

**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

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**COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL**

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On the Comments:  
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## SUMMARY

The New Jersey Division of Rate Counsel (“Rate Counsel”) fully supports the efforts of the Federal Communications Commission (“FCC” or “Commission”) to empower consumers of wireless services by providing them with tools to monitor and to control their usage so that they are not “shocked” when they receive bills from wireless providers. Furthermore, Rate Counsel commends the FCC for its multi-faceted approach to ensuring that consumers possess adequate protection in the increasingly concentrated wireless market,<sup>1</sup> particularly because consumers’ reliance on the many uses of wireless devices (voice, Internet access, texting, and numerous other applications) raises the significance of empowering consumers. Safeguards that the FCC puts in place today will protect consumers in the short term and establish an expectation that, as the wireless industry evolves so too will consumer protection to correspond with such evolution. Also, the FCC’s proposed rules, by equipping consumers with clear and comprehensive information as well as tools for controlling their usage, will yield more efficient outcomes in the marketplace than exist today, where consumers make purchasing decisions based on incomplete information.

The FCC’s proposed rules, when implemented, will provide consumers with much-needed options for controlling their wireless usage while permitting carriers to innovate and

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<sup>1</sup>/ As a result of the FCC’s investigation of Verizon Wireless’ “mystery” fees imposed on its wireless customers, Verizon Wireless returned \$90 million to customers. Also, the FCC recognizes the importance of resolving the pending proceeding regarding early termination fees. *See, e.g., Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, CC Docket No. 07-52, Concurring Statement of Commissioner Michael J. Copps, at 142.

diversify, provided that they comply with the “baseline” level of requirements. The proposed rules, therefore, properly balance consumers’ clearly-established need for protection against bill shock with industry’s need to have leeway for innovation and diversification, and also balance the conflicting goals of empowering consumers to limit their wireless charges with industry’s ability to generate revenues.

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**I. INTRODUCTION**

Pursuant to the schedule set forth by the Federal Communications Commission (“FCC” or “Commission”), the New Jersey Division of Rate Counsel (“Rate Counsel”) submits these comments in response to the notice of proposed rulemaking (“NPRM”) released by the FCC regarding wireless “bill shock.”<sup>2</sup>

**A. INTEREST OF RATE COUNSEL IN THE INSTANT PROCEEDING.**

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial

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<sup>2</sup> / *Notice of Proposed Rulemaking, CG Docket Nos. 10-207 and 09-158, Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, released October 14, 2010 (“NPRM”). The FCC’s NPRM was published in the Federal Register on November 26, 2010, and filing dates were originally set for December 27, 2010 (initial comments) and January 25, 2011 (reply comments.) Federal Register, Volume 75, No. 227, November 26, 2010, 72773. The FCC subsequently extended the comment period to January 10 and February 8, 2011. In the Matters of Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure, CG Docket Nos. 10-207; 09-158, *Order*, December 17, 2010.

entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996.<sup>3</sup>

The outcome of this proceeding has immediate and long-term consequences for New Jersey consumers because rules for the wireless industry could assist consumers in controlling the prices that they pay for wireless service and in avoiding unanticipated increases in their wireless service bills.

## II. BACKGROUND

The FCC's investigation into ways to "empower" consumers to manage their wireless bills better has been underway for some time. In a Public Notice released May 11, 2010,<sup>4</sup> the FCC sought comment in CG Docket No. 09-158 on methods to alert consumers regarding their voice and data wireless usage and charges and on the following specific items related to wireless consumer protection initiatives:

- Whether adopting "usage alerts" and "cut-off mechanisms" such as those adopted by the European Union ("EU")<sup>5</sup> so that wireless consumers can monitor their usage and

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<sup>3</sup> / Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

<sup>4</sup> / FCC Public Notice, "Comment Sought on Measures Designed to Assist U.S. Wireless Consumers to Avoid 'Bill Shock,'" CG Docket No. 09-158, DA 10-803, May 11, 2010.

<sup>5</sup> / The FCC stated: "In June 2009, the European Union (EU) adopted regulations governing the transparency of retail roaming charges incurred by European wireless customers for voice calls, text messaging, and data services when traveling to other EU markets. Certain of these provisions, commonly referred to as the "bill shock" provisions, are designed to ensure that a consumer is fully aware of the roaming charges he or she is incurring so that the consumer does not receive a higher than expected bill for these services." Public Notice, citing Regulation (European Communities) No. 544/2009, Art. 6, of the European Parliament and of the Council of 18 June 2009, amending Regulation (European Communities) No. 717/2007 on roaming on public mobile telephone networks

associated fees on a “real-time basis” is practical. Specifically, the FCC sought comment on whether there are differences (technological or otherwise) that make the EU usage controls difficult or impossible for providers in the United States to implement.

- Whether consumers in the United States currently have the ability to monitor their wireless usage and whether consumers “are fully aware of the consequences of exceeding their predetermined allocations of voice minutes, text message limits, or data usage.” The FCC asked various questions such as whether U.S. wireless providers already offer comparable controls; the cost of the usage controls to consumers and to providers; whether the usage controls are more practical for one type of service over another (i.e. voice vs. data wireless services), whether the usage controls are available to users with disabilities, and whether a requirement for certain type of usage controls would prevent or help consumers with hearing, visual, cognitive or other disabilities in receiving the information they need to effectively monitor their usage.

The May 2010 Public Notice followed up on the *2009 Consumer Information and Disclosure NOI* (in which the Commission sought comments on methods to ensure consumer access to relevant information<sup>6</sup>), and initial and reply comments were submitted in July, 2010.<sup>7</sup> Rate Counsel commends the FCC for its thorough investigation and consideration of these issues,

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within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services.

<sup>6</sup>/ *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*).

<sup>7</sup>/ Rate Counsel did not submit comments in response to the May 10 Public Notice, but is a member of the National Association of State Utility Consumer Advocates, which submitted reply comments on July 19, 2010.

which bear directly on more than 7.8 million wireless consumers in New Jersey<sup>8</sup> and more than 277 million wireless consumers nationwide.<sup>9</sup> The industry has been given ample notice of the FCC's intention to improve consumers' ability to control their wireless bills and to expand consumers' access to information. It is a well-accepted economic principle that improving information improves the efficiency of economic transactions.<sup>10</sup> Rate Counsel is hopeful that this proceeding will improve significantly consumers' access to timely information about the consequences of their wireless use, and thereby yield more efficient transactions in wireless markets.

### III.NPRM

The FCC issued the proposed rules to address the widespread "bill shock" that has been confronted by consumers throughout the country.<sup>11</sup> According to a survey that the FCC conducted in April and May 2010, 30 million Americans, or one in six mobile (cell phone) users have experienced bill shock.<sup>12</sup> The survey also showed that of the 30 million consumers, 84%

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<sup>8</sup> / The FCC reports that as of June 30, 2008, there were 7,834,401 mobile telephone subscribers in New Jersey. *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, May 20, 2010 ("14<sup>th</sup> Annual Wireless Report") (data as of December 2008), at Table C-2.

<sup>9</sup> / NPRM, at fn 5, citing *14<sup>th</sup> Annual Wireless Report*.

<sup>10</sup> / See, e.g. F.M. Scherer, *Industrial Market Structure and Economic Performance*, Rand McNally Economic Series, 1970, at 417-418.

<sup>11</sup> / Bill shock is when consumers experience unexpected increases in their wireless bills that are not caused by a change in their service plans. This can be caused by high roaming fees or by exceeding a monthly allotment of voice minutes, texts, or data consumption. In his statement accompanying the NPRM, FCC Chairman Genachowski gave as an example a \$35,000 cell phone bill for data and texting charges incurred when a consumer was visiting her sister in Haiti after the earthquake although her cell phone provider had said that a courtesy plan would be extended to subscribers after the earthquake.

<sup>12</sup> / Federal Communications Commission, Consumer and Governmental Affairs Bureau, White Paper on Bill Shock, October 13, 2010 ("FCC White Paper"), at 3. The FCC's White Paper relies in part on the results of a survey that the FCC conducted in April and May, 2010. "FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion about Early Termination Fees," News Release and Survey, 2010 WL 2110749, May 26, 2010 ("Bill

were not contacted by their mobile carrier when they were about to exceed their allowance for text messages, minutes or data downloads and 88% said that their carrier did not contact them after their bill suddenly increased.<sup>13</sup>

Mobile service is the fastest growing segment of the communications market,<sup>14</sup> which means that bill shock affects many American consumers, and will continue to do so for years to come. Therefore, the FCC's efforts in these proceedings will affect consumers today and well into the future. Furthermore, wireline cord-cutting is a well-recognized trend, and although the vast majority of households continue to subscribe to wireline service, for those households that now rely exclusively on wireless service for their voice communication link,<sup>15</sup> as well as for those households that supplement their wireline communication with wireless communication, the ability to manage and to anticipate costs is important. Presently, the kinds of usage alerts and bill-management tools that providers offer vary significantly, and consumers are often unaware of any tools that do exist for setting limits on their usage.

The purpose of the proposed rules is to empower consumers to avoid unexpected and costly wireless charges.<sup>16</sup> In today's economy, as consumers confront budgetary constraints,

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Shock Survey." Verizon Wireless criticized the FCC's survey. "The FCC Survey: What the Data Can Tell Us About 'Bill Shock' and Early Termination Fees," Joel B. Cohen, prepared on behalf of Verizon Wireless, July 2010. For a response to these criticisms, see Reply of Princeton Survey Research Associates International to Verizon Wireless, September 3, 2010.

<sup>13</sup> / *FCC White Paper*, at 5.

<sup>14</sup> / NPRM, at para. 1.

<sup>15</sup> / Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, January–June 2010, National Center for Health Statistics, December 2010. Available from: <http://www.cdc.gov/nchs/nhis.htm>. According to the survey 26.6% of households had only wireless telephones. *Id.*, at 1. The percentage of households that have only wireless telephones varies by demographic group and by region. *Id.*, at 2-17.

<sup>16</sup> / NPRM, at para. 5. The bill shock proceeding is separate from the enforcement actions announced in October 2010 by the FCC. (The FCC's Enforcement Bureau announced on October 3, 2010 that it had opened an

such empowerment is essential. Among other things, establishing clear baseline tools will prove beneficial for future years, if and as more consumers abandon their wireline for wireless services, and if and as they increasingly rely on wireless service for mobile communication. Rather than relying on the vagaries of the marketplace, where suppliers' incentives to bolster wireless revenues do not mesh well with consumers' interests in limiting the size of their bills, the FCC is well-advised to establish minimum "rules of the road" for wireless markets.

Additional tools for consumers are necessary so that the wireless market can work efficiently – consumers need accurate and complete information so that they can make purchasing decisions that make sense for their budgets and telecommunications needs. The proposed rules will help consumers manage their cell phone budgets and save them (and the industry) the time that might otherwise be necessary to engage in billing disputes with their providers. The caption of the NPRM refers to the proposed rules as "empowering" consumers, and Rate Counsel fully supports that objective.

Rate Counsel supports rules that require the wireless industry to implement usage monitoring tools so that consumers can adequately manage their usage and avoid bill shock. Such tools could include requirements that wireless providers provide free of charge: real-time usage alerts; consumer pre-designated usage/rate caps; and consumer override of pre-designated caps. Alerts should include data usage to the extent that the usage is metered in addition to voice

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investigation into fees that Verizon Wireless customers had complained about appearing on their bills. FCC News Release, "FCC Confirms Investigation into Verizon Wireless' Mystery Fee," October 3, 2010. On October 3, 2010, Verizon Wireless announced that it was refunding its customers a total of up to \$90 million for the charges, which it now acknowledges were erroneous charges for data usage. Verizon New Release, available at: <http://news.vzw.com/news/2010/10/pr2010-10-03.html>.)

and messaging usage alerts. It is critical that consumers have access to information about the services to which they subscribe, their usage, and how their usage will affect their monthly bills.

As these comments discuss in more detail below, among the proposed rules are the following:

- *Over-the-limit alerts:* Under the proposed rules, carriers would need to provide the customer notification (e.g., voice or text alerts) when the customer approaches and reaches monthly limits that would lead to overage charges.
- *Out-of-the-country alerts:* Mobile providers would be required to notify customers when they are about to incur international or other roaming charges that their monthly plans do not cover and where they would be charged at above-normal rates.
- *Easy-to-find tools:* The wireless industry would be required to provide clear disclosure of any tools that mobile providers offer for setting usage limits or for reviewing usage balances. The FCC is also seeking comment on whether all carriers should be required to offer the option of capping usage based on consumer-established limits.

The FCC's intention is to develop practical rules that are not burdensome and that allow carriers to be innovative in the way that they inform their customers.<sup>17</sup> Rate Counsel anticipates that industry members likely will oppose the proposed rules, asserting that they are not necessary, are costly to implement, or should be adopted in weaker versions. Industry commenters so far have generally asserted that the marketplace is competitive and that purported competition creates incentives for providers to make information and tools available and so

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<sup>17</sup> / NPRM, Statement of Chairman Julius Genachowski.

regulatory requirements are unnecessary.<sup>18</sup> However, as the FCC observes, the proposed rules are a minimum and do not prevent the industry from innovating “as they see fit,” provided that they meet the threshold requirements.<sup>19</sup> Inconsistent tools lead to consumer confusion. Rate Counsel is aware that industry members contend that competitive pressures create adequate incentives for carriers to provide consumers with tools, but Rate Counsel is skeptical of the sufficiency of such incentives.

Despite the industry’s claim that the market is competitive,<sup>20</sup> evidence suggests otherwise. For example, although not directly encompassed by this NRPM, Verizon Wireless’ imposition of millions of dollars of erroneous fees on consumers throughout the country provides evidence of an industry gone astray. Carriers’ substantial net earnings also belie the purported competitiveness of the wireless industry.<sup>21</sup>

Migrating among wireless suppliers is a complex ordeal: consumers confront significant transaction costs to change providers, including, among others, early termination fees.<sup>22</sup> The process of changing wireless providers is not a simple one, and for family plans involving

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<sup>18</sup> / See, e.g., Reply Comments of AT&T, Inc., at 2 (referring to “a hotly competitive marketplace”).

<sup>19</sup> / NPRM, at para. 14.

<sup>20</sup> / See, e.g., NPRM, at para 7, citing various industry comments.

<sup>21</sup> / See *14<sup>th</sup> Wireless Report*, at para. 4 (see pages 12-14). See *id.*, at 12, which states that “the seven largest mobile wireless service providers all had EBITDA margins over 20 percent during the second quarter of 2009,” and that AT&T, MetroPCS, T-Mobile, and Verizon Wireless all had EBITDA margins greater than 30 percent. See *also, id.*, at paras. 215-221.

<sup>22</sup> / The FCC has explained: “In the context of mobile wireless services, consumer switching costs are costs that a consumer incurs when past investment specific to her current service provider must be duplicated for a new service provider. First, there is the information cost associated with the consumer’s need to obtain sufficiently detailed information about the offerings of other service providers. Second, wireless service consumers that have entered into multi-month service subscriptions with their service providers may be liable for early termination fees (ETF) if they choose to prematurely terminate their contracts. Third, there are the costs associated with obtaining a new wireless handset or unlocking the old handset when changing service providers. A potentially related handset change cost is the cost of reacquiring applications purchased for their current handset that may not be transferrable to a new handset.” *14<sup>th</sup> Wireless Report*, at para. 229.

transitions for several consumers, each of whom may have different starting and ending dates for equipment contracts, even less so. In any event, changing a wireless provider is certainly not like selecting a different brand of canned tomatoes in the grocery aisle.<sup>23</sup>

In its most recent report on competitive market conditions with respect to mobile wireless services, the FCC did not reach “an overarching, industry-wide determination with respect to whether there is ‘effective competition,’”<sup>24</sup> but instead, among other things commented on increasing market concentration, stating:

*Continued Industry Concentration.* Over the past five years, concentration has increased in the provision of mobile wireless services. The two largest providers, AT&T, Inc. (AT&T) and Verizon Wireless, have 60 percent of both subscribers and revenue, and continue to gain share (accounting for 12.3 million net additions in 2008 and 14.1 million during 2009). The two next-largest providers, T-Mobile USA (T-Mobile) and Sprint Nextel Corp. (Sprint Nextel), had a combined 1.7 million net loss in subscribers during 2008 and gained 827,000 subscribers during 2009. One widely-used measure of industry concentration indicates that concentration has increased 32 percent since 2003 and 6.5 percent in the most recent year for which data is available.<sup>25</sup>

Conditions in today’s wireless markets amply justify the FCC’s proposed rules.

#### **IV. ISSUES RAISED IN NPRM**

In its NPRM, the FCC seeks comment on various aspects of its proposed rules and raises detailed questions for comment, including such issues as the scope of the entities that should be

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<sup>23</sup> / CTIA asserts that customer churn in 2009 was 25%, but does not provide the underlying source data for this estimate. “Measures Designed to Assist U.S. Wireless Consumers to Avoid ‘Bill Shock,’” Presentation to Joel Gurin, Chief, Consumer and Governmental Affairs Bureau, CTIA – The Wireless Association®, October 1, 2010, at 2. Churn rates for pre-paid wireless service is significantly higher than churn rates for post-paid service. *14<sup>th</sup> Wireless Report*, at 9. FCC statistics show that the monthly “blended” churn rate, that is the combined pre-paid and post-paid churn rates for AT&T Wireless and Verizon Wireless was approximately 1.5%. *14<sup>th</sup> Wireless Report*, at 10. See, also *14<sup>th</sup> Wireless Report*, at 9, referring to a industry-wide monthly churn rate of approximately 2.1 percent, with pre-paid churn rates higher than post-paid churn rates, and indicating that the churn rates of two largest national service providers are half the rates for the next two largest providers.

<sup>24</sup> / *14<sup>th</sup> Wireless Report*, at para. 3.

<sup>25</sup> / *14<sup>th</sup> Wireless Report*, at para. 4. See also discussion of HHI analysis, *id.*, at paras. 48-55.

encompassed by the proposed rules, the legal authority for the FCC to adopt bill-shock-related requirements, the form in which notifications should be provided, the technical feasibility of providing international alerts, whether roaming notification requirements should be limited to international situations, methods for capping usage, whether prepaid mobile services should be exempt from usage alert requirements and many other specific aspects of the FCC's proposed rules. Rate Counsel comments on many of these issues and also intends, in its reply comments, to address others' comments and proposals.

**Rate Counsel supports notification when and as consumers approach limits.**

Rate Counsel supports the FCC's proposal 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" and that such notification be provided when a subscriber is approaching her plan's allotted time for voice, text, or data usage.<sup>26</sup> In response to the FCC's more specific questions, Rate Counsel recommends that such notifications be provided in real time with text messaging, and, in the case of family plans, to each member for whom the limit is being approached. If, for example, under a family plan, the limit is based on the total number of messages (in other words one member could use less than average and another member could use more than average), each member would need to be notified.<sup>27</sup> If the limits are specific to the wireless number, then the notifications would apply correspondingly. Notifications by text messaging are appropriate for many given the

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<sup>26</sup> / NPRM, at para. 20.

<sup>27</sup> / See, e.g.,  
<http://www.verizonwireless.com/b2c/store/controller?item=familyShare&action=viewFSPlanList&typeId=2&catId=323&scl=fam>

Overage minutes are priced at \$0.45 and overage texts are priced at \$0.20. *Id.*

nation's increasing and substantial reliance on text messaging, but consumers also should have the option for voice alerts since not all consumers text (for example, texting is prevalent among teenagers but far less so among the elderly).

The FCC also seeks comments on whether a single notification at the 80 percent usage mark would be sufficient or whether additional notifications should be sent at the 90 or 95 percent mark.<sup>28</sup> Rate Counsel's preliminary recommendation is that two notifications be provided, once at the 80 percent usage mark and another at the 95 percent mark.

**Consumers should have the option of receiving notifications when they begin incurring overage charges.**

In Rate Counsel's view, notifications are also important once consumers begin incurring overage charges, and such notifications should clearly spell out the additional costs that will apply so that consumers can make informed choices (for example, whether to discontinue use for that month, upgrade to a higher package, etc.).<sup>29</sup> As to the merits of consumers needing to proactively opt in so that they can use their service in the "overage" mode, Rate Counsel recommends that consumers be given the option to establish as a "default" either an opt-in requirement (which would require consumers to proactively opt in to use their service after they have reached their usage limit) or to establish as a "default" that they can use their service after they have reached their limit (without needing to proactively opt in). With this arrangement, consumers could request that an "opt-in" mode be applied to particular numbers, for example, within a family plan, or to the plan as a whole.

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<sup>28</sup> / NPRM, at para. 20.

<sup>29</sup> / *Id.*, at para. 21.

The FCC seeks comment on the extent to which this and other proposed rules should make special allowances for smaller regional and/or rural carriers.<sup>30</sup> Rate Counsel recommends that the FCC be cautious in carving out exemptions based on technical limitations and that the FCC place the burden on carriers to demonstrate the need for exemptions or extensions of time for compliance. Except where extenuating circumstances justify otherwise, all consumers, regardless of where they reside, should be able to control their wireless usage. Furthermore, Rate Counsel fully supports the FCC effort to ensure that any kind of alert system not constrain consumers' ability to complete critical communications such as their access to E911.<sup>31</sup>

**Consumers should receive notification when they are about to incur international or other roaming charges that exceed normal rates.**

Rate Counsel supports a required notification to consumers when they are about to incur international or other roaming charge in excess of their normal rates.<sup>32</sup> Rate Counsel does not comment on the technical feasibility of providing such international alerts, but urges the Commission to require detailed explanations of any claims of purported infeasibility.<sup>33</sup> Consumers should be able to choose the frequency of such alerts (such as each time that a consumer is about to incur international roaming charges or less frequently).<sup>34</sup> The FCC observes that several industry commenters assert that domestic roaming is less of an issue because many service plans include nationwide roaming at no additional cost.<sup>35</sup> Rate Counsel is

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

<sup>31</sup> / *Id.*

<sup>32</sup> / NPRM, at para. 22.

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

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

<sup>35</sup> / NPRM, at para. 22, and fn. 82.

not specifically aware of issues relating to domestic roaming charges, and, therefore, does not comment at this time on this issue.

**The FCC should require providers to substantiate any time estimates associated with implementing mandatory usage alerts.**

Rate Counsel acknowledges that providers may require time to revise their existing systems to comply with a mandatory usage alert requirement, but urges the Commission to examine carefully any seemingly prolonged time estimates submitted by industry purportedly needed for compliance.<sup>36</sup> The FCC has provided industry with ample notice of its intention to propose and adopt rules. Rate Counsel does not oppose allowing smaller, regional, and/or rural providers additional time to implement changes, provided that such implementation is not delayed unduly.<sup>37</sup>

**Methods for reviewing and capping usage should be clearly conveyed to all consumers.**

The FCC observes that although some mobile providers offer tools that enable consumers to monitor their usage balances and to set usage limitations, “consumers are often unaware of how to access these tools or even that such tools are available.”<sup>38</sup> Rate Counsel fully supports the FCC’s proposed requirement that providers “make clear, conspicuous and ongoing disclosure of any tools they offer which allow subscribers to either limit usage or monitor usage history.”<sup>39</sup> Tools are only valuable if consumers are aware of them. Clear, readily available “baseline”

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<sup>36</sup> / NPRM, at para. 23.

<sup>37</sup> / *Id.*

<sup>38</sup> / NPRM, at para. 24.

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

information is essential to a well-functioning marketplace. Also information and tools should “be accessible to and usable by consumers with disabilities.”<sup>40</sup>

The FCC seeks additional information about the methods for monitoring usage balances and limiting usage for subscribers of smaller, regional and rural carriers, and observes that the four largest wireless carriers (AT&T, Sprint, T-Mobile, and Verizon) already offer usage history for free through handset devices and online accounts.<sup>41</sup> The FCC also seeks comment on:

- Whether mobile providers should be required to provide information about the availability of tools through their bills and annual bill inserts;
- The most cost-effective way to ensure that consumers have access to and use the tools that are currently available;
- The effectiveness of existing usage controls in helping consumers avoid bill shock;
- The possibility of requiring all mobile service providers to offer consumers the means to set their own usage limits (either, for example, in advance at a customer-specified level, either by account or by individual user) or to be allowed to opt out entirely of certain services; and
- Whether requirements would be “overly burdensome” for smaller, regional, and rural providers.<sup>42</sup>

Rate Counsel recommends that the FCC require that information about tools be included with each bill, in annual bill inserts, and conspicuously on carriers’ websites. At a minimum, bill

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<sup>40</sup> / See, e.g., NPRM, at para. 7, citing various comments.

<sup>41</sup> / NPRM, at para. 24, and fn. 89.

<sup>42</sup> / NPRM, at para. 24.

inserts should be translated into the most prevalent foreign languages in relevant geographic markets. Furthermore, consumers should be allowed to set usage limits both by account and by individual user. Certainly in a family plan situation, it is entirely plausible that parents will want to set usage limits for their children that differ from those (if any) that they establish for themselves. Also, it is essential that consumers be able to opt out of certain services such as text messaging, web browsing, sending pictures, etc. The goal of the rules should be to provide consumers with flexibility and control over how they and their family members use their mobile devices. Artificial constraints on such control diminish overall consumer welfare and benefits.

**Customers of prepaid services also merit protection.**

Those consumers who elect to use prepaid wireless service likely seek to stay within specified budgets, and, therefore, prepaid mobile services should not “be exempt from any usage alert requirements that might evolve from this proceeding to address bill shock.”<sup>43</sup> Prepaid consumers would benefit from usage alerts to assist them in managing their usage. The FCC observes that prepaid services include traditional, pay-as-you-go services in which customers buy minutes ahead of time on a card and also unlimited prepaid services in which customers pay in advance for unlimited voice and/or data services each month with no long-term contract.<sup>44</sup> Rate Counsel is not presently aware of any way in which rules for traditional, pay-as-you-go prepaid service and unlimited prepaid services should differ.<sup>45</sup> Presumably, in the latter instance, if a customer, for example, had unlimited voice but not unlimited data, a usage alert would kick in for the data portion of the consumer’s usage, and would be unnecessary for the voice portion.

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<sup>43</sup> / *Id.*, at para. 25.

<sup>44</sup> / *Id.*

<sup>45</sup> / *Id.*

**The Commission should require providers to offer a rollover option, which would assist consumers in avoiding bill shock.**

One way that carriers could assist consumers in avoiding rate shock is to offer a plan by which “low-volume” consumers, that is, those with limited usage packages, could roll over unused minutes of voice, data, and/or text to subsequent months. A requirement to provide such an option would help consumers manage their plans. The purpose of this requirement (that is, to provide low-volume consumers with plans tailored to low-usage) would be similar to the purpose of the low-volume plans associated with the FCC’s creation of a new regulatory framework for the regional Bell operating companies (“RBOC”) and their affiliates. In that order, the FCC allowed AT&T, Qwest, and Verizon to provide in-region, interstate, long distance services either directly or through affiliates that are neither section 272 separate affiliates nor rule 64.1903 separate affiliates, subject to nondominant carrier regulation, as long as they complied with certain targeted safeguards set forth below as well as with other continuing statutory and regulatory obligations. As part of the safeguards, the FCC approved a voluntary plan that required long distance service with no fee. In particular, the FCC concluded:

As discussed above, although we find that Qwest, Verizon, and AT&T generally lack classical market power in the provision of in-region, interstate, long distance services, we are concerned that their customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service may have fewer competitive choices among interstate, long distance providers and may not be able to avoid the impact of a price increase by engaging in usage substitution. To address this concern, AT&T and Verizon each have committed for three years to offer a rate plan tailored to these customers’ needs. We note that, under the Qwest Section 272 Sunset Forbearance Order, Qwest committed to freeze for two years the per-minute prices for two calling plans that it currently offers which are tailored to these customers’ needs, and to not increase the monthly fee that applies to one of these plans by more than one dollar as a condition of the Commission’s forbearance.

**The rules should cover all mobile data services.**

The FCC seeks comment on the types of wireless services that its proposal should cover.<sup>46</sup> Rate Counsel recommends that the FCC’s rules apply to all types of communications services that mobile wireless providers offer, including voice, text, and data services. Also, Rate Counsel recommends that the scope of the rules be broader than commercial mobile radio service (“CMRS”) providers so that they apply to mobile data services that are offered by entities that do not also offer CMRS. Rate Counsel is unaware of services for which the rules would be unnecessary.<sup>47</sup>

**V. CONCLUSION**

The FCC states that forms of bill shock that are related to consumers’ confusion about the underlying terms and conditions of service plans are beyond the scope of this proceeding, but that “the Commission intends to address these broader disclosure issues at a later date.”<sup>48</sup> Rate Counsel fully supports such an examination. Rate Counsel also urges the Commission to adopt rules in a timely manner and to resist industry-foot-dragging. When consumers exceed their allowances, the consequence is that carriers generate revenues. Therefore, well-informed, well-equipped consumers will, all else being equal, lead to lower profitability for wireless providers than consumers who are left in the dark. Therefore, the Commission should not anticipate industry eagerness to adopt new rules that empower consumers. Rate Counsel supports

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<sup>46</sup> / NPRM, at para. 26.

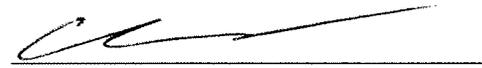
<sup>47</sup> / *Id.*

<sup>48</sup> / NPRM, at fn 4.

reasonable measures that balance the cost of implementing rules with the substantial value of enabling consumers to manage their wireless bills better.

Respectfully submitted,

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