

**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  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

**I. INTRODUCTION & STATEMENT OF INTEREST**

The National Telecommunications Cooperative Association (“NTCA”) hereby submits these comments in the above captioned proceeding and its accompanying Regulatory Flexibility Analysis (“RFA”).<sup>1</sup> NTCA is a national association representing more than 570 rural telecommunications providers. While NTCA’s members are all rural incumbent local exchange carriers, most provide their rural communities with a broad array of telecommunications services, including mobile wireless service. NTCA’s CMRS providers are all Tier III wireless carriers and small businesses as that term is defined by the Small Business Administration.<sup>2</sup>

NTCA urges the Federal Communications Commission (the “Commission”) to exempt Tier III carriers from burdensome Information and Disclosure requirements. There is no evidence of widespread “Bill Shock.” However, compliance with the proposed regulation would be extremely difficult and expensive, would interfere with

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<sup>1</sup> *Empowering Consumers to Avoid Bill Shock*, CG Docket No. 10-207, *Consumer Information and Disclosure*, CG Docket No. 09-158, *Notice of Proposed Rulemaking* (rel. October 14, 2010) (“NPRM”)

<sup>2</sup> The Small Business Administration considers a cellular and other wireless telecommunications business to be “small” if it employs 1,500 or fewer employees.

providers' service plans and would increase costs to all consumers, the vast majority of whom who will receive no benefit.<sup>3</sup>

## **II. TIER III MOBILE WIRELESS PROVIDERS SHOULD BE EXEMPT FROM BURDENSOME INFORMATION AND DISCLOSURE REQUIREMENTS.**

NTCA's members are small providers in rural areas and they share close relationships with their subscribers. These carriers recognize the importance of providing timely and accessible usage information to effectively attract and retain customers, many of whom have the option to garner service from a large, nationwide provider. NTCA's members provide their subscribers with accurate account information, as well as information about specific charges, how to monitor usage and any available cut off mechanisms. However, the small providers lack the resources to comply with requirements that requires them to supply notification messages to consumers. Unlike the large carriers, many small providers do not currently have the technical capabilities to send messages to their subscribers. Further, small providers do not have access to the information that would enable them to track their subscribers' usage on a real-time basis. Attaining the capabilities necessary to comply with the proposed regulations would require significant hardware and software upgrades as well as additional personnel. Although the exact cost of upgrades is currently unknowable (because the specific means of achieving compliance have not yet been defined), indications are that it would be astonishingly expensive. The mobile industry is also moving quickly from 2G service to 3G and beyond, and subscribers demand and expect additional service offerings. Consumers will enjoy no benefit if rural service upgrades are delayed so that a small sub-set of customers may be reminded of the agreed-to limits of their usage plans.

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<sup>3</sup> According to the Commission's own estimates, the issue affects at most one in six consumers.

Moreover, the Commission's proposed unfunded Bill Shock mandate comes at a time when Tier III carriers are struggling. They are competing with nationwide mobile providers with coast-to-coast unlimited data plans. Because there is currently no requirement that large carriers offer data roaming, small providers competing in areas also served by large providers are at a significant disadvantage. Consumers living in areas without a nationwide provider are subject to data service that will not work outside of their home area. Requiring small mobile providers to make expensive hardware, software and technical upgrades will itself generate a significant unexpected "Bill Shock," and may be the final nail in the coffin for some providers.

If the Commission adopts bill shock consumer regulation, it should exempt Tier III mobile providers from any requirements beyond those that require clear disclosures on service contracts, web pages or bill inserts regarding tools available to subscribers to limit usage or monitor usage history.

**III. IF AN EXEMPTION IS NOT AVAILABLE, THE COMMISSION SHOULD OFFER A WAIVER PROVISION FOR TIER III PROVIDERS AND AN EXTENDED COMPLIANCE PERIOD.**

NTCA urges the Commission to exempt small mobile providers from any burdensome Bill Shock avoidance requirements, but offers an alternative in the event the Commission moves forward with the requirement nonetheless. Given the prohibitively expensive nature of the proposed regulations, NTCA submits that small providers who cannot comply, or for whom compliance is prohibitively expensive, should be afforded the opportunity to obtain a waiver, including permission to toll compliance with any Bill Shock requirements until such time as any request for waiver is resolved.

There are small providers for whom compliance would mean delaying or canceling planned service deployment or upgrades, and others for whom compliance is so expensive that they would effectively be compelled to exit the line of business rather than make the required upgrades. If the Commission moves forward with the regulation, it should adopt a waiver provision with reasonable and clearly defined standards for Tier III providers. Small providers should have the opportunity to show that compliance is contrary to the public interest.

Additionally, if rules are adopted without an exemption for small providers, then the Commission should adopt an extended implementation and compliance period. The extended period should be designed so that small providers can make necessary equipment upgrades and adjustments to processes in the normal course of the business upgrade cycle with minimal disruption and additional cost.<sup>4</sup>

#### **IV. THE PROPOSED REGULATION WOULD HAVE A SIGNIFICANT ECONOMIC IMPACT ON SMALL BUSINESSES AND ALTERNATIVE REGULATION IS APPROPRIATE**

The Regulatory Flexibility Act of 1980, as amended (RFA) requires the Commission to consider alternative rules that will alleviate the burden for smaller providers.<sup>5</sup> The burden of the proposed unfunded mandate is currently unknowable because the technology for compliance has yet to be developed, but will be significant. As an initial matter, the Commission should postpone making any decision about small provider compliance until such time as compliant equipment is available and implementation costs

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<sup>4</sup> See, e.g., Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, RM 8535, FCC 96-286, Final Regulatory Flexibility Analysis, Appendix C (Rel. July 2, 1996).

<sup>5</sup> 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

are known. At that time, the Commission will be in a better position to weigh the costs of the regulation against the perceived benefits.

NTCA offers several alternative proposals that would lessen the economic impact on small rural wireless providers. In lieu of the proposed regulation, the Commission should exempt small providers from any requirements for which compliance would need significant hardware or software upgrades or require the hiring of additional personnel.

## **CONCLUSION**

NTCA respectfully submits that the costs associated with the proposed Bill Shock notification requirements far outweigh the benefits to consumers served by small, rural mobile wireless providers. If the Commission adopts notification provisions, it should exempt small providers from complying, or at a minimum offer a liberal waiver provision with an extended compliance period.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CG Docket No. 10-207, FCC 10-180, was served on this 10th day of January 2011 by electronic mail to the following persons:

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