

**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

To: The Commission

COMMENTS OF NTCH, INC.

NTCH, Inc. ("NTCH"), by its attorneys, hereby offers these brief comments regarding the Commission's proposals to deal with "bill shock." In general, NTCH supports the Commission's efforts to reduce or eliminate bill shock, but the rules must be tailored so as to avoid imposing an unnecessary burden where bill shock is not a legitimate consumer concern.

NTCH's principals, like millions of Americans, have had the trauma of receiving a cellular bill that contains hundreds and even thousands of dollars in charges which were unanticipated. Typically this situation occurs when unfamiliar foreign roaming charges are incurred, when teenagers or other young mobile users fail to appreciate or obey plan limits, or when plans are so complicated in their application that it is difficult without an advanced degree to understand when some limit is approaching or has been exceeded. For example, minutes are no longer just 60 seconds – they are "night-time" minutes, "peak" minutes, "anytime" minutes, and "rollover" minutes, to mention just a few, and each category of minute has different implications for exhaustion of a customer's allotted time. The problem is further complicated by family plans in which there may be four or five people sharing the same bucket of minutes and

no individual user knows when the family bucket is in danger of exhaustion. We must admit that even savvy network operators and communications lawyers sometimes inadvertently exceed their allotted minutes with no excuses but with a similarly whopping bill.

The bill shock phenomenon is likely to expand as more and more Americans sign up for data plans in connection with 3G and 4G services. The niceties of bit rates, bandwidths and megabits are even harder to keep track of than plain old minutes, so the danger of exceeding the limits of typical usage plans increases significantly with the newer data-based broadband usage plans. Reasonable safeguards to protect consumers should therefore be adopted. As will be set forth below, however, the treatment for bill shock should vary depending on the type of service subscribed to by the consumer.

I. Post-Paid Plans with Limited Minutes

NTCH suggests that the solution here should be crafted to limit the cost burden on carriers (a burden which would ultimately only come back to adversely affect consumer prices) while at the same time giving consumers fair warning that surcharges are imminent if usage continues. The solution should also be tailored to the age and sophistication of the consumer, since many mobile phone users are now under the age of 18 and are unsophisticated and often unfamiliar with the restrictions that govern their cell phone use. The solution must also prevent the exorbitant penalties assessed when a consumer does exceed the limits of his plan. The Commission should therefore adopt the following measures:

1. A warning text should be sent to all users of any particular plan when the user is within 200 minutes or 20 Mb of triggering higher usage charges outside the usage allotted by the user's plan. Where there are multiple users under a single plan, the warning should be sent to all users in the plan.

2. A second warning to the same individuals should be texted when the usage reaches 100 minutes or 10 Mb to the plan limits.

3. When the actual plan limit is reached, the users should be alerted that they are in the penalty zone, that higher surcharges will apply, and that they should check their plan terms to know what the exact penalties are.

4. A "Parents' Plan" option should be available to all plans under which the authorized subscriber could opt to forbid any calls or usage over the plan limits. This tool would permit parents to protect themselves from bill shock through thoughtless, inadvertent or malicious use of their plan by minors. While dubbed a "Parents' Plan," this option would be available to anyone who desired to be certain that plan usage by anyone in the plan (adult or minor) did not exceed the limit. This option could, of course, be over-ridden by the authorized subscriber contacting the carrier and affirmatively over-riding the option either temporarily or permanently.

5. The "shock" that consumers experience from bill shock is not just a matter of being surprised by added charges – it's also the sheer size of the penalty charges. The solution to bill shock, therefore, must address the very real problem of the excessive penalties imposed for going over the plan limit. In some cases, the in-plan per-minute or per-bit rate is as little a penny a minute or a kilobit, but as soon as the plan limit is exceeded, the rate may jump to 25 cents a minute or 10 cents a kilobit. Obviously, the carriers' costs to deliver those extra minutes or kbs are marginally the same as the original minutes or kbs, yet suddenly the customer is being charged 10 to 25 times what a putatively reasonable charge was to begin with. These exorbitant rate levels are themselves shocking to the conscience and are prima facie unreasonable in contravention of Section 201 of the Act. The Commission should ameliorate the problem by

limiting the penalty charges to no more than two or three times the in-plan rates. Even that level of surcharge is questionable when its relation to costs is considered, but we assume that some penalty must be imposed in order to encourage customers to select the plans that are right for their usage patterns and then stay within them. A 200% or 300% penalty charge is more than sufficient to get that message across without becoming out and out price-gouging.

6. As a safety feature, when usage is blocked to prevent bill shock, calls to 911 should nevertheless be permitted.

The above measures can be implemented relatively inexpensively by carriers, will give consumers fair warning of higher charges if they persist in use, and will then alert them in strong terms when the higher charge threshold is crossed. The Parents' Plan also addresses one of the most vulnerable points in the system – high usage by youngsters – in a responsible way.

II. Pre-paid and Unlimited Use Plans

The evil that the foregoing measures are designed to prevent does not arise in the context of pre-paid or unlimited use plans. "Bill shock" – the incurring of a large and unexpected liability by overstepping plan limits – does not arise when the plan by its very nature prevents a customer from overusing the plan. We are confident that no user of a phone card or a pre-paid plan has ever complained about bill shock because she only gets what she has paid for and is not charged any more than that. The Commission recognized this in the NPRM. Pre-paid plans typically operate on low margins without many of the service capabilities which are normally associated with full service post-paid plans. To provide alerts under these circumstances would therefore needlessly increase the cost of providing the service with no concurrent benefit. The one benefit to early alerts is to let people know that their pre-paid minutes are about to run out,

but that is more a matter of courtesy than bill shock prevention. Of course, many, if not most, pre-paid plans already alert the user as to how many minutes are remaining when she initiates a call. In this sense the pre-paid caller is actually getting more frequent reminders about the status of her account than a post-paid customer. There is simply no problem here that needs solving. Pre-paid fixed amount plans should therefore be exempt from any alert system.

Similarly, some carriers offer unlimited voice and/or data plans. While we expect unlimited data plans to disappear as monitored usage (driven by broadband spectrum scarcity) becomes the norm, we do expect unlimited voice calling to persist. Again, in that situation there is no possibility of bill shock since the customer can never be charged more than the fixed rate he agreed to under his contract. There would never be an alert under this scenario, so it would be pointless to impose an obligation that will never come into play. There should therefore be an exemption for this category of service as well.

III. International Roaming

The fixes described above would not help the traveler who returns home to find exorbitant roaming charges on his phone bill assessed by foreign carriers. And unfortunately, the Commission has no jurisdiction to require foreign carriers to alert travelers that they are incurring high charges. Recently the European Union has again expressed concern at the level of roaming charges which are being levied. The Commission should coordinate with the EU to agree to mutual obligations by both US and EU carriers to alert travelers that roaming charges are being incurred before the first call over any carrier is put through. This solution is imperfect but goes a long way toward establishing a fair and reciprocal bill shock prevention program for both US and foreign travelers.

Respectfully submitted,

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January 4, 2011

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