

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF T-MOBILE USA, INC.

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SUMMARY

In a competitive wireless retail market with few government mandates, T-Mobile has excelled at customer service, winning numerous awards and recognition for its efforts. T-Mobile appreciates that customers who receive unexpected charges on their bills are not happy customers, and it does everything it can to maintain customer satisfaction, which is essential for it to remain competitive. The company offers numerous rate plans to meet subscribers' needs, strives to "right-fit" customers with appropriate plans at the start of the subscriber relationship, and provides customers a wide variety of account management tools and features to help them monitor both domestic and international roaming and other services. Like many wireless providers, T-Mobile has made significant strides in helping customers avoid overage charges and believes that flexibility is needed in such a competitive and innovative market to ensure the needs of the customer are met.

Unnecessary regulation could put at risk the Commission's longstanding and highly successful "light touch" regulatory approach to wireless services that has fueled the dynamic success of the wireless industry. Ironically, the concerns expressed in the NPRM are partially a byproduct of the amazing pace of innovation that has spurred such a wide range of wireless services, applications, and technologies, all to the benefit of consumers. T-Mobile continuously works to determine what practices for managing subscribers' usage best work from a competitive, business, and consumer perspective, but given the rapidly evolving marketplace and the natural learning curve for both consumers and providers that is inherent with new developments and innovations, this is a constantly moving target. Therefore, the Commission should allow the issues raised by the NPRM to be addressed through means consistent with the current light-touch regulatory framework.

The record in this proceeding shows that government-mandated usage alerts are unnecessary because the marketplace is already addressing consumers' needs faster and more effectively than regulation. The data shows that wireless customers generally are satisfied with their services, and the Commission fails to present evidence of widespread overages, leaving the NPRM's assumption that regulations are necessary to guard against usage overages largely unsubstantiated. Implementing the proposed rules would also be burdensome and in many cases technically infeasible, involving changes to practically every facet of T-Mobile's business and systems, including modifications of highly complex billing and network systems, changes to advertising, promotional, and legal materials, and training customer service and sales representatives.

If the Commission moves forward with the proposals in the NPRM, it should be sure to limit the scope of any new rules so that providers retain the flexibility to respond to market changes and consumer demand. In addition, the Commission should give mobile providers sufficient time to implement the rules. Also, given the wide range of mobile services available to consumers and the constantly evolving nature of the marketplace, the Commission should not assume that a "one-size-fits-all" approach best serves the public interest. Rather, any new rule should reflect the tremendous diversity of service providers' technical capabilities and service offerings. Regulations regarding fixed content and distribution methods, and usage limits would be technologically difficult to implement, cause customer confusion, and prevent providers from responding to market developments and innovations to meet consumer needs.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) submits these comments in response to the above-captioned Notice of Proposed Rulemaking (“NPRM”), which proposes to require mobile service providers to provide usage alerts and other information to help consumers avoid unexpected charges on their bills, or “bill shock.”¹ Without government mandates, T-Mobile and other wireless competitors already have implemented measures to help consumers make appropriate choices regarding their wireless services and monitor their usage, and the industry will continue to adopt new measures to meet customers’ needs. Rules mandating usage alerts will only limit competition, investment, and innovation by reducing mobile providers’ flexibility to work with their subscribers creatively and proactively as market conditions evolve. Accordingly, T-Mobile urges the Commission to refrain from adopting the new regulations proposed in the NPRM, and at a minimum, to ensure there is sufficient flexibility going forward to serve customer needs in an evolving wireless marketplace.

¹ *Empowering Consumers to Avoid Bill Shock*, Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (2010) (“NPRM”).

I. ADDITIONAL REGULATION TO PREVENT BILL SHOCK IS UNNECESSARY AND INAPPROPRIATE AT THIS TIME AS THE INDUSTRY ALREADY IS ADDRESSING CUSTOMER NEEDS

A. T-Mobile Provides Numerous Tools to Help Consumers Avoid Bill Shock

T-Mobile is extremely responsive to customer needs and demands.² Given the highly competitive retail wireless marketplace, neither T-Mobile nor any other provider can be successful unless it provides customers with the information they need to make informed decisions about wireless products and services, which is why T-Mobile strongly emphasizes customer service and has achieved widespread recognition as an industry leader in this area.³

The record previously developed in this proceeding is replete with examples of providers' efforts to minimize unexpected overage charges and to provide consumers with tools to avoid them.⁴ For instance, before consumers become subscribers, T-Mobile works with them to

² See *id.* at 14626-27.

³ For example, in July 2010, T-Mobile received the highest ranking in the J.D. Power and Associates 2010 Wireless Customer Care Performance Study – Volume 2, demonstrating the company's commitment to delivering superior customer service online and over the phone, as well as in retail stores. See Press Release, J.D. Power and Associates, *Wireless Customers Are Contacting Their Service Providers Through Retail and Online Channels With Increasing Frequency: T-Mobile Ranks Highest in Wireless Customer Care Performance* (July 29, 2010), available at <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010144>. Shortly thereafter, T-Mobile was given the highest ranking in the J.D. Power and Associates 2010 Wireless Retail Sales Satisfaction Study – Volume 2, the third consecutive highest ranking in that study. See Press Release, J.D. Power and Associates Reports, *While Any Type of Sales Pressure Negatively Impacts Satisfaction with the Wireless Retail Sales Experience, Poor Treatment by Sales Staff is Particularly Dissatisfying for Customers: T-Mobile Ranks Highest in Wireless Retail Sales Satisfaction for a Third Consecutive Time* (Aug. 12, 2010), available at <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010156>.

⁴ See, e.g., Reply Comments of T-Mobile USA, Inc., CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36 (Oct. 28, 2009); Comments of T-Mobile USA, Inc., CG Docket No. 09-158 (July 6, 2010); Comments of CTIA – The Wireless Association, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36 (Oct. 13, 2009); Comments of CTIA – The Wireless Association, CG Docket No. 09-158 (July 6, 2010).

recommend voice and data plans that meet their needs. T-Mobile teaches its retail sales representatives about the need to right-fit the customer and trains these front-line employees on how to effectively educate customers and empower them to make informed decisions about their wireless devices and plans. For example, at the point of sale, retail sales representatives review the material terms and conditions of a customer's service plan, highlighting any limitations on use and additional fees that may be incurred for exceeding those limits.⁵ Also, as discussed in more detail below, T-Mobile provides tools to help its disabled customers obtain information about their accounts. In addition, T-Mobile addresses the needs of Latino consumers by ensuring that service contracts, bills, and promotional items are printed in Spanish, that Spanish-speaking customer care representatives are available to speak to these consumers, and that T-Mobile's website includes account and status information in Spanish.

In order to right-fit customers and help them avoid overages, T-Mobile provides a variety of "unlimited" plans for voice, messaging and data services that negate overage charges altogether and has modified some of its other plans to minimize the possibility of overage charges,⁶ and the cost of all of these plans continues to fall. For example, in April 2010, T-Mobile modified its webConnect mobile broadband data offering to include a plan without overage charges for subscribers who purchase 5 gigabytes ("GB") of data for \$39.99 per month. For subscribers to T-Mobile's \$24.99 per month 200 megabyte ("MB") data plan, overage

⁵ T-Mobile requires customers to acknowledge at the point of sale – for both initial service activation and upgrades – that they are aware of the material terms and conditions of service, including their obligations if they exceed applicable usage limits.

⁶ As disclosed in its terms and conditions, advertising collateral, and elsewhere, on data plans, T-Mobile reduces data throughput speed for a small fraction of its customers who use at least 5 GB of data in a billing cycle.

charges (\$.10 per MB) are capped at \$30, which is charged after total usage reaches 500 MB for the billing cycle.

1. T-Mobile Provides a Variety of Monitoring Tools to Voice, Text and Data Subscribers

Regardless of the various account management tools and alerts that mobile providers offer to customers to help mitigate the likelihood of overages, overages will occur. Just as with other retail services, it is appropriate for consumers to take a proactive role in managing their purchases and accounts and use the myriad tools service providers offer for that purpose. Neither T-Mobile nor other providers have the ability to control the actions of their subscribers, or compel them to heed alerts or use the other management tools that mobile providers make available.

With that said, for subscribers who choose to purchase service plans with voice, messaging, and/or data usage limits, T-Mobile provides multiple tools to help them manage, monitor, and control their accounts and usage:

- **Billing Statements.** Postpaid voice, text, and data subscribers have access to monthly billing statements, either online or in paper form, which summarize their voice, messaging, and/or data usage and associated charges incurred in the previous month.
- **On-Line Account Information.** Postpaid subscribers may view all account information online including their bill, call details, and text message status (used and remaining) by setting up a password and accessing their accounts at <https://my.t-mobile.com>.⁷
- **My Account Application.** Every T-Mobile phone launched in the last two years has been pre-loaded with “My Account” software that enables users to, among other things, receive free minutes usage alerts, payment reminders, billing summaries, and other service-related

⁷ See T-Mobile, Support, “Know Where You Stand, available at http://www.t-mobile.com/support/SupportSubContent.aspx?PAsset=Hme_Sup_QuestionMaster&WT.cg_s=support_billing (last visited Jan. 5, 2011).

information.⁸ There also are a variety of web-based applications available to subscribers to meet such needs. T-Mobile actively encourages subscribers to practice account management from their handsets to give them more control of their accounts.

- **Short Codes.** Postpaid subscribers can access minutes used, text message usage, and balances from their handsets by dialing #MIN# (#646#), #MSG# (#674#), and #BAL# (#225#), respectively. Prepaid subscribers can dial #999# to receive their prepaid account and minute balances. In 2010, T-Mobile also began providing subscribers with tiered data plans the capability to dial #WEB# to check their data usage.
- **Family Allowances Feature.** For \$4.99 per month, the authorized account holder of a “family plan” can assign allowances for minutes, messages, and downloads to all the lines on the account, and to restrict usage during certain times of the day. The customer can dial #FAM# (#326#) from the handset to check allowances and usage for minutes, messages, and downloads, and manage the account from the company’s website.
- **Contacting T-Mobile.** Subscribers who prefer more traditional methods of communication may call into T-Mobile’s interactive voice response (“IVR”) system, contact customer service directly, or visit a T-Mobile store to obtain usage information (assuming their identities are properly authenticated).

2. T-Mobile Provides a Variety of Usage Alerts to Subscribers

T-Mobile has developed notification features for many of its service plans that alert subscribers (for no additional charge) when they are close to reaching or have reached their usage limits, including the following:

- **Family Allowances Feature Alerts.** The authorized subscriber on a family plan can elect to receive text messages when another line on the account has approached and/or exceeded its bucket of minutes or has chosen to opt out of receiving the alerts.
- **Pay-Per-MB Alerts.** For a subscriber on a pay-per-MB data plan, the first time that he or she accesses the Internet via a mobile device, a message appears stating that usage will be charged according to the applicable data plan, and a text message then is sent to notify the account holder (who could be a different person) that the device was used for Internet access. Pay-per-MB data subscribers receive a notification when they have incurred a certain dollar

⁸ See, e.g., T-Mobile, “My Account (myTouch with 3G Google),” available at <http://mytouch.t-mobile.com/mytouch-support-3g-my-account>; T-Mobile Support Videos, available at http://support.t-mobile.com/videos.html?autoplay=10%20MyAccount_V2-640x360.flv and http://support.t-mobile.com/videos.html?autoplay=My_account_v5.flv (last visited Jan. 5, 2011).

amount of data charges in a billing cycle and a text alert when the subscriber has used 5 GB in a billing cycle.

3. T-Mobile Allows Subscribers to Block Certain Types of Usage to Help Avoid Overages

To help avoid specific content or overages, T-Mobile also allows subscribers to limit or block certain types of usage, such as:

- **Text Message Blocking.** Subscribers may block chargeable incoming and outgoing text messages (SMS), picture messages (MMS), Instant Messages (IM), and e-mail, as they see fit.⁹
- **Web Guard.** An optional feature for most postpaid and FlexPaySM customer accounts,¹⁰ Web Guard restricts access to certain adult-themed (age 18 or over) content on the handset, and can be applied to multiple devices on an account.
- **Content Blocking.** Subscribers can block downloadable content available from T-Mobile to the handset, which can help a subscriber avoid unwanted charges from downloading such content. This feature enables a subscriber to block downloads of games, ringtones, wallpaper, and CallerTunes®.
- **Data Blocking.** Subscribers who do not have a specific data plan and do not intend to purchase data services on a per-MB basis can block all data usage by contacting customer care or modifying their account settings on-line.

4. Tools for International Roamers

For subscribers who travel internationally, T-Mobile sends a free text message when their handsets register with a foreign wireless network. This message alerts subscribers that charges while roaming are higher for voice, data, and email applications, and that they can use a variety of options (*e.g.*, altering their settings to turn on/off their international data roaming capabilities

⁹ Customers always receive service-related messages that are transmitted by T-Mobile at no charge. In addition, technological differences among customers' handsets may affect the ability to block certain instant messages and email messages.

¹⁰ T-Mobile's FlexPay plans allow subscribers to purchase a handset at the suggested retail price and pay in advance for services, negating the need for an annual contract, activation fee or deposit.

and/or calling T-Mobile for applicable rates) to minimize incurring additional charges. In October 2010, T-Mobile launched its Roam Monitor & Control service to further eliminate any possible bill confusion relating to international data roaming charges. Specifically, T-Mobile sends additional text messages to subscribers when they have incurred \$50, \$100, \$200 and \$500 worth of international data roaming charges, again providing additional information to those subscribers to better monitor their usage and control costs.¹¹ In November 2010, T-Mobile also joined the FreeMove Alliance, an alliance between various international mobile providers that helps provide multinational enterprise customers with advanced solutions to manage their employees' international roaming expenditures.¹²

5. Tools to Assist Customers with Disabilities

T-Mobile continuously works to provide usable tools for its subscribers with disabilities.¹³ For individuals with hearing disabilities, T-Mobile offers devices typically equipped with a vibrating alert when a text message is received, and for individuals who are blind or otherwise visually impaired, Android and other Smartphone devices are often equipped with built-in or easily downloadable screen readers to facilitate accessibility of text information. In addition, T-Mobile's Android and certain Blackberry models provide robust text-to-speech capabilities. Real-time information is available via the abbreviated dialing mechanisms described above, which, like T-Mobile's other voice telephony services, are highly accessible for the blind and visually impaired. Finally, as noted above, T-Mobile's usage monitoring features

¹¹ See *infra* p. 20 (regarding the difficulty of providing such alerts in real time).

¹² See Press Release, FreeMove Alliance, *T-Mobile USA Joins FreeMove Alliance* (Nov. 10, 2010) available at <http://www.freemovealliance.com/latestnews/t-mobile-usa-joins-freemove-alliance/>.

¹³ See NPRM, 25 FCC Rcd at 14637-38.

also can be managed online in most instances, and T-Mobile and other service providers have made significant efforts in recent years to ensure that their retail and consumer websites are accessible for this and other purposes and will continue to do so.

B. Unnecessarily Proscriptive Regulations Could Inadvertently Limit Competition, Investment and Innovation

The Commission's longstanding light touch regulatory approach to wireless services has resulted in a highly dynamic and competitive retail marketplace.¹⁴ Even during one of the worst economic downturns in U.S. history, the wireless marketplace has experienced widespread investment and innovation¹⁵ in which T-Mobile and other service providers have implemented a wide variety of creative services and rate plans in response to changing technology and consumer demand. Developments in the wireless marketplace occur at a fast pace, and service providers are continually reviewing and updating their offerings and tools to help avoid overage charges and best meet the evolving needs of consumers. T-Mobile has worked for almost a decade to implement many features to help subscribers monitor and control usage. For example, in 2003 T-Mobile began offering subscribers the ability to check their unbilled voice usage via two SMS commands (#MIN# and #BAL#) and on-line. In 2005 T-Mobile launched its IVR system, and T-Mobile rolled out the Family Allowances feature in 2008. As described above, the new #WEB# functionality for data service and the Roam Monitor & Control service are two of the most recent improvements implemented by the company in 2010. In T-Mobile's experience,

¹⁴ In the past decade, the number of wireless subscribers in the U.S. has increased from approximately 86 million in 1999 to more than 285 million in 2009. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fourteenth Report, 25 FCC Rcd 11407, 11414-15 (2010) ("*Fourteenth CMRS Competition Report*").

¹⁵ *See* Letter from Christopher Guttman-McCabe, CTIA – The Wireless Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191, WC Docket No. 07-52, at 2 (Nov. 16, 2010).

rapid and caring customer service and response to consumer demand for such tools help set T-Mobile apart in the competitive marketplace.

The Commission's usage alert proposals are inspired in large part by roaming alert requirements adopted in the European Union,¹⁶ but the wireless market and regulatory landscape in the United States differ dramatically from those in Europe.¹⁷ Given the successes for U.S. mobile consumers achieved through adherence to a light touch regulatory philosophy dating from the early 1990s, the Commission should not now seek to adopt a less flexible and more prescriptive model of wireless regulation. The issues raised by the NPRM can be and are being addressed under the current regulatory framework.

Unnecessarily prescriptive regulations could inadvertently limit competition, investment, and innovation by reducing a provider's flexibility to respond quickly and proactively to evolving market conditions. As new offerings, applications, and devices develop, there is a natural learning curve both for service providers and consumers to determine what works best from customer, competitive, and business perspectives. For example, providers continue to refine their data offerings and capabilities by offering different service packages (unlimited and tiered), rates, handsets, and bundles, and develop new features to help customers monitor their use of those services. As explained in Section III below, however, many of the potential

¹⁶ See NPRM, 25 FCC Rcd at 14629-30.

¹⁷ See Seth L. Cooper, The Free State Foundation, *Don't Let "Bill Shock" Regulation End Light-Touch Treatment of Wireless*, at 2 (Nov. 10, 2010) available at http://freestatefoundation.org/images/Don_t_Let_Bill_Shock_Regulation_End_LightTouch_Treatment_of_Regulation_111010.pdf ("Free State Foundation") (explaining that unlike the United States, "Europe is much more prone to adopt a regulatory answer than enable pursuit of marketplace solutions to competition issues"). In this case, no evidence exists that the regulations proposed in the NPRM are necessary to address market power, competitive issues, or some sort of fraud perpetrated on consumers. See *id.* at 3.

regulations raised by the NPRM could effectively lock carriers into providing specific types of alerts and notifications, regardless of future market developments, limiting their ability to create unique and compelling tools that may better serve consumers.

The Commission has long recognized that excessively regulating wireless companies' interactions with their subscribers could impose costs on consumers and limit competition, investment, and innovation. For example, in 1994, the Commission decided to forbear from requiring Commercial Mobile Radio Service ("CMRS") providers to file tariffs.¹⁸ The ruling was particularly noteworthy because it came before the introduction of Personal Communications Service ("PCS") and at a time when each of the two cellular licensees in a market still had significant market power. In making its decision, the Commission found that requiring tariff filings could:

- (1) take away carriers' ability to make rapid, efficient responses to changes in demand and cost, and remove incentives for carriers to introduce new offerings;
- (2) impede and remove incentives for competitive price discounting, since all price changes are public, which can therefore be quickly matched by competitors; and
- (3) impose costs on carriers that attempt to make new offerings.¹⁹

This logic applies even more so in today's marketplace. As the Commission has long recognized, a competitive market allows customers to "shop around" if they believe a particular provider does not meet their needs, and that it is not necessary for the Commission to intervene with prescriptive regulations.²⁰ Rushing to adopt standardized usage alert requirements will only

¹⁸ *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 (1994).

¹⁹ *Id.* at 1479.

²⁰ *Orloff v. Vodafone AirTouch Licenses LLC, d/b/a Verizon Wireless and New Par*, Memorandum Opinion and Order, 17 FCC Rcd 8987, 8999 (2002), *aff'd*, *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir.) (2003), *cert. denied* 542 U.S. 937 (2004).

impede the ongoing evolution of wireless services to the detriment of consumers²¹ and the public interest.

C. The Record Does Not Support a Conclusion That Additional Regulation is Necessary to Help Consumers Avoid Unexpected Overages

The record compiled to date in this proceeding does not support the NPRM's assumptions that: (1) a significant percentage of consumers incur unexpected charges on their wireless bills and (2) immediate action in the form of usage alert and disclosure regulations is necessary. The data cited in the NPRM do not in fact show that additional regulation is necessary. First, the GAO Report on wireless consumer satisfaction, cited by the Commission as evidence of customer confusion and uncertainty, actually demonstrates that wireless customers are satisfied overall with their services, although there is room for improvement. In fact, the GAO Report found that **84 percent** of adult wireless users are *very or somewhat satisfied with their wireless service*, based upon such factors as billing, terms of service, explanation of service, call quality and customer service.²²

The NPRM places considerable weight on the GAO's estimate that 34 percent of wireless phone users receive unexpected charges on their bills,²³ a finding that T-Mobile respectfully submits does not support adoption of the regulations proposed in the NPRM. The GAO's survey

²¹ See also Free State Foundation at 4-5 (expressing the fear that "in addition to the additional cost burden, the concern is that imposing regulation inconsistent with a light-touch approach will serve as a precedent for future regulatory intrusion" and that premature regulation in this area "could create expectations that regulators expand their controls over additional aspects of the dynamic wireless marketplace").

²² See GAO Report to Congressional Requesters – FCC Needs to Improve Oversight of Wireless Phone Service, GAO-10-34 (Nov. 2009) at 8 ("GAO Report"), available at <http://www.gao.gov/new.items/d1034.pdf>.

²³ See NPRM, 25 FCC Rcd at 14629.

asked consumers only one question regarding billing charges: “Since the beginning of 2008, how often, if at all, did you receive charges related to your wireless phone service that you did not expect?”²⁴ Importantly, the survey failed to distinguish among the underlying causes of these unexpected charges. The Commission simply cannot assume that the “unexpected charges” resulted from additional roaming fees or even from exceeding a monthly allotment of voice minutes, texts, or data usage. In fact, the NPRM explicitly acknowledges that “unexpected charges can also occur for reasons that extend beyond a lack of timely and easily accessible usage information....”²⁵ Therefore, the GAO’s estimate, which presumably encompasses these other forms of bill shock, cannot reasonably be used to support the NPRM’s assumption that regulations regarding usage alerts are necessary.

Second, the Commission’s Bill Shock Survey does not demonstrate a systemic problem requiring additional regulation. Rather, like the GAO Report, the Commission’s survey suggests that a large majority of consumers are comfortable with their current billing situation. The Bill Shock Survey notes that 17 percent of surveyed American adults with a personal cell phone (approximately one in six) had experienced “bill shock,” which, according to the survey, means “that at one time their cell phone bill increased suddenly from one month to the next, even

²⁴ See GAO, Telecommunications: Surveys of Consumers and of State Utility Commissions about Wireless Phone Service (GAO-10-35SP, November 2009), an E-supplement to GAO-10-34, Question No. 26, available at <http://www.gao.gov/special.pubs/gao-10-35sp/10-35spa/10-35spa9.html>. The responses available to the consumer included “none of the time” (63 percent), “some of the time” (29 percent), “most of the time” (4 percent), “all of the time” (1 percent), and “don’t know/not sure” (3 percent), or they could refuse to answer the question. See Responses to Question No. 26, available at <http://www.gao.gov/special.pubs/gao-10-35sp/10-35spa/q26.html>.

²⁵ NPRM, 25 FCC Rcd at 14625 n.4.

though they had not changed their calling or texting plans.”²⁶ This means that 83 percent of American adults surveyed – the overwhelming majority – never had a problem with a sudden increase in their bills.²⁷ Moreover, the survey did not ask the 17 percent who claimed to have experienced “bill shock” when the billing increase occurred, *e.g.*, within the last year, the last five years, or the last ten years. Like the GAO Report, the Bill Shock Survey does not delve into the reasons for the unexpected increases, nor does it provide any indication that the 17 percent who reported a sudden increase in their bills were actually surprised by the increase. Indeed, some or all of those surveyed may have been expecting a higher bill and have been well aware of its causes.

Third, a recent study by The Nielsen Company (“Nielsen”) indicates that 86.5 percent of consumers surveyed reported zero overage occurrences for voice service.²⁸ Furthermore,

²⁶ See John Horrigan and Ellen Satterwhite, *Americans’ Perspectives on Early Termination Fees and Bill Shock*, at 1 (rel. May 26, 2010) (“Bill Shock Survey”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298414A1.doc.

²⁷ Although the Consumers Union has stated that a September 2010 Consumer Reports survey found that “1 out of 5 respondents reported receiving an unexpectedly high bill in the previous year, often for exceeding the plan’s voice, text, or data limits,” this means that 80 percent of respondents did not receive such a bill in the previous year. See Press Release, Consumers Union, *Consumers Union Sends Consumer Reports Wireless Phone Findings to Congress and FCC, Urges Crackdown on Cell Phone “Bill Shock,” Provider Practices* (Dec. 9, 2010), available at http://www.consumersunion.org/pub/core_telecom_and_utilities/017194.html. The Consumers Union has not made the survey questions and methodology available for review.

T-Mobile also takes issue with the assertion in Consumer Reports that implementing usage alerts is “a no-brainer that should be a snap for today’s sophisticated smart phones.” “*Bill Shock*” is common, Consumer Reports, Jan. 2011, available at <http://www.consumerreports.org/cro/magazine-archive/2011/january/electronics/best-cell-plans-and-providers/cell-phone-bills/index.htm>. As discussed below, widespread implementation of inflexible alerts involves complex business and technical issues that involve mobile providers’ networks and administrative operations, not merely their smartphones.

²⁸ Comments of The Nielsen Company (“Nielsen”), CG Docket No. 10-207; CG Docket No. 09-158, at 9 (Dec. 17, 2010) (“Nielsen Comments”).

according to Nielsen, “[c]onsumers who regularly or periodically go into overage are unlikely to be surprised by their overages regardless of the amount. The distribution of overages is stable to increasing for both voice and data overages, indicating that these consumers make a conscious choice.”²⁹ In other words, the majority of consumers who incur overages voluntarily do so with the knowledge that they exceeded their monthly allotment.

Moreover, the comments filed in response to the *Consumer Information NOI* and cited by the Commission provide no relevant data on bill shock issues and are not indicative of a pervasive problem requiring usage alert regulations. For example, prior commenters included accounts of unique individual experiences that were extreme and far from the norm (*e.g.*, a \$5,000 data overage charge).³⁰ Other commenters relied upon general complaint statistics that included cramming, wireline, and other data, or simply cited back to the GAO Report.³¹ None of the comments cited in the NPRM offered data specifically addressing unexpected overages by subscribers in a meaningful or comprehensive way. In contrast, Nielsen concludes that “[a]bout 1% of Americans experience significant overages in any given year, similar to their regular bill.”³² Accordingly, the record evidence to date cannot form a reasonable basis for concluding that the usage alerts proposed in the NPRM are appropriate.

²⁹ *Id.* at 9.

³⁰ *See* NPRM, 25 FCC Rcd at 14628-29 & n.26 (citing David Austin NOI Comment at 3-5, Consumer Federation NOI Comments at 7).

³¹ *See id.* at 14628 & n.26 (citing Cal. PUC NOI Comments at 5-6, DC PSC Comments at 6, Senator Franken NOI Comments at 1).

³² Nielsen Comments at 11.

Furthermore, the NPRM overstates the relevance of consumers buying buckets of minutes that are larger than their average monthly use and thus “overpaying” for service.³³ This does not demonstrate that usage alerts are necessary to help consumers manage their wireless service plans. Rather, it shows just the opposite, that consumers are purchasing sufficient minutes of use to avoid incurring overage charges, which accomplishes the NPRM’s stated goals. In fact, the rise of “bucket” plans with highly competitive prices was due to consumer demand, and has benefited consumers by creating a wide range of different and low cost service offerings that meet the varying needs of customers.³⁴ Also, the limited data cited by the NPRM that specifically relate to subscribers exceeding their monthly allowances dates back to 2001-2003, which fails to accurately represent the current status of the wireless marketplace and is therefore unreliable.³⁵

Finally, consistent with the GAO’s recommendations,³⁶ before proceeding with adopting the regulations proposed in the NPRM, the Commission should first improve its own practices for collecting and analyzing complaint data so it can make a more informed decision about whether the adoption of additional rules serves the public interest.³⁷

³³ See NPRM, 25 FCC Rcd at 14628.

³⁴ The NPRM also fails to acknowledge that consumers benefit significantly from the availability of tiered pricing plans.

³⁵ See NPRM, 25 FCC Rcd at 14628-29 n.27. The Commission acknowledges the outdated nature of the data, but illogically concludes that “we have seen no evidence that they are disproved2 [sic] by more recent data on these issues.” In other words, the Commission’s conclusions are based upon the *absence* of relevant data.

³⁶ See GAO Report at 39-40.

³⁷ In reforming its practices, the Commission must also keep in mind that it receives many informal inquiries and complaints that do not involve statutory or rule violations, and that the “existence of a complaint does not necessarily indicate wrongdoing by the company at issue.”

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D. Implementing Standardized Usage Alerts Would Require the Unnecessary Expenditure of Significant Resources, With the Costs Borne by Consumers

If the Commission adopts new inflexible regulations, mobile providers will have to change their billing and network systems, which are extremely complex software systems that are integrated into all aspects of a company's operations.³⁸ The NPRM grossly underestimates the costs associated with implementing the proposed rules. In its submission to the Office of Management and Budget pursuant to the Paperwork Reduction Act, the Commission estimates that many wireless providers may "on occasion" make "some modifications to their existing billing systems to comply with the proposed requirement to offer usage alert notifications."³⁹ The Commission further estimates that within each organization, the proposed rules can be implemented by one person within each organization, based upon 140 hours of work annually, for less than \$16,000.⁴⁰ These estimates do not come anywhere remotely close to reflecting the reality of the wireless marketplace and the resources necessary to implement the proposed rules.

FCC News Release, *First Quarter 2010 Report on Informal Consumer Inquiries and Complaints Released*, at 2 (Aug. 13, 2010).

³⁸ See, e.g., Comments of the Rural Cellular Association, CG Docket No. 09-158, at 5-6 (July 6, 2010); Reply Comments of Verizon Wireless, CG Docket No. 09-158, at 3-4 (July 19, 2010).

³⁹ See FCC Information Collection Review Submission Supporting Statement, ICR Reference No: 201011-3060-012, at 3 (Nov. 26, 2010), available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=215347&version=0>. See also ICR Submission, available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201011-3060-012.

⁴⁰ Specifically, the Commission estimates that system modifications for usage alerts can be undertaken by one individual and that they can be accomplished within 100 hours for a total annual expenditure of \$6,236. The Commission also estimates that implementing the proposed rule regarding disclosure methods for capping and reviewing usage will similarly be done "on occasion" by one individual within each organization, and only take 40 hours of work at an annual cost of \$2,514. The Commission further estimates that the annualized capital costs that providers may expend for upgrading software and other equipment will be around \$6,666 per year. See *id.* at 3-4.

For example, developing and implementing T-Mobile's Family Allowances feature, which involved only a subset of T-Mobile products and services, took tremendous internal resources. Hundreds of T-Mobile and vendor employees were involved, and T-Mobile spent millions of dollars on this project alone over more than eight months.

Moreover, the Commission should not assume that providers will be able to easily apply existing solutions to implement any new rules. Rather, providers will need to design multiple solutions reflecting the wide variety of their service offerings (which, as noted above, are continuously evolving) and the complexity of their billing and network systems. Implementing usage alerts and disclosure tools necessarily implicates changes to other aspects of the business, such as advertising, customer collateral, promotional and legal materials, and training retail sales and customer care representatives. These tasks cannot be accomplished merely "on occasion" by 140 hours of work by one person within each organization for less than \$16,000, but rather are more likely to be in the range of hundreds of times more expensive and requiring many more than 140 hours of work.

Finally, the Commission should keep in mind that the costs of system changes based on the proposals in the NPRM ultimately will be borne by consumers, either directly or indirectly, from slowing down or re-directing resources away from other initiatives that would meet consumers' fundamental needs for affordable, reliable, and high-speed mobile service. In fact, overly prescriptive regulations could delay or even prevent the launch of new and innovative services and equipment if providers must first make widespread system changes to comply with the new rules.

II. ANY NEW REGULATIONS SHOULD BE LIMITED IN SCOPE AND SUFFICIENTLY FLEXIBLE TO PERMIT PROVIDERS TO RESPOND TO CUSTOMER NEEDS AND MARKET DEVELOPMENTS

Mandatory usage alerts are unnecessary and inappropriate at this time, but if the Commission nonetheless adopts new rules in this area, it should take care to limit them in scope and give providers the flexibility to adopt different customer disclosure procedures and to tailor alerts based upon technological limitations and evolving market and consumer demand. Overly detailed, rigid regulations would prevent providers from responding to market conditions and would also require them to change their existing practices, negating the investments made and benefits derived from already implemented alerts and other mechanisms.

As discussed above, T-Mobile has already implemented some usage alerts and other tools to help consumers manage their usage. The Commission, however, erroneously assumes that simply because “such technological tools are not only feasible, but are currently being utilized by a number of American wireless providers” that mandatory alerts can be easily implemented across all services and that mandatory alerts would, in fact, benefit consumers. A “one-size-fits-all” approach that requires alerts for all service offerings at fixed usage levels and in particular formats is inappropriate in light of the varying technical capabilities of providers and the wide variety of plans and services available. Thus, such rules would not well serve customer needs or the public interest.

A. The Commission Should Not Establish Fixed Levels at Which Usage Alerts Must Be Sent

Mandating fixed levels for usage alerts (*e.g.*, requiring alerts to be sent at 80, 90, 95 and/or 100 percent of a subscriber’s allotment of minutes) is arbitrary, can lead to customer

confusion and often will not provide meaningful information to customers.⁴¹ To be effective, alerts need to provide customers sufficient time to adjust their usage patterns and/or their service plans before incurring overage charges. That adjustment time could vary greatly depending on the service plan. For example, applying an 80 percent threshold to a 1500 minute plan and informing a subscriber he or she has 300 minutes left is significantly more meaningful than applying the same threshold to, say, a 300 minute plan and informing a subscriber he or she has 60 minutes left.

Moreover, providing multiple alerts as customers approach their monthly limits could unnecessarily distract or aggravate them. For many customers, alerts could well be superfluous and therefore annoying, particularly if the subscribers are aware of their use, have larger monthly allowances, or are unlikely to exceed their limits as they approach the end of the monthly billing cycle. For those customers with smaller monthly allowances, receiving multiple alerts in short succession also could be very annoying (*e.g.*, alerts when the customer reaches 80, 90, 95 and 100 percent of a 500 minute plan would trigger notices at 400, 450, 475 and 500 minutes). Requiring alerts at fixed thresholds is further complicated by the fact that, as discussed below, it can take significant time for providers to process incoming usage information about individual subscribers from their own networks and from roaming partners.

In addition, it will only mislead consumers if the Commission adopts rules promising subscribers that they will receive alerts at specific times when neither the Commission nor providers can guarantee that all alerts will be received promptly (*e.g.*, if spectrum or network congestion delays the delivery of a text message, if a subscriber's text messaging in-box is full

⁴¹ See NPRM, 25 FCC Rcd at 14634-35.

and cannot receive the alert, or if information regarding roaming usage is not timely delivered from third parties). Again, carriers make many information tools available, and the Commission should focus its efforts on encouraging customers to use these tools to manage and control their usage. If the Commission nevertheless decides to adopt usage alert requirements, it should do so only for those customers who affirmatively opt to receive them.

1. Alerts Cannot Be Provided in “Real Time”

The Commission should not require that mandatory alerts be delivered to consumers in “real time” for several reasons.⁴² First, defining what constitutes real time is critical to whether a provider would be able to comply with such a requirement. Second, in most cases, T-Mobile cannot process usage information in real time for transmission to consumers. Such processing can take hours, days or even weeks. Third, each provider’s billing and network systems have different technological capabilities and limitations. In T-Mobile’s experience, implementing alerts can require drastic revamping of business plans and internal systems. Although providing alerts in real time (or more accurately “near real time”) may be possible for some providers and for some services, this is not generally feasible – technically, economically, or otherwise – for all providers and services.

As an example, T-Mobile utilizes different billing procedures and systems for prepaid and postpaid services. For prepaid customers, call information is rated and processed at the switch before being sent to the prepaid billing system. Accordingly, usage data – particularly as customers approach their limits – can be relayed back to customers fairly quickly though still not in real time. In contrast, usage information cannot be provided as promptly for postpaid calls

⁴² *See id.*

because they are rated and processed after the data reaches the postpaid billing system. Even if it were possible, reconfiguring T-Mobile's postpaid billing processes to more closely resemble its prepaid mechanism would require a major overhaul of its systems and networks as well as millions of dollars and countless man hours.

Providing current usage information for postpaid customers is further complicated by the fact that T-Mobile must first receive usage information from its roaming partners before it can provide that information to subscribers.⁴³ Like many other service providers, T-Mobile uses a third-party clearinghouse to manage voice traffic with its roaming partners. Each subscriber's minutes of use on a visited network is captured in a Transferred Account Procedure ("TAP") file, which is conveyed to the clearinghouse. Although the clearinghouse strives to send the TAP files to the home carrier within 24 hours (high usage TAP files typically are sent every four hours), it has 30 days to send all files. T-Mobile estimates that it receives roughly 95 percent of the TAP files for its roaming customers within three days, with the remaining files typically received within three to four weeks. Understanding that customers benefit from receiving timely usage information, T-Mobile has worked to reduce the period of time it takes to process TAP files for roaming customers. For example, although T-Mobile previously used a clearinghouse to process roaming SMS and data usage information, it implemented various system and network changes in the second quarter of 2009 so that it could process roaming SMS records directly. T-Mobile made additional changes in the fourth quarter of 2010 so it also could process roaming data records directly. Now T-Mobile can usually process postpaid roaming SMS and data records within four hours or less but still cannot process even these records in real time.

⁴³ Prepaid customers use T-Mobile's network only and do not roam on other providers' networks.

2. The Commission Should Not Mandate the Specific Content of Alerts

If the Commission adopts usage alert requirements despite the reasons stated herein, it should ensure that providers retain sufficient flexibility to respond to customer and market demands by not mandating the content of those alerts. Specifically, the Commission should reject suggestions that usage alerts include specific content, such as the charges that customers will incur if they exceed their monthly allotments or available cut off mechanisms.⁴⁴ Providers must be able to tailor their products and services now and in the future as technologies and services advance and in response to customer demands. Detailed content requirements could restrain flexibility needed to respond to consumer demands and market developments.

Contrary to the overarching goals of this proceeding, requiring providers to include certain language in the alerts also could cause customer confusion. Because a wide variety of service plans and options are available to subscribers, a single Commission-mandated message to subscribers may not be applicable to a particular subscriber's service. Conversely, a comprehensive message that might address a variety of plans also could be confusing, especially in a short text message or other medium. In addition, the more detailed the mandated content, the greater the additional implementation and operational costs that providers could incur, which, as noted above, ultimately would be borne by consumers. This is particularly true if providers must design new programs and software in order to provide in each alert specific account information and service options to each subscriber.

⁴⁴ See NPRM, 25 FCC Rcd at 14635-36.

3. The Commission Should Not Mandate the Method for Distributing Usage Alerts to Subscribers

The Commission should not require carriers to deliver usage alerts in any particular way.⁴⁵ A wide variety of methods exist for transmitting usage alert notifications, including but not limited to text messages, voice calls/messages, email, and regular mail. The suitability of each method depends on the capabilities of the individual service providers and the needs and preferences of their subscribers. Importantly, providers must have the flexibility to modify their distribution methods based upon marketplace developments and customer demand. For example, if the Commission's rules mandated that the notifications be sent via text message, carriers would need an alternative way to reach those customers who do not have texting capability or who choose not to use text services or do not understand how to retrieve text messages. Similarly, mandating a particular form of notice now could prevent providers and customers from using new messaging features that may be developed in the future.

In addition, providing alerts for multi-line accounts can raise complex issues.⁴⁶ For example, not all end users who receive the alerts are the responsible billing parties or primary account holders; while the party paying the bills may be interested in controlling overage costs, the end user may not. That is why T-Mobile created a specific optional mechanism for customers with multiple line accounts – the Family Allowances feature – which allows them to designate the appropriate contact person and monitor and control the usage of the other members of the account. To automatically apply this type of feature to all multi-line accounts, however, would require T-Mobile to make additional complex assumptions about who should receive the

⁴⁵ *See id.*

⁴⁶ *See id.* at 14634-35.

alerts and could ultimately confuse customers. Again, providers are in the best position to determine the most effective and efficient means of alerting their subscribers, including customers that are part of a multi-line account. The Commission should not dictate how information is delivered to customers.

B. Mandatory Alerts Regarding Roaming Charges are Unnecessary

Incurring unexpected charges for domestic roaming has become uncommon in the U.S. due to the prevalence of nationwide service plans that allow subscribers to use voice, text, and data services anywhere in the country without incurring additional charges. Thus, requiring alerts for domestic roaming would be largely superfluous.⁴⁷ T-Mobile notes that only a very small fraction of its subscribers remains on legacy regional plans and therefore may incur roaming fees for usage outside regional calling areas. It would likely be prohibitively expensive to develop and implement roaming alerts for such a small number of customers. If the Commission requires service providers to provide domestic roaming alerts, T-Mobile would likely seek to move these subscribers to nationwide plans, despite the subscribers' preference for their regional plans.⁴⁸

Mandatory alerts for international roaming also are unnecessary.⁴⁹ U.S. consumers are less likely to be caught unaware of international roaming charges than customers in the European Union, where traveling between different countries is more prevalent. Moreover, providers have

⁴⁷ *See id.* at 14636.

⁴⁸ These subscribers have concluded that their legacy plans satisfy their needs and thus have chosen to stay with those plans despite the availability of other service offerings and features (including usage alerts). In fact, many of these subscribers continue to use older handset models that do not have the capability to receive alerts.

⁴⁹ *See* NPRM, 25 FCC Rcd at 14636.

already been responding to the marketplace in this area by developing new features and programs to provide information useful to subscribers when they plan to travel outside the United States. For example, as described above, T-Mobile just recently launched its new Roam Monitor & Control functions to help subscribers monitor and adjust their usage abroad. These kinds of initiatives by carriers will continue.

International roaming alerts also require close coordination with the carriers providing service in the foreign country. And alerts regarding international roaming may not be feasible from a technical and economic perspective depending upon the capabilities and resources of the U.S. provider and its international roaming partners.⁵⁰ U.S. providers should not be held responsible for sending alerts to subscribers when their foreign partners are unable to convey sufficient and timely usage information. As in the domestic context, implementing certain alerts could require new software and significant billing and network modifications. Similarly, the Commission should not mandate the content, frequency, timing, or type of international roaming alerts for the same reasons why they should not be mandated for general domestic usage.

C. Additional Regulations Regarding Disclosure of Monitoring and Usage Tools are Unnecessary

There is no need for the Commission to adopt specific regulations regarding the disclosure of tools that are available to monitor and limit usage.⁵¹ Providers already make disclosures and are continually reviewing and updating their disclosure practices to ensure subscribers know about the tools that are available to them. If the Commission were to adopt

⁵⁰ The unique structure of the European Union allows the same rules and regulations to be adopted by all member countries, providing a common basis for all service providers operating in those countries to implement those requirements. There is no similar mechanism, however, to motivate foreign carriers to help U.S. carriers provide alerts to their customers.

⁵¹ See NPRM, 25 FCC Rcd at 14637-38.

such regulations, however, it should ensure that providers retain the flexibility to respond to consumer and market demand by not mandating the content or type of disclosure tools that they employ. Rather, providers are in the best position to determine and adopt the most efficient, practical and economical disclosure methods that would best meet the needs of subscribers in this ever-changing marketplace. Mandating the specific content and type of disclosure tools also could unnecessarily increase operating costs for providers, restricting their ability to respond to and take advantage of new innovations in the marketplace. The Commission also should take care to ensure that any new disclosure tools it may require as a result of this proceeding are not in conflict with the recently adopted rules to preserve the open Internet. Creating layers of conflicting regulation that cause consumer confusion would not serve the public interest.

D. Prepaid Services Should Be Exempt from Any Usage Alert Requirements

Service providers, including T-Mobile, already give appropriate information to prepaid subscribers to help them manage their usage. For instance, most prepaid customers can easily determine their service balances; T-Mobile subscribers can easily access their account and minute balances from their handsets by dialing #999#. ⁵² By definition, prepaid customers pay in advance for an allotted quantity of service (minutes of voice service or quantity of data), and, therefore, mandatory usage alerts are superfluous. Prepaid services terminate when customers exhaust the purchased quantity. ⁵³

⁵² See *infra*, Section I(A)(1).

⁵³ As previously explained, T-Mobile uses separate billing and network systems for its prepaid and postpaid service offerings. Although its prepaid system allows T-Mobile to process usage data more quickly, incorporating those features into its postpaid system would be far more complex, if even possible.

III. NEW RULES AS PROPOSED IN THE NPRM REQUIRE A SUBSTANTIAL IMPLEMENTATION PERIOD

If the Commission were to adopt the rules proposed in the NPRM, it should provide for a substantial implementation period. As discussed above, implementing many of the new proposals would require new software and significant billing and network modifications. The more detailed the requirements, the more time and resources will be required to develop and implement them. The new rules would have to be incorporated into all facets of a service provider's business. For example, T-Mobile would need to conform its internal business practices to the changes, update its advertising and promotional materials, inform its subscribers, and train its service and customer care representatives. New rules also implicate intercarrier relationships and third party billers and clearinghouses (as in the exchange of roaming information), which may require providers to revisit and potentially renegotiate those agreements. It has taken many years, with multiple revisions and changes, for T-Mobile to develop and implement its existing monitoring and usage tools. Similar efforts by service providers to implement widespread network and system changes to comply with E911 and local number portability requirements also spanned many years.⁵⁴ Accordingly, to the extent the

⁵⁴ The Commission adopted a phased implementation plan for E911 services in light of the system and other challenges presented by the new rules. The Commission provided an 18-month window to complete Phase I, which requires a carrier to transmit a 911 caller's call-back number and cell site to the appropriate PSAP, and a five-year period to complete Phase II, which requires a carrier to transmit a 911 caller's location information to the appropriate PSAP. And implementation periods were triggered on a PSAP-by-PSAP basis, based on individual requests. Thus the implementation period in some cases extended well beyond the initial compliance windows established by the Commission. *See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996); 47 C.F.R. § 20.18(d), (e), (h).

Similarly, the Commission extended the original June 30, 1999 deadline (which provided an implementation period of slightly less than three years) to implement wireless local number
(continued on next page)

Commission adopts rules regarding usage alerts, it should provide the mobile industry with sufficient time to implement those requirements.

IV. CONCLUSION

For the reasons discussed above, T-Mobile urges the Commission to refrain from imposing burdensome usage alert and related disclosure requirements on the wireless industry at this time. If the Commission does adopt such requirements, it should ensure that the rules are sufficiently flexible to allow providers to respond to market changes and innovations and evolving consumer demand.

Respectfully submitted,

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portability until November 24, 2003. *See Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8440 (1996); *Verizon Wireless's [sic] Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14972-73 (2002); *Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003); 47 C.F.R. § 52.31.