dedicated for wireless services. This is one of the great advantages of using prepaid wireless services, which are becoming a rapidly growing portion of the overall wireless service market.⁷

Because MetroPCS has voluntarily put in place many of the mechanisms that the Commission is contemplating to avoid “bill shock,” the Commission might expect MetroPCS to be unconcerned about the prospect of rules mandating these mechanisms. That is not the case. First, MetroPCS is against any regulatory obligations which impose costs that outweigh any tangible benefits. This is particularly the case with respect to services, such as those offered by MetroPCS, which require strict cost control and do not pose the kinds of risks identified by the Commission as necessitating regulatory intervention. Since MetroPCS’ customers never can end up with a “runaway” bill, it makes little sense to impose usage alert and cut-off mechanisms on the few services offered by MetroPCS on a metered basis.

⁷ See *US Wireless 411*, UBS Securities LLC, March 12, 2010 (finding that “[p]repaid represented almost half of the industry’s net adds in 4Q (unlimited making up 23%), driven by promotional pricing at MetroPCS, Leap, and StraightTalk. As a result, prepaid subscriber growth accelerated 30 bps sequentially to 17.1%. Prepaid subscribers now make up 19% of the US wireless base, up from 17% a year ago.”).

Second, MetroPCS firmly believes that regulatory intervention should be reserved for situations where competitive market forces are not working to protect and benefit consumers. Government regulations should be a last resort, to be turned to only when competitive market forces have failed and the industry is not functioning properly. Here, the competitive market is working properly. Wireless consumers may select from a number of providers and “vote with their feet” to acquire the service features and billing plans they most need or desire. As a result of this market competition, some wireless providers, such as MetroPCS, offer their customers tools to monitor and limit their monthly wireless expenses. If this is a feature that consumers want, other providers will have to respond by offering such tools of their own, or else suffer the competitive consequences.

Finally, MetroPCS becomes particularly concerned about proposed regulations which impose a uniform regulatory regime on a competitive market that exhibits great diversity. A “one size fits all” approach to avoiding unexpectedly high bills and keeping customers informed ignores the diversity of business models and customer needs that are in the market. Because many providers’ services are structured differently, the optimal method for keeping customers adequately informed will be different as well. Inflexible regulations actually will stand in the way of wireless providers who are more acutely attuned to the needs of their customers, and best able to tailor approaches to their individualized circumstances.

II. THE RETAIL WIRELESS INDUSTRY IS COMPETITIVE AND “BILL SHOCK” REGULATIONS ARE NOT NECESSARY AT THIS TIME

The *Notice* asks whether the Commission should implement rules requiring “usage alerts and cut-off mechanisms similar to those required under the EU regulations 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.”⁸ With respect to the relatively mature voice and text markets, competitive market forces are sufficient to protect consumers at this time. With respect to the data market, it would be premature for the Commission to act.

The wireless telecommunications industry, particularly the well-developed voice and text markets, are highly competitive. In the *Fourteenth Mobile Wireless Competition Report*, the Commission noted that almost 74 percent of Americans are covered by five or more wireless service providers, more than 90 percent of Americans are covered by four or more, and 95.8 percent have the option of three or more.⁹ With this many retail competitors, wireless service consumers have the option of shopping around for the suite of service features and billing plans that makes the most sense for them. If they are concerned with their own usage (or, perhaps even the wireless usage of their children), they can select a provider or switch to a provider which offers the ability to limit, or at least to closely monitor, their monthly usage. In a highly competitive market, wireless providers have significant market-driven incentives to establish such measures. Providers want consumers to switch to their services, and one effective way to do that is to offer customers tools and plans that enable them to manage the cost of their service effectively and avoid unpleasant surprises.

The Commission’s own wireless competition report shows that consumers are, in fact, voting with their feet and choosing new and innovative mobile offerings by switching in greater numbers to prepaid wireless plans. Between the second quarter of 2007 and the second quarter of 2009, total prepaid subscribers increased by 37.6 percent, accompanying a decline in the amount of postpaid subscribers as a portion of the entire wireless market from 81.9 percent to

⁸ *Notice* at 2.

⁹ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, FOURTEENTH REPORT, at Table 4, in WT Docket No. 09-66 (May 20, 2010) (“*Fourteenth Mobile Wireless Competition Report*”).

78.5 percent.¹⁰ These prepaid wireless services allow consumers to enjoy robust coverage and to avoid even the chance of exceeding their monthly budgets for wireless communications services by limiting their monthly usage on the front end. Additionally, the growth of prepaid service plans puts increasing pressure on post-paid service providers to provide customers with tools to enable them to manage their wireless costs effectively – all without government regulation.

Admittedly, the broadband wireless data market is not as well-developed as the voice and text markets. This does not mean, however, that Government intervention is either necessary or appropriate at this time. Given the nascency of the wireless broadband data market, service features are still being developed and improved through the normal process by which emerging industries develop themselves. It would be unfortunate if the developing market was shaped by preconceived Government notions rather than by the unlimited creativity of entrepreneurs and business professionals who are in the best position to respond quickly to the often-changing demands of consumers. Rather than extending micromanaging regulation over the wireless data market and tying the hands of providers in offering innovative solutions to their customers, the Commission should allow the industry to develop further on its own terms.

The best thing the Commission can do to assure that this process works to the benefit of consumers is to promote further broadband data competition by making additional spectrum available for new and existing carriers, as it pledged to do in the National Broadband Plan.¹¹ As President Obama properly recognized in a recent statement entitled *Unleashing the Wireless Broadband Revolution*: “America's future competitiveness and global technology leadership depend, in part, upon the availability of additional spectrum. The world is going wireless, and

¹⁰ *Id.* at ¶ 163.

¹¹ See THE NATIONAL BROADBAND PLAN at 85 (“Ultimately, the cost of not securing enough spectrum may be higher prices, poorer service, lost productivity, loss of competitive advantage and untapped innovation.”).

we must not fall behind.”¹² MetroPCS strongly endorses this spectrum initiative and is confident that the licensing of additional spectrum will provide even greater incentive for those carriers to respond quickly to any billing concerns of their customers.

III. COMPETITIVE MARKET FORCES ARE WORKING

The Notice also “seek[s] comment on the extent to which consumers currently have the means at their disposal to monitor their wireless usage and are fully aware of the consequences of exceeding their predetermined allocations of voice minutes, text message limits, or data usage.”¹³ The answer is that competition in the wireless industry has given rise to different business models, some of which are designed specifically to make certain that customers do not exceed the monthly expenditures they have budgeted for their mobile communications.

As a case in point, MetroPCS offers a variety of service features specifically designed to ensure that its customers are able to control their expenses. For example, MetroPCS customers who want roaming services can sign up for a service that enables them to roam without additional charge throughout the MetroPCS network in the US and on the networks of roaming partners who have entered into certain reciprocal roaming arrangements. There are, however, areas where roaming surcharges might apply. Customers can roam in these areas without “bill shock” by subscribing to a prepaid service called TravelTalk. In order to use TravelTalk, customers place funds into an account from which any applicable roaming surcharges will be deducted. The customer then changes the setting on his or her phone from “Home or MetroPCS only” to “Roam or Automatic” which allows the phone to receive or place phone calls through a

¹² Presidential Memorandum for the Heads of Executive Departments and Agencies: Unleashing the Wireless Broadband Revolution, The White House Office of the Press Secretary, June 28, 2010.

¹³ *Notice* at 2.

host network to which surcharges would apply. However, the customer may only be charged up to the extent of the funds they have placed into their account for just such purposes.¹⁴

MetroPCS also has implemented additional measures to ensure that customers are not caught unawares by roaming charges. If a customer is roaming outside of his or her home area and receives an incoming call, upon answering the call, the customer will hear a “whisper message,” which explains that an incoming TravelTalk call is waiting. The customer may then accept the call or decline the call and the charges.¹⁵ Furthermore, MetroPCS customers may check their balances at any time and add funds into their account to allow for whatever amount of roaming and other services that they desire. But, again, they cannot receive a large unexpected bill because their usage is geared to the amount they have chosen to fund into the TravelTalk account.

The growth of prepaid services, and the availability without government intervention of the specific safeguards MetroPCS has put in place to protect subscribers against unexpectedly large wireless bills, demonstrates that market forces are working to the benefit of consumers. This being the case, the Commission should refrain from imposing inflexible regulations upon the entire industry. Furthermore, because many carriers offer free nationwide roaming, an across-the-board requirement that carriers send their customers notices when they are roaming might very well confuse customers and lead to a less-than-full use of the services for which they pay. Similarly, consumers who want to be able to use their phones anywhere all the time regardless of cost will not be served by intercept notifications that unnecessarily delay the

¹⁴ MetroPCS.com, TravelTalk, <http://www.metropcs.com/products/traveltalk> (last visited June 28, 2010).

¹⁵ MetroPCS.com, TravelTalk FAQs, <http://www.metropcs.com/products/traveltalk/faqpop.aspx> (last visited June 28, 2010).

communication. Accordingly, carriers should not be uniformly obligated to provide SMS messages regarding roaming or account balances.

In addition, the Commission should be sensitive to potential intellectual property claims that might arise with some of these messages it suggests mandating. For example, it appears that Freedom Wireless claims that any service in which an account balance is used in real-time to determine when to provide service would infringe upon certain patents it holds.¹⁶ The Commission must not mandate a particular method of providing service or notice, especially if it might lead to claims of intellectual property infringement, unless the Commission intends to acquire a license for the use of such methods for all regulated carriers.

IV. IN NO EVENT SHOULD THE COMMISSION IMPOSE REGULATIONS FOR “BILL SHOCK” ON PRE-PAID OR PAY-IN-ADVANCE OR UNLIMITED CARRIERS

The Commission’s inquiry regarding potential “bill shock” requirements are not limited to post-pay or metered usage-based services. No consumer benefits would result from imposing such requirements on pre-paid or pay-in-advance or unlimited carriers. To a large extent, consumers who sign up for those services have already made the decision that they want to limit their exposure to “runaway” costs. As a result, the consumer only puts in money for services they want to purchase, and they know that they cannot be charged beyond their pre-payment for the service. Further, the providers of pay-in-advance, pre-paid or unlimited services need to ensure low costs in order to provide their services to their customers. An increase in compliance costs resulting from new Government mandates will translate into higher-priced services. Because a significant number of consumers of pre-paid and pay-in-advance services are in lower

¹⁶ See Ben Charny, *Freedom Wireless collects prepaid patent*, CNET NEWS, May 23, 2001, available at http://news.cnet.com/Freedom-Wireless-collects-prepaid-patent/2100-1033_3-258175.html.

income brackets, and their wireless services may be their primary or sole telecommunications service, any increase in cost will disadvantage those least able to afford it. In any event, any such regulations, if imposed at all, are more appropriate for services, such as post-pay services, where a consumer can run up significant charges without notice or knowledge. Accordingly, the burdens of such regulations will exceed the nominal benefits these consumers will enjoy.

V. CONCLUSION

Individual carriers are in the best position to establish service features and business models that help customers understand their charges and avoid unexpectedly high monthly bills. A Government-mandated, “one size fits all” approach risks creating inefficient, potentially confusing, government-mandated messages that will not benefit wireless customers. Under a “hands-off” policy, MetroPCS and other carriers still will continue to incorporate features, such as TravelTalk, into their service plans to ensure that its customers are aware of charges beyond their base plans. The Commission should let private industry develop customer friendly features that are tailored to the specific contours of their own service plans and customers’ needs. Thus, MetroPCS urges the Commission to refrain from imposing regulations – particularly with respect to the pre-paid or pay-in-advance segment – and to allow competitive market forces to more efficiently and effectively address consumer concerns.

Respectfully submitted,

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