

**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

**COMMENTS OF THE
MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL**

Jesse S. Reyes
Assistant Attorney General
Chief, Office of Ratepayer Advocacy,
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

January 10, 2011

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE CURRENT EXPERIENCE LEAVES CONSUMERS VULNERABLE	3
A.	Bill shock is a widespread and costly problem.....	3
B.	Usage monitoring tools currently offered by wireless providers are inadequate.	4
III.	PROPOSED RULES TO INCREASE CONSUMER PROTECTIONS	6
A.	Mobile providers should be required to actively notify subscribers regarding their voice, data and text usage levels as well as potential roaming or overage charges.	6
B.	The FCC should adopt rules that provide consumers the tools they need to monitor usage, and the ability to voluntarily cap usage when appropriate.	10
C.	FCC rules regarding usage alerts and monitoring tools should be viewed as a floor and will not inhibit the ability of mobile service providers to innovate.....	12
IV.	CONCLUSION	12

**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

**COMMENTS OF THE
MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL**

I. INTRODUCTION

Martha Coakley, Attorney General of the Commonwealth of Massachusetts (“Attorney General”) hereby submits initial comments in response to the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“FCC” or “Commission”) on October 14, 2010.¹ The Attorney General is an officer of the Commonwealth of Massachusetts authorized by common law and by statute to institute proceedings before state and federal courts, tribunals, and commissions that she may deem to be in the public interest.² The Attorney General is further authorized by statute to intervene on behalf of public utility ratepayers in administrative proceedings involving financing, rates, charges, prices or tariffs of any telecommunications company doing business in Massachusetts and subject to the jurisdiction of the MDTC.³

¹In 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* (“NPRM”), October 14, 2010.

² MASS. GEN. LAWS ch. 12, § 10; *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E. 2d 1262, 1266 (1977); *Secretary of Administration and Finance v. Attorney General*, 367 Mass. 154, 326 N.E. 2d 334, 338 (1977).

³ See MASS. GEN. LAWS ch. 12, § 11E.

In its NPRM, the FCC proposed rules that require wireless telecommunications service providers to provide consumers with usage alerts and information to assist consumers in avoiding bill shock (*i.e.* unexpected charges on their wireless bills).⁴ Specifically, the FCC proposed rules that would require that wireless providers send usage alerts to subscribers. The FCC seeks comments on the following:

- Notification when a subscriber is approaching plan limits for voice, text or data usage;⁵
- Notification when a subscriber reaches a monthly allotment limit and will start incurring overage charges;⁶
- Notification that a subscriber will incur international or roaming charges in excess of normal rates;⁷ and
- The length of time that mobile providers should have to implement systems to comply with notification requirements that the FCC adopts.⁸

The FCC also seeks comments on the availability of tools for consumers to manage their usage and a proposal to require that providers allow consumers to set usage limits.⁹

⁴ See NPRM at para. 1.

⁵ *Id.* at para. 20. The FCC further seeks comment on whether such notifications should be in “real time”, how family plans should be treated, the method of notification, and at which level(s) of usage the proposed notification should be provided. *Id.* These questions are discussed below.

⁶ *Id.* at para. 21. The FCC also seeks comment on whether the exact overage rates should be included in such a message and whether consumers should be required to “opt-in” to continue using their service once they have reached their original monthly allowance limit. *Id.*

⁷ *Id.* at para. 22.

⁸ *Id.* at para. 23.

⁹ *Id.* at para. 24.

This NPRM follows a Public Notice seeking comments earlier this year¹⁰ and a *2009 Consumer Information and Disclosure Notice of Inquiry* in which the Commission sought comments on methods to protect consumers of telecommunications services and ensure consumer access to relevant information.¹¹ The Attorney General and the Department of Telecommunications and Cable filed comments with the FCC on July 6, 2010 and reply comments on July 19, 2010. As stated in those comments, the Attorney General urges the Commission to view skeptically any industry assertions regarding the purported irrelevance or burdensome nature of requirements related to usage monitoring and alerts. As noted by the FCC, an ample record has been developed that indicates 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.”¹² It is in both the industry’s and consumers’ interest to implement a solution to the problem. Baseline notification practices should be adopted and consumer education efforts should be implemented.

II. THE CURRENT EXPERIENCE LEAVES CONSUMERS VULNERABLE

A. Bill shock is a widespread and costly problem.

Parties in this proceeding and the 2009 Consumer Information and Disclosure proceeding have provided ample evidence that bill shock is a real problem and that the

¹⁰ Comment Sought on Measures Designed to Assist U.S. Wireless Consumers to Avoid “Bill Shock,” CG Docket No. 09-158, DA 10-803 (rel. May 11, 2010), 75 Fed. Reg. 28,249 (May 20, 2010) (“Public Notice”).

¹¹ *2009 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) (“*2009 Consumer Information and Disclosure NOI*”).

¹² NPRM at para. 2.

proposed rules are by no means a solution in search of a problem.¹³ In addition, the FCC's own research suggests that the status quo is unacceptable. The FCC's survey on "the consumer mobile experience" found that one in six mobile telecommunications subscribers, or 30 million Americans, experienced bill shock (*i.e.* "a sudden increase in their monthly bill that is not caused by a change in service plan").¹⁴ The unexpected increase in bills for consumers is substantial: more than one-third of consumers experiencing bill shock faced a bill increase of at least \$50, and 23 percent of cell phone users experiencing bill shock faced a bill increase that was over \$100.¹⁵ Most recently, the FCC released a *White Paper on Bill Shock* on October 13, 2010 concluding that bill shock "is a relatively common problem" that "can be extremely costly."¹⁶ The volume of complaints related to bill shock is on par with complaints about "cramming" and early termination fees.¹⁷

B. Usage monitoring tools currently offered by wireless providers are inadequate.

As noted in the Attorney General's comments in response to the public notice: the "evidence shows that consumers are still unfairly subjected to unexpectedly high bills

¹³ See, e.g., MA AG/DTC Public Notice Comments at 4; Public Notice Reply Comments of Consumer Action and the National Consumers League at 1-3; NPRM at paras. 2-11 (citing the comments and/or reply comments of Consumer Action, Consumers Union, Montgomery County, and the National Association of State Utility Consumer Advocates "NASUCA").

¹⁴ FCC News Release, "FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion about Early Termination Fees," rel. May 26, 2010; see also *Americans' perspective on early termination fees and bill shock*, John Horrigan and Ellen Satterwhite, ("Bill Shock Survey Findings") (summarizing the survey findings).

¹⁵ Bill Shock Survey Findings at 3. See also FCC News Release, "FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion about Early Termination Fees" (rel. May 26, 2010).

¹⁶ Federal Communications, Consumer and Governmental Affairs Bureau, *White Paper on Bill Shock* at 2 (October 13, 2010).

¹⁷ Bill Shock White Paper at 4.

due to usage penalties despite the industry assertion that usage alert rules are an adequate solution. Without well publicized, easily accessible tools, the industry will retain its ability to surprise unsuspecting consumers with penalties and increased rates for mistaken overuse.”¹⁸ The FCC states: “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.”¹⁹ The stated goal of new requirements 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.”²⁰

While wireless carriers are taking some steps to alleviate bill shock, voluntary industry measures are not always an adequate substitute for uniform rules applied to all service providers. Continued complaints regarding unexpected charges as detailed in the *White Paper on Bill Shock* indicate that the status quo is unacceptable. The patchwork of individual carrier notification and monitoring tools and continued reliance on competition in the wireless market to address bill shock issues has failed.²¹ Competition in the wireless market has not proven adequate to effectively address bill shock and the continued presence of early termination fees reduces the churn one would expect in a

¹⁸ MA AG/DTC Public Notice Comments at 4, citing *In the Matter of Consumer Information and Disclosure Truth-in-Billing and Billing Format IP-Enabled Services*, Reply Comments of Verizon and Verizon Wireless at 3, CG Docket No. 09-158 (Oct. 28, 2009) (“[M]andatory disclosure regimes [regarding pricing, features, and terms of service] proposed by consumer group such as NASUCA . . . are unnecessary and inappropriate. What is more, the commenters have failed to identify any evidence of consumer confusion warranting such a regime.”).

¹⁹ NPRM at para. 14 (cite omitted).

²⁰ *Id.*

²¹ *See, e.g.* MA AG/DTC Public Notice Comments at 4-9; Consumer Action Public Notice Comments at Att. A; NPRM at n.74.

highly competitive market where bill shock problems affect so many consumers.²² Furthermore, the Attorney General concurs with the observations of the National Association of State Utility Consumer Advocates that “the source of the problem is that it is, overall, profitable for carriers not to provide adequate disclosures” and that a reliance on competition to solve the problem requires that consumers “have an unpleasant experience before they move on and make the offending carrier suffer the loss of customers.”²³ In conclusion, the Attorney General is encouraged that the NPRM notes the extensive record that has been developed regarding the need for promulgation of rules to address bill shock.²⁴

III. PROPOSED RULES TO INCREASE CONSUMER PROTECTIONS

A. Mobile providers should be required to actively notify subscribers regarding their voice, data and text usage levels as well as potential roaming or overage charges.

Despite updating its Consumer Code in July 2010, the CTIA (the wireless industry group) did not include standards with respect to usage alerts or ways to set limits on usage.²⁵ The FCC faults the Consumer Code (even with forthcoming updates) as “lack[ing] full industry participation, objective oversight, and enforceability” as well as omitting key tools that would prevent bill shock.²⁶ In addition, despite the patchwork of

²² MA AG/DTC Public Notice Reply Comments at 3 (citing Comments of Consumer Action and the National Consumers League at 1). In addition, the tying of particular handsets to service also makes switching providers difficult and costly.

²³ NASUCA Public Notice Reply Comments at 2-3.

²⁴ *See, e.g.*, NPRM at paras. 1-2, 14-16. Therefore, AT&T’s concern that rules will be promulgated in the absence of a finding that the current consumer usage and monitoring tools are inadequate is moot. AT&T Public Notice Reply Comments at 2.

²⁵ NPRM at para. 13, citing <http://www.ctia.org/content/index.cfm/AID/10549>.

²⁶ *Id.* para. 17 (cite omitted).

usage information tools, there continues to be a bill shock problem.²⁷ In its NPRM the FCC concludes that the record supports a finding that the current patchwork of tools is insufficient and that consumers would “benefit from automatic notification that will empower them to make informed decisions regarding their mobile usage prior to incurring substantial overage or roaming charges.”²⁸

The Attorney General supports the FCC’s proposal to require mobile providers to send notifications to subscribers when they are approaching their monthly usage limits.²⁹ These alerts should be applicable to any and all voice, data, and text limits that the consumer faces. A text should be sufficient for those subscribers that utilize texting facilities, but a voice call would be more appropriate for subscribers that do not text. The NPRM expresses concern related to automated calls without prior express consent of the subscriber.³⁰ However, as noted by the FCC, the current rules allow calls to wireless phones when there is a prior business relationship. In many cases, consumers are able to opt for the format of communication they prefer from a service provider at the point of sale or at a later date by updating their account. Rules could be drafted to take this option into account.

The FCC seeks input on the specific usage levels that should prompt a notification.³¹ Clearly, a notification should be sent when the consumer reaches his or her

²⁷ *Id.* at para. 15 stating: “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.” The Better Business Bureau received more complaints about the wireless industry than any other industry for 2009. *Id.*

²⁸ *Id.* at para. 16.

²⁹ *Id.* at para. 21.

³⁰ *Id.* at n.75.

³¹ *Id.* at para. 20.

usage limit for voice, text or data usage. The FCC cites the European Union usage level of 80% and seeks input on additional usage levels.³² The Attorney General acknowledges that consumers bear responsibility for their purchasing and usage decisions, but in order to do so they need information. At this time, the Attorney General supports an 80% and 100% notification and is hopeful that the industry will provide information about the feasibility and cost of implementing additional usage “marks” (90% or 95%) *in addition to* notification at the 80% and 100% levels.

Notifications should be in “real time” or as soon as possible thereafter.³³ As noted in Massachusetts Parties’ Public Notice Comments, it does not appear that the current usage tools give subscribers access to “real time” usage information, but rather, they provide usage information lagged by 15 to 24 hours,³⁴ a substantial amount of time for additional texts or minutes to accrue. The Attorney General hopes that industry commenters will address any technical issues related to “real time” notifications, and that the FCC will require more than vague estimates if a delay in notification is contemplated in the rules. Real time notification is critical for consumer management of their usage.³⁵

The FCC seeks comment regarding whether the wireless provider should be required to do anything more than send a notification that the subscriber has reached 100% of his or her monthly usage level. The Attorney General continues to agree with other consumer advocates that consumers need access to specific information related to the cost of any additional usage and that the subscriber should affirmatively “opt-in” to

³² *Id.*

³³ *Id.*

³⁴ *See* MA AG/DTC Public Notice Comments at 5-7.

³⁵ *See, e.g., id.* at 6, n.14 (discussing U.S. Cellular Coverage Protection Plan time lag issues).

any additional use above their normal monthly plan.³⁶ The Attorney General sees no reason why consumers should not be able to opt-out of usage alerts through, for example, an affirmative selection at the point of sale or through a change on their user account online.³⁷

The FCC expresses the need to ensure that any new requirements do not hamper carriers' ability to provide subscriber access to emergency services.³⁸ Access to emergency services is the number one priority. The FCC should confirm with providers that emergency services will not be impacted. The Attorney General notes that subscribers can currently access emergency services on handsets even if they have no other service, so any limit on service after a set usage limit should not limit a subscriber's ability to make emergency calls.

The Attorney General also supports the FCC's proposal that mobile providers notify consumers when they are about to incur international or roaming charges that are higher than their normal usage charges.³⁹ If real time information is not available with respect to the rates that will be incurred, providers should be required to provide a message that indicates that consumers may face charges substantially in excess of their package rates.⁴⁰

Finally, the FCC seeks comment regarding the time required to implement a

³⁶ See NPRM at para. 21, n.79.

³⁷ See *id.*; see also Ex Parte letter to the Honorable Julius Genachowski, Chairman, Federal Communications Commission, Re: Support for Rules to Protect Consumers from Bill Shock, Sascha Meinrath and Benjamin Lennett, Open Technology Initiative, New American Foundation, et al. (October 7, 2010).

³⁸ NPRM at para. 21.

³⁹ *Id.* at para. 22.

⁴⁰ *Id.*

mandatory usage alert requirement.⁴¹ The Attorney General plans to review the industry input on this matter but notes that many of the national providers already provide notifications in many instances.⁴² As noted by the FCC, usage alerts are employed in various forms already by many wireless carriers and there is “no known technological limitation on the record”⁴³ that would make implementation particularly difficult. Thus, limited time may be required after new rules are adopted. In any case, the FCC should carefully examine requests for lengthy implementation timelines or exemptions for subgroups of wireless carriers. The temptation to exempt carriers may be greatest in areas with the least amount of consumer choice with respect to wireless service or other telecommunications service alternatives. Furthermore, mobile service providers have not based their opposition to bill shock regulations on any purported technical objections.

B. The FCC should adopt rules that provide consumers the tools they need to monitor usage, and the ability to voluntarily cap usage when appropriate.

The FCC observes that while some mobile service providers currently offer various tools to enable consumers to monitor or cap their usage, consumers are often uninformed about how to access and use the tools.⁴⁴ As noted above, the FCC finds that the record provides ample evidence that consumers “face significant challenges” in monitoring their usage and ensuring that they do not incur overage charges.⁴⁵ To address this issue, the FCC proposes that mobile providers “make clear, conspicuous and ongoing

⁴¹ *Id.* at para. 23.

⁴² *See* MA AG/DTC Public Notice Comments at 4-6.

⁴³ NPRM at para. 18.

⁴⁴ *Id.* at para. 24.

⁴⁵ *Id.*

disclosure of any tools they offer which allow subscribers to either limit usage or monitor usage history.”⁴⁶ The Attorney General supports the FCC’s efforts in this regard. Tools to monitor usage must be well-publicized and easily accessible.

As noted in Massachusetts Parties’ Public Notice Comments, consistency among usage alert tools for the entire industry would be the most appropriate method to address the customer confusion that currently exists. As documented by the Massachusetts Parties and others, while many tools are available, they vary in their applicability (voice, text, and data) and accessibility.⁴⁷ The FCC specifically seeks comment on whether “tools disclosure” should be required on bills or in annual inserts.⁴⁸ Annual inserts are not an adequate method of informing consumers about how to manage their usage. Instead, disclosures related to usage management should be prominently displayed on monthly bills as well as on the providers’ websites. Many consumers no longer receive paper bills. Disclosures should be available on the “front page” of their user account on the provider’s website as well as on any e-bill they receive.

The FCC also seeks comment on whether it “should explore the possibility” of requiring that mobile broadband providers allow consumers the ability to set their own usage limits or opt out of some services altogether (*i.e.* texting).⁴⁹ The Attorney General urges the FCC to move past the exploration phase and adopt rules that allow consumers to set limits on their usage and block certain services. As noted above, the market has not

⁴⁶ *Id.*

⁴⁷ *See, e.g.*, MA AG/DTC Public Notice Comments at 4-7; Consumer Commenters Public Notice Comments at 6; Consumer Action and The National Consumers League at 6.

⁴⁸ NPRM at para. 24.

⁴⁹ *Id.* at para. 14.

provided the incentive for providers to offer such options. Indeed, the market may in fact incent providers *not* to offer these options.

Finally, the FCC asks whether prepaid services should be exempt from usage notifications. The FCC observes prepaid service users do not face overage charges when they reach their cap. However, the Attorney General concurs with the National Association of State Utility Consumer Advocates that the ability of users to manage their minutes is of importance for prepaid users, who have limited minutes (and perhaps funds) each month.⁵⁰

C. FCC rules regarding usage alerts and monitoring tools should be viewed as a floor and will not inhibit the ability of mobile service providers to innovate.

The FCC states: “Mobile service providers remain free to tailor additional transparency efforts to their subscribers’ needs as they see fit.”⁵¹ As stated in Massachusetts Parties Public Notice Comments: “Rules that require wireless providers to alert consumers when approaching usage limits will not limit the industry’s ability to innovate or respond to consumer demand.” The FCC should dismiss arguments to the contrary.

IV. CONCLUSION

The Attorney General concurs with the FCC’s conclusion that “voluntary efforts alone have proven insufficient to address the [bill shock] problem.”⁵² Consumers must have access to usage information tools in “real time” that are clearly disclosed. The FCC should adopt rules that require mobile providers to provide notification that consumers

⁵⁰ NASUCA Public Notice Reply Comments at 4.

⁵¹ NPRM at para. 14.

⁵² *Id.* at para. 17.

have reached various usage limits or are nearing those limits. In addition, consumers should have the ability to set usage caps and to restrict certain services. As discussed above, these alerts and tools are critical for consumer avoidance of overage charges. Such requirements will not hamper the industry's ability to innovate or to provide new packages, options, or services, and will serve only as a minimum level of consumer protection. Finally, the Attorney General urges the Commission to thoroughly examine any exemptions, attempts to create lengthy implementation periods, and arguments regarding the technical feasibility of such rules.

Respectfully submitted,

MARTHA COAKLEY,
ATTORNEY GENERAL

/s/Jesse S. Reyes

By: Jesse S. Reyes
Assistant Attorney General
Chief, Office of Ratepayer Advocacy,
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108
Tel: 617.963.2432
E-mail: jesse.reyes@state.ma.us

January 10, 2011