

**Before the  
Federal Communications Commission  
Washington, DC 20544**

<b>In the Matter of</b>	)	
	)	
<b>Empowering Consumers to Avoid Bill Shock</b>	)	<b>CG Docket No. 10-207</b>
	)	
<b>Consumer Information and Disclosure</b>	)	<b>CG Docket No. 09-158</b>

**COMMENTS OF THE NATIONAL CONSUMER LAW CENTER AND  
ADVOCATES FOR BASIC LEGAL EQUALITY,  
ON BEHALF OF THEIR LOW-INCOME CLIENTS**

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## I. Introduction and Summary

The National Consumer Law Center (NCLC)<sup>1</sup> and the Advocates for Basic Legal Equality (ABLE)<sup>2</sup>, on behalf of their low-income clients, file these comments in support of the proposed consumer protection from “Bill Shock” rules set out in the Commission’s October 14, 2010 Notice of Proposed Rulemaking.<sup>3</sup> NCLC and ABLE will focus these brief comments on the particular need to protect low-income wireless users from bill shock. We applaud the Commission for addressing the urgent need for action to empower consumers to control their wireless costs, especially in these very difficult economic times where so many families are having a hard time keeping a roof over their heads<sup>4</sup>, food on the table<sup>5</sup> and keeping the heat on in the winter.<sup>6</sup> A surprise high wireless bill can stress already precarious monthly low-income household budgets. This bill shock rulemaking is an important first step in consumer

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<sup>1</sup> The National Consumer Law Center (NCLC) is a nonprofit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services and publishes *Access to Utility Service* (4<sup>th</sup> edition) as part of its Debtor Rights Series of legal manuals as well as NCLC’s *Guide to the Rights of Utility Consumers* and *Guide to Surviving Debt*.

<sup>2</sup> The Advocates for Basic Legal Equality (ABLE) is a regional nonprofit law firm in Ohio that provides a full range of free, high quality legal services to low-income individuals and groups to help them achieve self-reliance, economic opportunity, and equal justice. ABLE serves clients in thirty-two counties in Northwest and Western Ohio as well as migrant farmworkers and immigrant workers statewide. Established in 1969, ABLE has a long history of representing low-income clients in all types of administrative advocacy and complex civil litigation, including consumer protection and utilities matters. Since 1995, ABLE attorneys have actively worked on behalf of community organizations to expand access and ensure affordability of telecommunications services.

<sup>3</sup> Notice of Proposed Rulemaking, In the Matter of Empowering Consumers to Avoid Bill Shock, Consumer Information and Disclosure, FCC 10-180 (rel. Oct. 14, 2010); published in 75 Fed. Reg. 72773 – 72777 (Nov.26, 2010); deadline for comments extended to January 10, 2011 and replies extended until February 8, 2011 in Order, In the Matter of Empowering Consumers to Avoid Bill Shock, Consumer Information and Disclosure, DA 10-2379 (rel. Dec. 17, 2010).

<sup>4</sup> See e.g., Debbie Gruenstein Bocian, Wei Li and Keith S. Ernst, Foreclosures by Race and Ethnicity: The Demographics of a Crisis, Center for Responsible Lending, pp. 2-3 (June 18, 2010)(from 2007 through 2009, CRL estimates 2.5 million foreclosures were completed and estimates there are 5.7 million borrowers at imminent risk of foreclosure).

<sup>5</sup> See e.g., *43.2 Million Americans Received SNAP/Food Stamps in October 2010*, Food Research and Action Center (October 2010)(record SNAP enrollment; approximately one in eight Americans received SNAP).

<sup>6</sup> See e.g., *NEADA Calls on Congress to Maintain \$5.1 Billion for FY 11 and 75% of State Median Income Eligibility*, National Energy Assistance Directors’ Association (Sept. 22, 2010) (state energy assistance directors predict energy assistance (LIHEAP) applications to exceed last year’s record 8.8. million households assisted).

protections. In essence wireless carriers would be required to notify consumers before they are charged higher rates or additional charges for moving outside their wireless plan (e.g., consumers are notified that they are about to reach the limits of their monthly voice, texting or data plans or about to incur roaming charges). Such early notice before additional costs outside the consumer's wireless plan allows consumers to adjust behavior to either ration usage until the end of the month or period of the plan or budget for an increase in wireless expenses for the month or the period of the plan. Prepaid wireless phone service is growing in popularity as a means to help control wireless costs. It is just as important to extend these protections to prepaid wireless service, especially in the case of prepaid wireless Lifeline, as this service is funded out of the federal Universal Services Fund. Early notice that a consumer is about to reach the limits of the prepaid plan gives the consumer the opportunity to budget for the purchase of additional minutes, texting, etc. before losing service. In the case of prepaid wireless Lifeline, it provides the opportunity for consumers to ration usage until the next month when the minutes and/or other services are replenished by the Lifeline fund. This planning can limit the need for a low-income Lifeline consumer to purchase additional minutes as a stop gap.

## **II. These Proposed Rules Provide an Essential Consumer Protection That Helps To Maintain Connectivity**

The record demonstrates the urgent need for these bill shock protections as 30 million Americans have experienced unexpected increases in their wireless bills not caused by changes in their services plans.<sup>7</sup> While this proposed bill shock rule has the potential to help the household budgets of a majority of Americans as the vast majority own cell phones,<sup>8</sup> in

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<sup>7</sup> NPRM ¶ 1 citing to FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion about Early Termination Fees, News Release and Survey, 2010 WL 2110749 (rel. May 26, 2010) and consumer groups' comments on the continuing and significant problem of Bill Shock.

<sup>8</sup> See, Amanda Lenhart, *Cell Phone and American Adults*, Pew Internet & American Life Project, at p. 2, September 2, 2010 (82% of American adults own a cell phone, Blackberry, iPhone or other device that is also a cell phone).

particular it will help preserve connectivity for the growing subset of the cell phone population that relies solely on wireless phone for connectivity. According to the Pew Research Center, a substantial number of Hispanics (one-third) and young adults (one-half) lead the way in cutting the cord.<sup>9</sup> Early estimates from the National Center for Health Statistics is also showing the shift to reliance on cell phones for connectivity with a quarter of American homes with only wireless phones and nearly 16% of American homes receiving all or almost all calls on their wireless phones despite having a landline.<sup>10</sup> Access to affordable wireless phones is also important for those with low incomes and less education to have access to the internet. According to analysis by the Pew Internet & American Life Project, consumers with low levels of income and education have relatively high rates of cell phone internet use while the better-off and well-educated have higher levels of wireless internet use stemming from higher rates of ownership and use of laptop computers.<sup>11</sup>

### **III. These Proposed Rules Must Be Applied to Prepaid Wireless Service, Especially Prepaid Wireless Lifeline**

The Commission seeks comment on whether prepaid mobile services should be exempt from any usage alert requirements that might evolve from this proceeding.<sup>12</sup> NCLC and ABLE urge the Commission not to exempt prepaid wireless service. Prepaid wireless service helps consumers on very limited and tight budgets acquire wireless service. As the Commission's own analysis has pointed out, prepaid products are targeted to poorer and younger consumers who

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<sup>9</sup> See, Leah Christian, Scott Keeter, Kristen Purcell and Aaron Smith, *Assessing the Cell Phone Challenge to Survey Research in 2010*, Pew Research Center, May 20, 2010. (23% of Americans have only a cell phone available for making calls and nearly one-third of Hispanics and almost one-half of adults 25-29 are cell-only).

<sup>10</sup> Stephen J. Blumberg, Ph.D. and Julian V. Luke, *Wireless Substitution: Early Release of Estimate From the National Health Interview Survey, January – June 2010*, National Center for Health Statistics, p.1, December 21, 2010.

<sup>11</sup> Aaron Smith, *Mobile Access 2010*, Pew Internet & American Life Project, p.10, July 7, 2010.

<sup>12</sup> NPRM ¶ 3.

would not necessarily qualify for a postpaid wireless phone.<sup>13</sup> While the Commission correctly points out that with prepaid service, as opposed to postpaid service, there is by definition no sudden increase in a consumer’s phone bill as the service has been prepaid. However, that does not mean there is no impact on the consumer. In order to continue access to wireless service, texting and/or data plans when the prepaid allotment has been reached, consumers must purchase additional minutes. This is a draw on consumers’ time and money. Prepaid wireless Lifeline products are also being marketed to low-income consumers in the majority of states. NCLC and ABLE have weighed in with the Commission about our concerns regarding these products in other proceedings<sup>14</sup> and our comments here are focused solely on the need to include prepaid wireless products in the bill shock protection rules being contemplated by the Commission. Prepaid wireless services are a rapidly growing component of the federal Lifeline program.<sup>15</sup> Below is the percentage of Tracfone and Virgin Mobile disbursements versus all other carriers receiving Low Income support<sup>16</sup>:

September 2008	0.01%
September 2009	25%
September 2010	33%

Thus a growing number of very low-income households have subsidized prepaid wireless Lifeline service. The ability to achieve the underlying goal of affordable phone service for low-

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<sup>13</sup> 14<sup>th</sup> Annual Wireless Report, 25 FCC Rcd at 11473-75, ¶¶ 98-100.

<sup>14</sup> See, Comments and Reply of the National Consumer Law Center, on Behalf of Greater Boston Legal Services, In the Matter of Lifeline and Link-Up, WC Docket No. 03-109 (Nov. 20 2009 and Dec. 7, 2009) (regarding TracFone’s Request for Clarification of Universal Service Lifeline Program “One-Per-Household” Rule as Applied to Group Living Facilities (DA 09-2257, rel. Oct. 21, 2009)); and Comments and Reply of Consumer Groups In Response to the Federal-State Joint Board Request for Comment, In the Matter of Federal-State Joint Board on Universal Service Lifeline and Link-Up, CC Docket No. 96-45, WC Docket No. 03-109 (July 15, 2010 and July 30, 2010).

<sup>15</sup> See, GAO, *Telecommunications: Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program*, GAO-11-11, p. 16 (Oct. 12, 2010).

<sup>16</sup> Source: USAC data.

income Americans is enhanced when consumers are provided notice that a certain amount of minutes remain on their plan. This notice, combined with robust education on how to temporarily stop components of the plan such as texting, will allow Lifeline consumers to ration out their remaining minutes and reduce the need to purchase additional minutes to make it through the month. The purchase of additional minutes, while not appearing on a traditional phone bill, is still an unexpected communications expenditure for the consumer. In the case of prepaid phone service, these protections are likely to help the most economically vulnerable as prepaid consumers tend to choose prepaid phone service because of limited budgets. Thus, we urge the Commission not to exempt prepaid service from the proposed rules.

Uniform basic minimum bill shock requirements for postpaid and prepaid wireless service will also help with consumer education of these protections as consumers will learn to expect this notification protection from one wireless provider to the next, whether prepaid or postpaid.

### **III. Provision of Effective Notice**

The Commission seeks comment on at what point notice should be provided.<sup>17</sup> At this time NCLC and ABLE have not taken a position on whether 80% of usage is better than another percentage, but what we do feel strongly about is that the notice occur early enough that there is still time for the consumer to be able to adjust behavior to maintain service without additional costs and fees. NCLC and ABLE support the proposal to provide an additional alert at the time the subscriber has reached the end of the allotted minutes, texting and/or data for the month or

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<sup>17</sup> NPRM ¶ 20.

coverage period.<sup>18</sup> This is the last point in time the consumer can avoid additional fees outside his or her plan.

NCLC and ABLE urge the rules require multiple options for notice, via text and/or phone call or some other readily accessible means and allow the consumer to choose how they wish to be notified. These alerts should be free and should not count against a subscriber's minutes. Reliance on a web tool or email is not adequate as a solution because of the digital divide. While consumers should be able to opt out<sup>19</sup> of receiving such notifications, we caution that the Commission's rules should prohibit the steering of consumers into opting out of these notices to avoid certain fees, lower quality packages, etc.

The Commission seeks comment on whether there should be an opt-in requirement before consumers incur roaming charges or additional costs from use of services outside the plan.<sup>20</sup> NCLC and ABLE support the requirement that a consumer engage in an affirmative act to opt-in to incursion of the charges outside the plan. This is not unprecedented. Federal law requires consumers be given notice before a fee is imposed for using an ATM outside of the consumer's network. The fee cannot be imposed unless the notice is provided, such notice includes disclosure of the amount of the fee, and the fee is explicitly assumed by the consumer.<sup>21</sup> Along similar lines of consumer protection, on November 17, 2009, the Federal Reserve Board issued a rule requiring financial institutions to obtain consumer consent, or an opt-in election, before assessing an overdraft fee for ATM or one-time debit card transactions that overdraw an account.<sup>22</sup>

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<sup>18</sup> NPRM ¶ 21.

<sup>19</sup> NPRM ¶ 21.

<sup>20</sup> NPRM ¶ 21.

<sup>21</sup> 15 U.S.C. § 1693b(d)(3); 12 C.F.R. § 205.16.

<sup>22</sup> 74 Fed. Reg. 59,033 (Nov. 17, 2009)(part of Reg. E, implementing the Electronic Funds Transfer Act).

#### **IV. Conclusion**

NCLC and ABLE commend the Commission for proposing rules to protect consumers from bill shock and we are supportive of this effort. We look forward to continuing participation in this proceeding.

**Respectfully submitted,**

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