

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

**In the Matter of** )  
 )  
**Measures Designed to Assist U.S. Wireless** ) **CG Docket No. 09-158**  
**Consumers to Avoid “Bill Shock”** )  
 )

**REPLY COMMENTS OF**  
**CONSUMER ACTION AND THE NATIONAL CONSUMERS LEAGUE**

Consumer Action<sup>1</sup> and the National Consumers League<sup>2</sup> (together, “Commenters”) respectfully submit these reply comments in response to the Federal Communications Commission’s *Public Notice* concerning “Measures Designed to Assist U.S. Wireless Consumers to Avoid ‘Bill Shock.’”

“Bill shock” is not an issue that necessarily affects any one carrier more or less than another. Rather we find it to be a systemic problem in the wireless industry. Publicly-available data combined with numerous media reports support the contention that “bill shock” is a real problem affecting millions of American consumers.

“Bill shock” does not solely stem from roaming charges. Unexpected overages due to domestic voice, text, and data use are culprits as well. It is evident from the FCC’s survey data and public statements as well as multiple news reports that the tools American wireless carriers provide consumers are inadequate to prevent “bill shock.” The available usage monitoring and management options are confusing and inconsistent across carriers, and offer limited roaming protection. “Bill shock” regulations modeled after those adopted in the European Union (“EU”) will help consumers better manage their budgets and ensure that they are treated fairly.

**I. PUBLICLY AVAILABLE DATA COUNTERS INDUSTRY CLAIMS THAT THERE IS NO “BILL SHOCK” PROBLEM**

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<sup>1</sup> Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change. By providing financial education materials in multiple languages, a free national hotline, and surveys of credit and telephone services, Consumer Action helps consumers assert their rights in the marketplace and make financially savvy choices. More than 8,000 community and grassroots organizations benefit annually from its extensive outreach programs, training materials, and support.

<sup>2</sup> The non-profit National Consumers League, founded in 1899, is America’s pioneering consumer organization. Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, please visit [www.nclnet.org](http://www.nclnet.org).

In its comments, the CTIA argues that overall, American consumers are satisfied with their wireless service and thus “bill shock” is not a problem.<sup>3</sup> This contention is flawed because consumers may experience “bill shock” even if they find other parts of their wireless service acceptable. The FCC survey was not the only data to suggest that “bill shock” is widespread among wireless consumers. A November 2009 Government Accountability Office (“GAO”) study found that while consumers may be generally satisfied with their wireless service, a significant portion of consumers report being dissatisfied with billing related issues. The GAO study found that 34% of wireless phone users had received unexpected charges.<sup>4</sup>

Additionally, in comments<sup>5</sup> and public statements,<sup>6</sup> the CTIA questioned the FCC’s methodology in its “bill shock” survey. FCC staff have gone on record to address the specific concerns the CTIA voiced.<sup>7</sup> FCC experts have stated that the CTIA’s criticism of the FCC survey is misleading. Furthermore, senior FCC staff report receiving thousands of “bill shock” complaints annually.<sup>8</sup> In the absence of data provided by the carriers as to how many of their users suffer from “bill shock,” the FCC’s data is the most reliable set of publicly-available data.

## **II. ARGUMENTS CLAIMING THAT ROAMING IS THE SOLE SOURCE OF “BILL SHOCK” IGNORE THE ROLE OF DOMESTIC VOICE, TEXT AND DATA OVERAGES**

In our initial comments in this proceeding, commenters noted three extreme instances of “bill shock.”<sup>9</sup> In each case, the large bills stemmed from roaming charges. Such roaming-related charges are not the only source of “bill shock” stories making headlines. Other consumers have experienced “bill shock” as a result of domestic wireless phone use, including:

- Ted Estarija, a Verizon Wireless customer, received a bill for \$21,917.59 instead of his normal \$93 because of excessive data use.<sup>10</sup> Estarija’s 13-year-old son had just been added to the family’s plan when he began using data despite the fact that the family did not have data plan. Verizon Wireless bills such use at \$1.99 per megabyte. Measures like those instituted in the EU, particularly the automatic cut-off mechanism, could have ensured that this the Estarija’s would have been notified that they were in danger of incurring such a large bill.

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<sup>3</sup> See Comments of CTIA, CG Docket 09-158 (filed July 6, 2010) at 13.

<sup>4</sup> “FCC Needs to Improve Oversight of Wireless Phone Service” United States Government Accountability Office. November 2009. Online: <http://www.gao.gov/new.items/d1034.pdf>

<sup>5</sup> See generally Comments of CTIA, at 13-17.

<sup>6</sup> Guttman-McCabe, Christopher. “Peeling the Onion on the FCC’s ‘Bill Shock’ Survey: Part I,” CTIA-The Wireless Association Blog. Posted July 14, 2010. Online: <http://www.ctia.org/blog/index.cfm/2010/7/14/Peeling-the-Onion-on-the-FCCs-Bill-Shock-Survey-Part-I>

<sup>7</sup> Gurin, Joel and Horrigan, John. “Denying Bill Shock by Distorting the Facts,” BlogBand: The Official Blog of the National Broadband Plan. Accessed July 15, 2010. Online:

<http://blog.broadband.gov/?ArticleTitle=Denying%20Bill%20Shock%20by%20Distorting%20the%20Facts>

<sup>8</sup> *Ibid.*

<sup>9</sup> See Comments of Consumer Action and the National Consumers League, CG Docket 09-158 (filed July 6, 2010) at 2.

<sup>10</sup> Winter, Michael. “Can you hear me? Calif. teen racks up \$21,900 cell bill,” *USA Today*. Dec. 11, 2009. Online: <http://content.usatoday.com/communities/ondeadline/post/2009/12/can-you-hear-me-calif-teen-racks-up-21900-cell-bill-1>

- David Buth was a Sprint Nextel customer for six years. Buth decided to upgrade his plan from 700-minutes to 1400-minutes per month. Because the new plan would not take effect until the next billing cycle, a representative offered to provide him 250 bonus minutes until the new plan took effect. Buth accepted the offer, but the bonus minutes were not applied to his account. He was then charged \$343 rather than his usual \$95 because of voice overage fees.<sup>11</sup> If Sprint Nextel had implemented a limit notification system, Buth could have been notified to Sprint Nextel to resolve this glitch before it turned into a billing issue. In the event that the notifications went unnoticed, an automatic shut-off system would have ensured that the bill would not have reached such a high level.

The industry further claims that EU regulations are unnecessary because American wireless consumers are not as susceptible to high roaming charges as their European counterparts.<sup>12</sup> Although American consumers do not generally face roaming charges while on another carrier's network within the United States, American consumers do roam outside the United States and incur charges for that use. As many of the "bill shock" headlines illustrate, roaming fees are one of the causes of "bill shock."

### **III. CONSUMER INFORMATION PROVIDED AT THE POINT-OF-SALE DOES NOT ADDRESS THE SOURCE OF "BILL SHOCK"**

The industry presents the "CTIA Code of Ethics"<sup>13</sup> ("the Code") as the set of principles the industry follows that help prevent "bill shock." We agree that the Code contains terms that are favorable for consumers at the onset of service. However, the Code does not address the specific issues that cause "bill shock." The information disclosure requirements in the Code help consumers decide on service plans and better understand their bills, but do not help consumers control or monitor their use. We argue that a major cause of "bill shock" is not a lack of cost information but rather a failure to present such information in a timely and useful manner. Usage management tools like limit notification and automatic shut-off systems address the source of "bill shock." They do so by informing consumers on a real-time basis when they are in danger of exhausting their usage allowance and providing "fail-safe" mechanisms in case warnings go unnoticed, effectively preventing unintended charges.

Information on the costs and fees associated with wireless service provided to consumers at the point-of-sale is not an adequate solution for addressing the source of "bill shock." For example, AT&T's Customer Service Summary (CSS) is provided to consumers at the point-of-sale.<sup>14</sup> The CSS provides the consumer information on usage limitations and costs that may apply to their wireless service. Although this information is useful to consumers, AT&T's argument that this tool is sufficient for consumers to avoid surprises is based on the faulty assumption that "bill shock" arises from of a lack of cost information. "Bill shock" results not

<sup>11</sup> Dawson, Greg. "Sorry, wrong number," *Orlando Sentinel*. Dec 2, 2007. 2007 WLNR 23789061

<sup>12</sup> See Comments of AT&T, CG Docket 09-158, (filed July 6, 2010) at 8; Comments of Sprint-Nextel, CG Docket 09-158 (filed July 6, 2010) at 8-9; Comments of Verizon Wireless. CG Docket 09-158 (filed July 6, 2010) at 21.

<sup>13</sup> "CTIA: Consumer Code for Wireless Service." Online: [http://files.ctia.org/pdf/The\\_Code.pdf](http://files.ctia.org/pdf/The_Code.pdf)

<sup>14</sup> See Comments of AT&T at 3.

because the consumer is unaware that his plan has a limited voice or data allowance, or that the cost of exceeding that allowance is high. Rather, “we argue that “bill shock” occurs because the consumer is unaware when he has exceeded or is in danger of exceeding the limits of his plan.

Consumers are not good estimators of their own cellphone use.<sup>15</sup> Wireless service plans are more complex than ever and expecting the consumer to keep track of their use is unrealistic. Voice features like free nights and weekends, and mobile-to-mobile calling add to the inability of consumers to accurately estimate their actual usage. The industry practice of pricing data usage on a per kilobyte basis adds to consumer confusion. Since data activity can consume anywhere from a few kilobytes to many megabytes depending on the application used, it is nearly impossible for consumers to accurately estimate their data consumption.

Measures like those implemented in the EU address this issue. Limit notification ensure that consumers are made aware that they are nearing their plans’ limits in a timely fashion. With that information a consumer can either curb her use or upgrade her plan. The “fail-safe” mechanism of an automatic shut-off as implemented by the EU, ensures a consumer never receives a bill higher than a certain threshold without the consumer’s consent.

#### **IV. INCONSISTENCIES ACROSS CARRIER-PROVIDED USAGE MANAGEMENT OPTIONS LEAD TO CONSUMER CONFUSION AND ARE THUS INEFFECTIVE AT PREVENTING “BILL SHOCK”**

Commenters and New American Foundation *et al.* both find that the carrier-provided options for preventing “bill shock” are ineffective and contribute to consumer confusion.<sup>16</sup> To prevent “bill shock,” regulation is needed to provide a baseline of consumer protection against “bill shock.” A floor of protection ensures that subscribers can expect a minimum amount of “bill shock” protection regardless of carrier or plan, eliminating confusion and effectively preventing “bill shock.”

The “bill shock” prevention measures currently available in the market are inconsistently applied across carriers and vary by domestic or international or roaming coverage, cost, and type of use covered. Drawing on carrier-provided comments in response to the *Public Notice* and publicly available marketing data, commenters have compiled the attached figures (*see* Attachment A, pages 7-9) to illustrate some of the notification options available to consumers across various carriers and the types of service. Specifically:

- Figure 1 describes the various text message notifications carriers will send the subscribers when they have reached certain domestic use thresholds.
  - AT&T will notify subscribers *after* they exceed their voice or text allowance, while U.S. Cellular and Verizon Wireless issue notifications *before* consumers exceed their voice or text plans.

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<sup>15</sup> Bar-Gill, Oren and Stone, Rebecca. “Mobile Misperceptions,” *Harvard Journal of Law & Technology*. Vol 21, No. 1, pg. 52. Fall 2009. Online: <http://jolt.law.harvard.edu/articles/pdf/v23/23HarvJLTech49.pdf>

<sup>16</sup> *See* Comments of New America Foundation *et al.*, CG Docket 09-158 (filed July 6, 2010) at 3.

- AT&T will notify subscribers before they exceed their data allowance, while U.S. Cellular does not offer any data use notifications.
  - T-Mobile will only notify consumers during certain times of the day, while Verizon Wireless only notifies consumers during a certain period in their billing cycle.
- Figure 2 illustrates the text message notifications for international roaming use.
    - AT&T offers no international roaming notification, while Verizon Wireless notifies consumers that they are roaming and the costs associated with that use.
    - T-Mobile does notify consumers that they are roaming internationally but does not notify consumers of the costs of using its service while roaming.
    - Although Sprint Nextel does not offer voice or text use notifications, they do notify consumers when they have reached certain use limits on their data plans.
- Figure 3 illustrates the automatic cut-off options consumers have when reaching domestic use thresholds.
    - Without charge, AT&T will automatically cut-off service for excessive text message overages but not voice or data overages.
    - T-Mobile only offers an automatic cut-off service (for a fee) to subscribers on family plans, but not individual plans.
    - Verizon Wireless offers an automatic cut-off service as well, but charges subscribers for access to this service on a per phone basis, regardless of whether they are subscribed to a family plan.

Consumers cannot be expected to successfully navigate the patchwork maze of usage management options offered by carriers. EU-style notification and cut-off requirements would ensure that consumers can comfortably rely on a minimum level of “bill shock” protection.

## V. CONCLUSION

Sprint Nextel has suggested that instead of imposing regulation, the commission should engage in a workshop to informally address “bill shock” issues.<sup>17</sup> We are not opposed to a workshop. However, proceedings that deal directly with an issue that is hurting consumers should be open and public, and should include consumers groups. A workshop should also not be seen as a substitute for regulation but rather should be seen as medium to clarify the issues surrounding “bill shock.”

Commenters recognize that some carriers have made efforts to provide consumers with limited means to prevent “bill shock.” We argue, however, that consumers require a baseline of protection against “bill shock,” regardless of which wireless carrier they choose. We do not believe that a minimum standard for notification and a “fail-safe” cut-off mechanism would

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<sup>17</sup> See Comments of Sprint-Nextel at 16.

create an obstacle to innovation in the wireless market. Rather, we argue that prudent regulation in this area creates a “win-win” scenario for consumers and wireless carriers. Ensuring that consumers are easily able to avoid unintended charges can build positive relationships between the carriers and their subscribers.

Commenters reaffirm our argument that “bill shock” is an issue that affects millions of American wireless consumers. We further believe that industry arguments against “bill shock” fail because they rely on a *status quo* of usage management options that are inconsistently available across carriers and provide consumers with inadequate means to protect themselves from “bill shock.” We strongly believe that notification and cut-off requirements such as those adopted in the EU would address this issue. We therefore urge the Commission to adopt rules requiring wireless service providers to supply automatic and free usage alerts and an automatic cut-off mechanism in the event of significant overages to protect consumers from “bill shock.”

Respectfully submitted,

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## ATTACHMENT A

**Figure 1: Wireless Carrier Notification Options\* (Domestic Use)**

	Voice	Text	Data
<b>AT&amp;T (free)</b>	At \$10-\$15, \$50, \$100 and \$200 in minute overage fees. <sup>18</sup>	At \$10-\$15, \$50, \$100 and \$200 in text overage fees. <sup>19</sup>	DataPlus/DataPro plan at 65%, 90%, and 100% of data plan limit. Legacy data plans at \$15, \$50, and \$100 in data overage fees. <sup>20</sup>
<b>Sprint Nextel (free)</b>	None.	None.	At 75% and 90% of data plan limit. Due to launch this summer. <sup>21</sup>
<b>T-Mobile (free)</b>	At 45 minutes remaining, and at 100% minute plan limit. Alerts will only be sent between 8am-10pm. <sup>22</sup> <small>23</small>	None.	None.
<b>U.S. Cellular (free)</b>	At 75% and 100% of minute plan limit. <sup>24 25</sup>	At 75% and 100% of text plan limit. <sup>26 27</sup>	None.
<b>Verizon Wireless (free)</b>	If the subscriber is nearing or has exceeded their plan's limit near the 20th of the billing cycle. <sup>28</sup>	If the subscriber is nearing or has exceeded their plan's limit near the 20th of the billing cycle. <sup>29</sup>	If the subscriber is nearing or has exceeded their plan's limit near the 20th of the billing cycle. <sup>30</sup>
<b>Verizon Wireless<sup>31</sup></b>	At 15 minutes remaining in minute plan. <sup>32</sup>	At 15 text messages remaining in text message plan. <sup>33</sup>	None.

\* These are the various thresholds that a consumer must surpass in order to receive a text message notification from the wireless carrier, for a given type of service use, informing them that they are near exceeding their allowance or have already exceeded it.

<sup>18</sup> See Comments of AT&T at 7.

<sup>19</sup> See Comments of AT&T at 7.

<sup>20</sup> See Comments of AT&T at 7.

<sup>21</sup> See Comments of Sprint Nextel at 6.

<sup>22</sup> See Comments of T-Mobile at 5.

<sup>23</sup> T-Mobile. Even More Plus Overage Alerts. Online: <http://support.t-mobile.com/doc/tm24032.xml> (last accessed July 13, 2010).

<sup>24</sup> See Comments of CTIA at 4.

<sup>25</sup> U.S. Cellular. Overage Protection. Online: <http://www.uscellular.com/uscellular/common/common.jsp?path=/overage-protection/index.html> (last accessed July 13, 2010).

<sup>26</sup> See Comments of CTIA at 4.

<sup>27</sup> U.S. Cellular. Overage Protection. Online: <http://www.uscellular.com/uscellular/common/common.jsp?path=/overage-protection/index.html> (last accessed July 13, 2010).

<sup>28</sup> See Comments of Verizon Wireless at 3.

<sup>29</sup> See Comments of Verizon Wireless at 3.

<sup>30</sup> See Comments of Verizon Wireless at 3.

<sup>31</sup> See Comments of Verizon Wireless at 7. For these options, a consumer must enroll for the \$4.99 Usage Control feature.

<sup>32</sup> See Comments of Verizon Wireless at 7.

<sup>33</sup> See Comments of Verizon Wireless at 7.

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**Figure 2: Wireless Carrier Notification Options\*** (*International Roaming Use*)

	<b>Voice</b>	<b>Text</b>	<b>Data</b>
<b>AT&amp;T (free)</b>	None.	None.	None.
<b>Sprint Nextel (free)</b>	None.	None.	At 75% and 90% of data plan limit. Due to launch this summer. <sup>34</sup>
<b>T-Mobile (free)</b>	Only that the subscriber is roaming. <sup>35</sup>	Only that the subscriber is roaming. <sup>36</sup>	Only that the subscriber is roaming. <sup>37</sup>
<b>U.S. Cellular (free)</b>	None.	None.	None.
<b>Verizon Wireless (free)</b>	Fees associated with use in that country when first connecting to the roaming network. <sup>38</sup>	Fees associated with use in that country when first connecting to the roaming network. <sup>39</sup>	Fees associated with use in that country when first connecting to the roaming network. Also, a warning at \$100 and \$250 in roaming data charges. <sup>40</sup>

\* These are the various thresholds that a consumer must surpass in order to receive a text message notification from the wireless carrier, for a given type of service use, informing them that they are near exceeding their allowance or have already exceeded it.

<sup>34</sup> See Comments of Sprint Nextel at 6.

<sup>35</sup> See Comments of CTIA at 11.

<sup>36</sup> See Comments of CTIA at 11.

<sup>37</sup> See Comments of CTIA at 11.

<sup>38</sup> See Comments of CTIA at 11.

<sup>39</sup> See Comments of CTIA at 11.

<sup>40</sup> See Comments of CTIA at 11.

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**Figure 3: Wireless Carrier Automatic Cut-Off Options\* (Domestic Use)**

	Voice	Text	Data
<b>AT&amp;T (free)</b>	None. <sup>41</sup>	At \$200 in text message overage fees. <sup>42</sup>	None.
<b>AT&amp;T (with \$4.99 Smart Limits feature)</b>	None. <sup>43</sup>	At any limit chosen by the subscriber. <sup>44</sup>	None. <sup>45</sup>
<b>Sprint Nextel (free)</b>	None.	None.	None.
<b>Sprint Nextel (with \$4.99 Spending Limit Program)<sup>46</sup></b>	A maximum dollar amount set by an outside Credit Service. <sup>47</sup>	A maximum dollar amount set by an outside Credit Service. <sup>48</sup>	A maximum dollar amount set by an outside Credit Service. <sup>49</sup>
<b>T-Mobile (free)</b>	None.	None.	None.
<b>T-Mobile (with \$2 Family Allowance feature)<sup>50</sup></b>	At any limit chosen by the subscriber. <sup>51</sup>	At any limit chosen by the subscriber. <sup>52</sup>	None.
<b>U.S. Cellular (free)</b>	None	None.	None.
<b>Verizon Wireless (free)</b>	None.	None.	None.
<b>Verizon Wireless (with \$4.99 Usage Control feature)</b>	At any limit chosen by the subscriber. <sup>53</sup>	At any limit chosen by the subscriber. <sup>54</sup>	None.

\* These are the various thresholds that a consumer must surpass in order for the carrier to automatically cutoff service, for a given type of service use, to prevent excessive overages without the customer's consent.

<sup>41</sup> See Comments of AT&T at 7.

<sup>42</sup> See Comments of AT&T at 7.

<sup>43</sup> AT&T Wireless, AT&T Smart Limits for Wireless, <http://www.wireless.att.com/learn/articles-resources/parental-controls/smart-limits.jsp> (last accessed July 13, 2010).

<sup>44</sup> See Comments of AT&T at 5.

<sup>45</sup> AT&T Wireless, AT&T Smart Limits for Wireless, <http://www.wireless.att.com/learn/articles-resources/parental-controls/smart-limits.jsp> (last accessed July 13, 2010).

<sup>46</sup> Sprint. Spending Limits FAQs, [http://shop.sprint.com/en/support/faq/spending\\_limits.shtml](http://shop.sprint.com/en/support/faq/spending_limits.shtml) (last accessed July 13, 2010). (Available only for subscribers with poor credit scores).

<sup>47</sup> Sprint. Spending Limits FAQs, [http://shop.sprint.com/en/support/faq/spending\\_limits.shtml](http://shop.sprint.com/en/support/faq/spending_limits.shtml) (last accessed July 13, 2010).

<sup>48</sup> Sprint. Spending Limits FAQs, [http://shop.sprint.com/en/support/faq/spending\\_limits.shtml](http://shop.sprint.com/en/support/faq/spending_limits.shtml) (last accessed July 13, 2010).

<sup>49</sup> Sprint. Spending Limits FAQs, [http://shop.sprint.com/en/support/faq/spending\\_limits.shtml](http://shop.sprint.com/en/support/faq/spending_limits.shtml) (last accessed July 13, 2010).

<sup>50</sup> T-Mobile. Family Allowances FAQs, <http://support.t-mobile.com/doc/tm23703.xml> (last accessed July 13, 2010). (Available only for subscribers on Family Plans).

<sup>51</sup> T-Mobile. Family Allowances FAQs, <http://support.t-mobile.com/doc/tm23703.xml> (last accessed July 13, 2010).

<sup>52</sup> T-Mobile. Family Allowances FAQs, <http://support.t-mobile.com/doc/tm23703.xml> (last accessed July 13, 2010).

<sup>53</sup> See Comments of Verizon Wireless at 7.

<sup>54</sup> See Comments of Verizon Wireless at 7.