

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
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	)	
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**

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The Wireless Communications Association International, Inc. (“WCAI”), the trade association of the wireless broadband industry, submits these comments on the Commission’s Notice of Proposed Rulemaking (“NPRM”) in this proceeding.<sup>1</sup>

## **I. EXECUTIVE SUMMARY**

Mobile service offerings are evolving rapidly, with innovative pricing models, innovative devices, and innovative quality of service options. In this rapidly evolving market, the Commission should avoid specific, one-size-fits-all notification regulations. The Commission should instead maximize the flexibility of service providers to design and adapt notification requirements to their diverse service offerings, which will promote innovation and allow service providers to offer the best consumer experience for every service offering today and in the future. Imposing detailed notification requirements would have the opposite effect – it would stifle innovation, limit consumer choice, and impair the potential for competitive differentiation. Because consumers currently have numerous options to avoid or completely eliminate the potential for bill shock, and given the potential harms regulation poses in this area, the appropriate balance favors maintaining the flexibility of service providers to innovate rather than prematurely imposing regulation.

If the Commission does decide to regulate in this area, it should require only transparent disclosure of the available tools subscribers can use to avoid the potential for “bill shock.” If consumers are aware of their options regarding overage

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<sup>1</sup> Empowering Consumers to Avoid Bill Shock, *Notice of Proposed Rulemaking*, FCC 10-180 (rel. Oct. 14, 2010).

charges, they will be in the best position to choose the service that best meets their needs at the best price and receive notifications that they deem appropriate. This approach to regulation, should regulation be imposed, would best maximize service providers' ability to innovate and compete on the basis of service quality and continue to promote competition, innovation, investment, and consumer choice.

## II. DISCUSSION

### A. The diversity in mobile service offerings militates against the imposition of a one-size-fits-all approach to consumer notification.

In the NPRM, the Commission recognizes that “mobile service is the fastest growing segment of the communications market.”<sup>2</sup> It is also the fastest *changing* segment of the communications market.

The United States is still in the early stages of the transition from switched, voice-centric mobile services to IP-centric services provided over mobile broadband platforms. These multi-purpose mobile broadband platforms provide diverse services that go well beyond voice and Internet access, including machine-to-machine communications, location services, and mobile video. Mobile broadband platforms also compete for every type of customer, including individual consumers, enterprises, and other “vertical” customers (e.g., public safety, health, and education), and they communicate with an ever-expanding array of devices, including miniature sensors, automobiles, mobile phones, handheld computing devices, netbooks, desktops, e-readers, and servers in the “cloud.”

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<sup>2</sup> NPRM at ¶ 1.

The incredibly diverse capabilities of mobile broadband platforms are having a profound impact on mobile business plans, service offerings, and consumers. The dominant business model for 2G switched mobile voice services – a monthly post-paid plan – no longer predominates in the rapidly evolving 3G/4G environment. The fastest growing segment of the mobile market is now prepaid service. In the fourth quarter of 2009, new prepaid mobile subscribers accounted for nearly two thirds (65 percent) of the 4.2 million net subscribers added by U.S. mobile providers, and overall prepaid penetration was at 20 percent.<sup>3</sup> Other new or developing pricing models include unlimited plans, pay-per-download and, as 4G networks mature, personalized service packages based on a particular user’s mobile lifestyle.<sup>4</sup>

Despite the rapid evolution of mobile broadband platforms and service offerings, the Commission’s proposed rule does not appear to contemplate or accommodate the wide and growing diversity of mobile networks and products. In the NPRM, the Commission expresses concern that “[u]sage alerts that are currently provided vary substantially between service providers and are inconsistent in application among various types of mobile services and plans.”<sup>5</sup> As the analysis below indicates, the type of notification that would be most useful (or whether any notification is warranted) *should* vary considerably. Notifications best serve consumers when notifications are appropriately tailored to the relevant characteristics of the service offering.

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<sup>3</sup> See New Millenium Research Council Report at 1 (available at [http://www.newmillenniumresearch.org/news/033110\\_prepaid\\_trends\\_news\\_release.pdf](http://www.newmillenniumresearch.org/news/033110_prepaid_trends_news_release.pdf)).

<sup>4</sup> See [http://www.telecomengine.com/article.asp?HH\\_ID=AR\\_6569](http://www.telecomengine.com/article.asp?HH_ID=AR_6569).

<sup>5</sup> NPRM at ¶ 16.

A review of today's diverse service offerings and notification options (let alone tomorrow's) weighs against imposition of a particularized, one-size-fits-all approach to consumer notification. As described below, carriers already offer a variety of plans, devices, applications, and websites to enable consumers to eliminate the potential for "bill shock."

**Prepaid Plans:** As noted above, prepaid plans are the fastest growing segment of the mobile market. By their very nature, pre-paid plans present no opportunity for consumers to exceed the limit of the services for which they've already paid. For example, with AT&T's "GoPhone" service, consumers pay only for the days and minutes they choose to use.<sup>6</sup> There is no contract, no credit check, minutes can be refilled 24/7, and the user can keep the user's phone number. Because the consumer pays for their service in advance, it is literally *impossible* for a consumer to be "shocked" by the amount they are charged for the service. Another approach is Sprint's "Spending Limit" program, which sets the maximum monthly amount consumers can spend on their account, based on their credit decision and the number of phones on the account.<sup>7</sup> Sprint provides several automatic notifications to help consumers stay within their limit, and all text messages related to the Spending Limit program are free. Consumers can easily check the previous day's account balance, any payment posted to their account, and their current Account Spending Status by

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<sup>6</sup> See [http://www.wireless.att.com/cell-phone-service/go-phones/index.jsp?partner=LinkShare&siteId=V\\_71gyRdbd8-Q.kYDsskBzVuHm4pMwi9Yg](http://www.wireless.att.com/cell-phone-service/go-phones/index.jsp?partner=LinkShare&siteId=V_71gyRdbd8-Q.kYDsskBzVuHm4pMwi9Yg).

<sup>7</sup> See [http://shop.sprint.com/en/support/faq/spending\\_limits.shtml#spending\\_limits\\_q3](http://shop.sprint.com/en/support/faq/spending_limits.shtml#spending_limits_q3).

logging into their account.<sup>8</sup> With prepaid plans, there is no opportunity for “bill shock” to occur.

**Unlimited Plans:** Mobile providers such as Clearwire offer a host of plans that provide unlimited voice and data and do not include overage charges.<sup>9</sup> For example, Clearwire’s “Take Two: On-The-Go” plan offers unlimited 4G data usage via a mobile USB device and CLEAR Spot mobile hot-spot device, which are available through a month-to-month or two-year contract.<sup>10</sup> Clearwire’s ROVER™ service is the nation’s first pay-as-you-go 4G mobile broadband service.<sup>11</sup> Unlike a typical prepaid plan, which is priced based on actual usage, Rover is priced at \$5/day, \$20/week, or \$50/month for unlimited 4G Internet usage. By offering unlimited data usage for a set price and time period agreed to in advance, it is impossible for a user to incur an overage charge.

**Postpaid Plans:** Mobile service providers offer plans that allow users to set limits on their usage. For example, AT&T’s “Smart Limits”<sup>12</sup> service allows users to (1) set limits for the number of text and instant messages allowed per billing cycle; (2) choose a dollar limit for downloadable purchases (ringtones, games and more); and (3) select the amount of web browsing/data usage allowed per billing cycle. As the user approaches the text and download limits, the user receives an advance

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<sup>8</sup> See *id.*

<sup>9</sup> Clearwire offers numerous unlimited voice and data plans. See <http://www.clear.com/plans>.

<sup>10</sup> See <http://www.clear.com/plans/details/id/979>.

<sup>11</sup> See <http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1464655&highlight=>; <http://www.rover.com/home.htm>.

<sup>12</sup> See <http://www.att.net/smartcontrols-SmartLimitsForWireless>.

warning. Once a limit is reached, the user is notified that the action is restricted and that the service will be stopped until the next billing cycle begins, eliminating the possibility of “bill shock.”<sup>13</sup>

**Smartphones:** Smartphones provide users with many options to track and restrict their use of services. For example, AT&T’s iPhone offers a number of features (explained on AT&T’s website<sup>14</sup>) that enable consumers to avoid the possibility of bill shock. Users can turn off the iPhone’s option of downloading email and syncing contacts automatically. Because the iPhone is Wi-Fi enabled, users can also turn off the iPhone’s mobile radio functionality entirely and rely on Wi-Fi to continue using email and other data services at no charge from AT&T. Finally, the iPhone has a built-in usage tracker, which enables users to easily track estimated their voice and data usage. Like the iPhone, Sprint’s EVO device allows users to disable the device’s 4G mobile radio functionality, Wi-Fi, and GPS functions; turn off automatic downloading of emails, contacts, and calendar entries; and turn off roaming. EVO users can also turn off their data connection separately from their voice service. The built-in capabilities of today’s smartphones to limit and monitor usage enable consumers to eliminate the possibility of “bill shock.”

**Data-Only Devices:** Data-only devices, such as USB “dongles”, connect to the mobile network, but are primarily used with laptop computers to provide portable

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<sup>13</sup> For other similar services, *see, e.g.*, [http://shop.sprint.com/en/support/faq/spending\\_limits.shtml](http://shop.sprint.com/en/support/faq/spending_limits.shtml); <http://www.uscellular.com/uscellular/common/common.jsp?path=/overage-protection/index.html>; <http://appworld.blackberry.com/webstore/content/2616>.

<sup>14</sup> See <http://www.wireless.att.com/learn/popups/international-iphone-tips.jsp?wtSlotClick=1-004700-0-1&WT.svl=calltoaction>.

Internet access. This method of accessing mobile networks is more akin to typical PC usage than a smartphone or even a netbook. Dongle users tend to mirror their data-centric interactions on the PC and are less communications-centric than smartphone users<sup>15</sup> – dongles are typically *not* offered with a voice service plan or text messaging capability.<sup>16</sup> Because dongles lack more traditional mobile communications features, text messages and voicemail cannot be used to notify consumers of potential dongle overages. Instead, providers enable consumers to monitor their dongle usage with software that is pre-loaded on the dongle.<sup>17</sup> This type of software solution enables consumers to eliminate the possibility of bill “shock”.

**International Services:** Some service providers already offer extensive options for avoiding international roaming charges. AT&T’s iPhone allows users to turn data roaming off when traveling internationally, turn off mobile network access altogether and use Wi-Fi, or purchase an international data package. Users can also monitor their voice and data usage with the iPhone’s built-in tracking capabilities, and AT&T sends a text message regarding notifying users of its international roaming rates when a user is traveling abroad. Finally, AT&T offers an international roaming data calculator,<sup>18</sup> which is another tool consumers can use to avoid overages. These

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<sup>15</sup> See Eliot Weinman, *Harnessing the Mobile Internet*, Yankee Group Research at 34 (2009).

<sup>16</sup> See <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/data-connect-plans.jsp?requestid=73652>.

<sup>17</sup> See <http://www.wireless.att.com/businesscenter/solutions/wireless-laptop/communication-manager/index.jsp>.

<sup>18</sup> See <http://www.wireless.att.com/learn/international/roaming/international-roaming-data-calculator.jsp>.

options enables consumers to eliminate the possibility of “bill shock” while traveling abroad.

In light of this diverse array of mobile offerings and notification options, the Commission should avoid specific, one-size-fits-all notification regulations. The Commission should instead maximize the flexibility of service providers to continue to innovate and compete in this area while offering consumers an experience that is tailored to their individual needs and the service being offered.

**B. To account for the diversity in mobile service offerings, the Commission should maximize service provider flexibility, innovation, and consumer choice.**

Maximizing the flexibility of service providers to design and adapt notification requirements to diverse service offerings will promote innovation and allow service providers to offer the best consumer experience for every service offering today and in the future. Imposing detailed notification requirements, however, would stifle innovation, limit consumer choice, and impair the potential for competitive differentiation.

In the communications context, “innovation” generally refers to technological innovation, i.e., the development of a new “gee whiz” widget. But innovation occurs in all layers of the production chain, including in the way services are provided (i.e., “service innovation”).<sup>19</sup> The service offerings discussed above exhibit continual innovation in the provision of consumer notifications and offer consumers many options for eliminating the potential for “bill shock.” If the Commission were to

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<sup>19</sup> See [http://en.wikipedia.org/wiki/Service\\_innovation](http://en.wikipedia.org/wiki/Service_innovation).

impose one-size-fits-all regulation, it risks stifling similar efforts to improve existing consumer notifications and adapt them to new service offerings.

Flexibility is a precondition to innovation. While there is room for improvement in the quality of consumer notifications in some circumstances, attempting to drive innovation through one-size-fits-all regulation in a rapidly evolving market is likely to have the opposite effect. It is only through a flexible process of trial and error that markets are able to sort out successful from unsuccessful service innovations, including innovations in notifications. Prematurely imposing a one-size-fits-all regulatory requirement would short-circuit this process by treating all service providers, whether innovative or not, in the same way. Imposing that “sameness” on all service providers will ultimately reduce innovation and experimentation in consumer notifications.

It would also limit consumer choice. As noted above, consumers can already choose among a variety of options to eliminate or limit their exposure to overage charges. They can choose an unlimited plan, a prepaid plan, a smartphone with built-in or downloadable usage tracking capabilities, or a postpaid service plan that provides notification or limits usage before overage charges are imposed. All of these consumer options are provided at varying price points that reflect the costs and benefits of each service plan. The regulations proposed by the Commission may limit consumer choice by forcing service providers to offer more homogenous services – all of which must fit the contours of the Commission’s new rules and potentially result in higher prices. Some consumers may appreciate having fewer choices pursuant to

Commission regulation, but *all* consumers will have lost the opportunity to match a particular offering to their particular needs at the best price.

Finally, a one-size-fits-all approach to notification would impair the potential for competitive differentiation. As the Commission has already recognized, “[i]n addition to price, mobile wireless service providers compete on many other dimensions,”<sup>20</sup> including service quality.<sup>21</sup> Customer retention is crucial to sustaining profitability and growth, and one of the most basic tools for retaining customers is providing superior service quality. Financial analysts and potential investors also carefully monitor customer acquisition costs and churn since they can be a harbinger for how a company is likely to perform. So, the pressure to win and keep customers comes from all sides of the marketplace. Mobile service providers thus have incentives to compete on the basis of their service quality, including the quality and effectiveness of their customer notifications. Mandating a particular approach to customer notification would adversely impact the ability of service providers to compete in this area.

**C. The best way to maximize the flexibility and innovation of service providers and empower consumers is to refrain from imposing regulation at this time.**

The best way for the Commission to maximize flexibility and innovation in consumer notifications is to refrain from regulating in this area at this time.

Regulation would be justified only if the potential benefits to consumers of the regulation would outweigh the potential harms to innovation, consumer choice, and

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<sup>20</sup> 14<sup>th</sup> Mobile Wireless Competition Report at ¶ 104.

<sup>21</sup> 13<sup>th</sup> CMRS Report at ¶ 162.

competition discussed above. Given that consumers currently have numerous options to avoid or completely eliminate the potential for “bill shock,” and service providers are continuing to innovate in this area, the appropriate balance favors flexibility rather than regulation. Forgoing regulation for the moment and monitoring this area going forward would also maximize the Commission’s flexibility. If the Commission regulates now, it may prematurely foreclose innovation in notifications, but it would not impact the ability of the Commission to regulate in the future. Absent a lack of consumer options or continuing innovation, the Commission’s best course is to take a wait and see approach.

**D. If the Commission does decide to impose regulation, it should maximize the flexibility and innovation of service providers and empower consumers by limiting regulatory requirements to the promotion of transparency.**

Rather than attempt to design and codify specific notification requirements applicable to today’s diverse service offerings and tomorrow’s innovations, if the Commission does decide to regulate this area, it should require only clear “disclosure of the available tools subscribers can use to limit usage and review their usage history.”<sup>22</sup> If consumers are aware of their options regarding overage charges, they will be in the best position to choose the service that best meets their needs at the best price and receive notifications that they deem appropriate. As the Commission recognized in its recent order addressing the Internet, “[e]ffective disclosure of . . . commercial terms of [broadband providers’] services promotes competition—as well

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<sup>22</sup> NPRM at ¶ 4.

as innovation, investment, end-user choice, and broadband adoption."<sup>23</sup> The Commission also noted that "the best approach is to allow flexibility in implementation of the transparency rule."<sup>24</sup> The Commission thus required that service providers prominently display or provide links to disclosures on a publicly available, easily accessible website and disclose relevant information at the point of sale.<sup>25</sup> The Commission did not require multiple disclosures or adopt a specific format for disclosures, opting instead to require that disclosure be sufficiently clear and accessible to meet the requirements of the rule.

This is also the best approach to consumer notification of potential overage charges, should the Commission decide regulation is necessary. Maximizing service providers' ability to innovate and compete on the basis of service quality while requiring transparency regarding the terms of service will promote competition, innovation, investment, and end-user choice. A more heavy-handed regulatory approach would impair these important goals without providing any significant benefit to consumers. To the extent the Commission imposes regulation, we urge it to exercise restraint in this rapidly developing area and rely on transparency as its guiding principle.

### **III. CONCLUSION**

The Commission should continue to encourage innovation, consumer choice, and competition in service notifications by refraining from regulation at this time. If

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<sup>23</sup> Preserving the Open Internet, *Report and Order*, FCC 10-201 at ¶ 53 (rel. Dec. 23, 2010).

<sup>24</sup> *Id.* at ¶ 56.

<sup>25</sup> *Id.* at ¶ 57.

the Commission does regulate, it should limit its intervention to flexible transparency requirements.

Respectfully submitted,

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