Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
	)	

To: The Commission

<u>Comments of the Blooston Rural Wireless Carriers</u>

The law firm of Blooston, Mordkofsky, Dickens, Duffy, & Prendergast, LLP ("Blooston"), on behalf of All West Communications, Butler-Bremer Communications, Copper Valley Wireless, NNTC Wireless, North Dakota Network Co., Smithville Communications, Inc., South Slope Cooperative Telephone Company, and SRT Communications, Inc. (collectively referred to as the "Blooston Rural Wireless Carriers"), respectfully submits the following comments with respect to the Commission's *Notice of Proposed Rulemaking*[1] ("NPRM"), released October 14, 2010, in the above captioned proceeding. Specifically, the Blooston Rural Wireless Carriers oppose the implementation of mandatory usage alerts. Such a requirement would necessitate expensive network and billing system upgrades which, in turn, increase the cost of service to rural customers. At the same time, it is unclear that the additional cost is off-set by a tangible benefit. The record does not support the Commission's conclusion that

[1] *In the Matter of Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, Notice of Proposed Rulemaking, CG Docket Nos. 10-207 and 09-158, released October 14, 2010.

mandatory usage alerts will reduce "bill shock," as several parties have provided examples of bill shock which would not have been prevented by the Commission's proposed rules. Finally, the Commission's proposal does not address potential issues with third party billing arrangements and resale agreements, where it is not necessarily possible for the service provider to have real-time updates of customer voice, text, and data usage.

I. Mandatory Usage Notifications Would Result in a Disproportionate Increase in Cost to Rural Carriers

As the Commission is no doubt aware, any increase in cost to a service provider is ultimately borne by the customer. The cost of upgrading any network is a flat cost that must be distributed across the entire customer base. Therefore, unfunded government mandates such as the proposed usage notification requirements are more easily dealt with by large carriers such as Verizon, AT&T, and Sprint, who enjoy a nationwide customer base over which to spread the added costs. On the other hand, as the Commission has recognized in other contexts, rural carriers simply do not enjoy such economies of scale.[2] Such costs, in the case of rural carriers, are spread over a much smaller customer base, and result in a disproportionately larger increase in cost than in urban areas.

Ironically, the Commission criticizes the carriers who offer usage monitoring services for a fee.[3] Yet, the revision to the network and billing system necessitated by the Commission's proposal produces the same net effect, as implementing carriers will be

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[2] *See, e.g., In re High-Cost Universal Serv. Support et al.*, 25 FCC Rcd 4072, 4091 (F.C.C. 2010)(" …rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and generally do not benefit from economies of scale and scope to the same extent as non-rural carriers.").

[3] NPRM ¶19

forced to raise rates to recoup the cost. The *Bill Shock Survey*[4] commissioned by the Commission indicated that only one in six cellular users experience even the most mild form of bill shock. Although it is unclear whether this percentage holds true for rural areas, the Commission's proposal nevertheless results in an increase in cost to 100 percent of the customer base 100 percent of the time, in the form of increased rates. Yet, the benefit applies (at best) to only one sixth of that customer base, and on relatively rare occurrences.

The cost issue is exacerbated by the fact that the Commission's proposal is also overbroad. While there are several anecdotal examples of bill shock in the record, most of them occurred in an international context. For example, the Utility Consumers Action Network's comments in an earlier proceeding[5] provided several examples of bill shock, all of which occurred in an international context. Indeed, even the European rules, upon which the Commission bases its proposal, are limited to the international context, and are expressly drafted in terms of home State and visiting State.[6] The mandatory alert rules do not apply to overages that occur when the customer is in his home State.

Instead, the Blooston Rural Wireless Carriers, along with many other commenters in a related proceeding,[7] agree that the best approach is for the Commission to continue to allow rural carriers to determine the best way to address the bill shock issue for its

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[4] *FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion About Early Termination Fees*, News Release and Survey, 2010 WL 2110749 (May 26, 2010).
[5] *In the Matter of Measures Designed to Assist US Wireless Consumers to Avoid Bill Shock*, Comments of the Utility Consumers' Action Network, CG Docket No. 09-158, filed July 6, 2010.
[6] Regulation of the European Communities No. 544/2009, Art. 6; amending Regulation No. 717/2007.
[7] *See, generally*, *In the Matter of Measures Designed to Assist US Wireless Consumers to Avoid Bill Shock*, Comments of the Rural Cellular Association; CG Docket No. 09-158, filed July 6, 2010; Comments of CTIA, CG Docket No. 09-158, filed July 6, 2010.

respective customer base. Nothing in the record supports the conclusion that consistency across carriers is necessary to reduce or eliminate bill shock; there is no evidence of bill shock occurring as a result the non-uniformity that exists in the industry today. As is often the case when dealing with telecommunications service in rural areas, a one-size-fits-all approach rarely succeeds. As other commenters have pointed out, rural areas already have significant incentive to eliminate occurrences of bill shock, given that many rural carriers rely on strong customer service relationships to remain competitive in the wireless market.[8] The Commission should allow rural carriers to address the issue in the manner that best suits their situation, without the need to purchase expensive software the cost of which can only be passed to a few hundred or thousand subscribers.

II. Mandatory Usage Notification would Not Reduce or Eliminate Many Instances of Bill Shock

Aside from the cost issue, it is unclear that usage alerts will significantly decrease occurrences of bill shock. First, the Commission's proposal assumes that all cell phone users have access to text and data services. However, many customers only use cell phones for voice service, especially elderly users, so they would not see the text or email notices.

Many of the anecdotes provided by commenters in the initial *Bill Shock Survey* proceeding dealt with situations where an automated alert would have likely been insufficient to prevent bill shock. For example, the Consumer Action Bill Shock Comments reference an instance where a woman's phone was stolen while she was

[8] *See* Comments of the Rural Cellular Association.

travelling abroad.[9] It is not likely an alert sent to a stolen phone will prevent bill shock. Consumer Action also relays an incident where a customer incurred a large bill because his son was using data but the family plan did not include data.[10] In this case, the automated notification system the Commission proposes (which would trigger at 80% and 100% of allotted usage) would never have triggered, since the customer had no allotted data usage in his $93 plan; the son's data use was not an "overage", but a per-kilobyte rate.

In another example, this time provided by the Utilities Consumer Action Network, the customer was again travelling abroad when her phone was cloned without her knowledge.[11] The phone in question was inaccessible to the customer, rendering any automated alert useless.[12] In yet another, the customer "consistently" received higher-than-anticipated bills because she lived near an international border, causing the phone to roam intermittently as it switched between the local and the international tower.[13] It is unclear whether an automated alert would have made any difference, where even a monthly notice in the form of a high bill was not sufficient.

III. Mandatory Usage Notifications Present Several Unaddressed Issues in the Context of Agreements for Third Party Billing and Resale of Services

[9] *In the Matter of Measures Designed to Assist US Wireless Consumers to Avoid Bill Shock*, Comments of Consumer Action and the National Consumers League, CG Docket No. 09-158, filed July 6, 2010, at 2.
[10] *Id.*
[11] Comments of the Utility Consumers' Action Network at 7-9.
[12] *Id.*
[13] *Id.*

The Commission's proposed rules fail to address complications presented by third party billing and resale arrangements. Rural carriers often use third party billing providers to reduce the cost of operating and regularly rely on resale agreements to provide wider coverage to their customers, whether in the customers' home market or on a nationwide scale. It takes time for usage data to make its way through the clearing houses and to a point where it can be properly aggregated, often days after the user has already exceeded his or her plan's allotment. It is unclear whether it possible, let alone feasible, for the rural service provider to obtain and monitor billing and usage information for resold services. In some cases, the rural reseller and the underlying carrier also operate on a monthly billing schedule, making it impossible for the rural carrier to know how many minutes, texts, or kilobits of data a customer has used until the billing cycle completes.

VI. Conclusion

It is respectfully submitted that the potential benefits of mandatory usage notifications are outweighed by the costs associated with implementation. Upgrading networks and billing systems to accommodate automated notifications increases the cost of service, which is especially detrimental to small rural carriers that do not have the economies of scale necessary to implement such modifications without cost to the consumer. While the Blooston Rural Wireless Carriers agree that bill shock should be addressed, mandatory usage notifications are not a cost-effective means of doing so. The proposed rules would have little to no effect on most of the instances of bill shock cited in the record. Given the cost of implementing such measures, the Blooston Rural

Wireless Carriers respectfully propose the Commission look to other methods of curtailing bill shock or, at minimum, exempt rural carriers from complying.

Respectfully submitted,

The Blooston Rural Wireless Carriers

By: __/s/ John A. Prendergast_____
John A. Prendergast
Salvatore Taillefer, Jr.

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Tel: 202-659-0830

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