

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

In the Matter of

Empowering Consumers to Avoid Bill Shock

Consumer Information and Disclosure

CG Docket No. 10-207

CG Docket No. 09-158

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (“NARUC”) respectfully submits these comments in response to the Notice of Proposed Rulemaking (“*NPRM*” or “*Proposed Rulemaking*”) adopted and released by the Federal Communications Commission (“FCC” or “Commission”) on October 14, 2010, in the above-captioned proceedings.<sup>1</sup>

For over 100 years, NARUC, a quasi-governmental non-profit corporation residing in the District of Columbia, has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin islands charged with, *inter alia*, overseeing the intrastate operations of telecommunications utilities.

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<sup>1</sup> See *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket Nos. 10-207 and 09-158, Notice of Proposed Rulemaking, FCC 10-180 (rel. Oct. 14, 2010) (“*Bill Shock NPRM*”), available online at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-180A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-180A1.doc), See also 75 Federal Register 72773 (November 26, 2010), available online at: <http://frwebgate2.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=QZHB8p/0/2/0&WAIAction=retrieve>.

NARUC is recognized by Congress in several statutes<sup>2</sup> and consistently by the Courts<sup>3</sup> as well as a host of federal agencies,<sup>4</sup> as the proper entity to represent the collective interests of State utility commissions.

On August 27, 2009, the Commission adopted the Consumer Information and Disclosure Notice of Inquiry,<sup>5</sup> which among other things sought comment on potential opportunities for protecting and empowering American consumers by ensuring access to relevant information about communications services.<sup>6</sup> Subsequently, on May 11, 2010, the FCC's Consumer and Governmental Affairs Bureau released a public notice.<sup>7</sup>

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<sup>2</sup> See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains "Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

<sup>3</sup> See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985) (where the Supreme Court notes: "The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate." 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); *Compare, NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

<sup>4</sup> NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, *mimeo* at 31 (June 29, 2010) ("We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers' interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members' injury-in-fact.")

<sup>5</sup> See *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158; CC Docket No. 98-870; WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380 (2009) (*Consumer Information NOI*).

<sup>6</sup> *Consumer Information NOI*, 24 FCC Rcd at 11382, ¶ 3.

<sup>7</sup> See COMMENT SOUGHT ON MEASURES DESIGNED TO ASSIST U.S. WIRELESS CONSUMERS TO AVOID "BILL SHOCK". (DA No. 10-803). (Dkt No 09-158 ) (rel. May 11, 2010) available online at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-10-803A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-803A1.doc).

That May 2010 notice cited the recently adopted “bill shock” rules implemented in the European Union, and sought comment on the feasibility of instituting usage alerts and cut-off mechanisms to provide wireless voice, text, and data consumers a way to monitor, on a real-time basis, their usage of a wireless communications service, as well as the various charges they may incur in connection with such usage. Shortly after the July 19, 2010 close of the comment cycle, NARUC passed a *Resolution Urging the Federal Communications Commission to Use Its Authority to Protect Consumers from Mobile Device Bill Shock*,<sup>8</sup> that, among other things:

- urges all wireless carriers with the technical ability to provide usage alerts, icons and/or screen notices on mobile devices, or other alerts to voice, text, and data consumers in the United States with clearly understood and prompt information to monitor usage, to empower consumers, to avoid bill shock, and to ensure that consumers are fully informed prior to incurring charges for services in excess of those in a customer’s calling plans;
- urges the FCC to work with State commissions, consumer representatives, and industry to implement measures to achieve these objectives; and
- directs NARUC staff to promote policies consistent with this statement.

On October 7, 2010, NARUC filed an ex parte in this docket outlining the July resolution that, among other things, specifically asked the FCC to work with industry, PUCs and consumer representatives to assure consumers have proper notice before being hit with additional fees and charges.<sup>9</sup> Shortly thereafter, the FCC adopted this *Proposed Rulemaking*.

The *Proposed Rulemaking* seeks comment on baseline mobile wireless consumer protection rules intended to help consumers avoid unexpected roaming and overage charges, or

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<sup>8</sup> *Resolution Urging the Federal Communications Commission to Use Its Authority to Protect Consumers from Mobile Device Bill Shock*, adopted by the NARUC Board of Directors July 21, 2010, available on line at: <http://www.naruc.org/Resolutions/Resolution%20Urging%20FCC%20to%20Protect%20Consumers%20from%20Bill%20Shock1.pdf>.

<sup>9</sup> See October 7, 2010 Letter from NARUC General Counsel James Bradford Ramsay to FCC Chairman Julius Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker, filed *In the Matter of Consumer Information and Disclosure: Measures Designed to Assist U.S. Consumers with Wireless Bill Shock*, DA 10-803, CG Dkt 09-158. Available online from: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020916092>.

“bill shock.”<sup>10</sup> Specifically, the *NPRM* seeks comment on proposed rules requiring mobile service providers to provide notification alerts to their subscribers when the subscribers: (1) are approaching an allotted limit for voice, text, and data usage; (2) have reached any allotted limit(s) and have begun to incur overage charges; or (3) “will incur international or other roaming charges ... not covered by” the subscriber’s monthly plan.<sup>11</sup> The *NPRM* also asks commentors to identify the types of wireless services and providers to which the proposed rules should be applicable.<sup>12</sup> The Commission also seeks comment on a proposed rule requiring mobile service providers to make “clear, conspicuous, and ongoing disclosure of any tools or services they offer” that allow subscribers to limit or monitor their usage.<sup>13</sup>

NARUC’s resolution makes clear the FCC has correctly opened a proceeding to examine an undeniable problem. Something needs to change.

The resolution also specifies that wireless carriers that currently have the technical capability should “. . . provide usage alerts, icons and/or screen notices on mobile devices, or other alerts to voice, text, and data consumers in the United States with clearly understood and prompt information to monitor usage, to empower consumers, to avoid bill shock.” NARUC is also on record as supporting existing residual State authority to, at a minimum, enforce any federal rules imposing additional obligations or duties on wireless services. We have also, like the GAO, consistently encouraged coordinated State and Federal consumer protection enforcement regimes.

In support of these positions, NARUC states as follows:

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<sup>10</sup> *Bill Shock NPRM* at ¶¶ 1, 14.

<sup>11</sup> *Id.* at ¶¶ 20-23 and Appendix A. Appendix A lists the specific proposed rules for public comment.

<sup>12</sup> *Id.* at ¶¶ 1, 26 and Appendix A.

<sup>13</sup> *Id.* at ¶ 24 and Appendix A.

***The record demonstrates there is a “bill shock” problem and that existing regulatory oversight and voluntary industry measures have not solved the problems.***

NARUC’s resolution points to the results of the FCC’s independently conducted national study of 3,005 American consumers regarding bill shock and Early Termination Fees.<sup>14</sup> That survey indicates that 80% of American adults have a personal cell phone, and 17% of those, or approximately 30 million Americans, have at one time experienced bill shock, or their cell phone bill increased suddenly from one month to the next, even though they had not changed their calling or texting plans. The study also points out that eighty-four percent said their cell phone company did not contact them when they were about to exceed their allowed minutes, text messages, or data download and that eighty-eight percent said their cell phone company did not contact them after their bill suddenly increased.

NARUC has consistently been on record supporting, as per the July 2010 resolution, measures to protect consumers and prevent so-called wireless “bill shock.” For example, in 2006 comments, in a related docket focused on consumer protection, NARUC explained that market forces cannot always effectively prevent fraudulent, deceptive, abusive, exploitative or unfair practices that are profitable:

History, economics and common sense suggest there are some problems market forces cannot be relied upon to correct.... In [this] category are problems that result from practices that actually enhance a particular market participant’s profits. The classic example is slamming. But for ... penalties and enforcement, it is more profitable for even mainstream carriers to encourage (or at least take no action to curtail) such practices.<sup>15</sup>

NARUC’s resolution – and the record<sup>16</sup> the FCC has compiled in this proceeding - make two things crystal clear. First there is a problem. Second, current industry practices, combined

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<sup>14</sup> Horrigan, John and Satterwhite, Ellen, *Americans’ Perspectives on Early Termination Fees and Bill Shock, Summary of Findings* (rel. May 26, 2010), (“*Bill Shock Survey*”). Available online at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-298414A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298414A1.doc).

<sup>15</sup> *In the Matter of Consumer Protection in the Broadband Era*, WC Docket No. 05-271 National Association of Regulatory Utility Commissioners, Initial Comments (Jan. 17, 2006) at 10.

<sup>16</sup> See *NPRM* at ¶¶ 2, 11. The Commission also points to a Government Accountability Office (“GAO”) finding that that at least 34 percent of wireless subscribers had experienced unexpected charges on their bills.

with existing federal and state oversight, have not taken care of the problem. At a minimum, the FCC study and the GAO survey indicate that market forces have yet to eliminate consumer confusion or concern. It appears that a significant percentage of wireless customers are either not aware of or do not know how to utilize existing mechanisms.

It is also true that NARUC's most recent resolution does not specifically choose any process solution or set of solutions to assure consumers get the needed information. But whether by voluntary industry activity or federal and State regulatory action, the record compiled by the FCC in this proceeding certainly strongly suggests that some additional measures are needed. Certainly the NPRM proposals, as modified by anticipated comments and suggestions from many NARUC member State commissions, are one option the FCC can consider that could well significantly reduce the size and scope of the problems identified. Indeed, those measures are generally referenced in the July 2010 NARUC resolutions exhortation to industry for specific prophylactic measures to reduce incidents of bill shock for carriers that have the technical capability to do so.

#### ***Partnership, not preemption***

The FCC has in several contexts “recognize[d] . . . that [S]tates play a vital role in protecting end users from fraud, enforcing fair business practices, and responding to consumer inquiries and complaints.”<sup>17</sup> In the wake of the GAO report, which suggested missed federal-state opportunities for coordinated action, this FCC immediately reached out to NARUC's member States to embrace collaborative federal and state action and continues to fully support existing cooperative enforcement efforts.

The law in the wireless context is clear on its face. Consumer disclosure rules and other billing details clearly fall within “*customer billing information and practices* and billing disputes

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*NPRM* at ¶¶ 2, 8, citing GAO Report to Congressional Requesters, “FCC Needs to Improve Oversight of Wireless Phone Service,” GAO-10-34, at 11 (rel. Nov. 2009) (“*GAO Report*”), available online at: <http://www.gao.gov/products/GAO-10-34>. The Commission notes that the GAO does not distinguish between the underlying causes of the unexpected charges reported. See *Bill Shock NPRM* at n. 16 and n. 35.

<sup>17</sup> In the Matter of Preserving the Open Internet Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52, FCC 10-201 Report and Order, (rel December 23, 2010) mimeo at 66, note 274 available online at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-201A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-201A1.pdf)

*and other consumer protection matters*” reserved to States by 47. U.S.C.A. §332(c)(3)(A). Certainly, such regulations are within a non-illustrative list of “other matters generally understood to fall under ‘other terms and conditions’.”

Unfortunately, that same GAO report points out that some are quick to interpret Commission silence on a topic as ambiguity.

Stakeholders said that states’ authority to regulate wireless service under federal law is unclear, leading, in some cases, to costly legal proceedings and reluctance in some states to provide oversight. *GAO Highlights of GAO-10-34* at 1.

There are no good reasons for this lack of clarity or for the FCC by its silence to either (i) encourage wasteful litigation at taxpayer and ratepayer expense because of this perception or (ii) undermine State-based avenues of consumer relief by its silence.

Accordingly, we respectfully request, in this docket, that the FCC include in any final order an affirmative statement that any regulations or rules adopted *will not* preempt states’ consumer protection authority or their ability to institute new protections or regulations for carriers operating in their states, except to the extent that a state sought to establish standards related to the same subject matter that would interfere with regulations promulgated by the Commission. Such a recommendation is consistent with existing federal law and previous recommendations.<sup>18</sup>

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<sup>18</sup> See NARUC Wireless Standards Survey at 12-13; *GAO Report* at 7; MDTC Comments, *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, and WC Docket No. 04-36, at 15-17 (filed Oct. 13, 2009).

***Resolution Urging the Federal Communications Commission to Use Its Authority to Protect Consumers from Mobile Device Bill Shock***

**WHEREAS**, The Federal Communications Commission (FCC) recently released the results of its independently conducted national study of 3,005 American consumers regarding bill shock and Early Termination Fees (ETFs);<sup>19</sup> *and*

**WHEREAS**, The survey results showed that 80% of American adults have a personal cell phone, and 17% of those, or approximately 30 million Americans, have at one time experienced bill shock, or their cell phone bill increased suddenly from one month to the next, even though they had not changed their calling or texting plans; *and*

**WHEREAS**, Eighty-four percent (84%) said their cell phone company did not contact them when they were about to exceed their allowed minutes, text messages, or data downloads, and 88% said their cell phone company did not contact them after their bill suddenly increased; *and*

**WHEREAS**, Wireless phone screens provide basic information such as time, date, battery power, number of emails and voice mails; *and*

**WHEREAS**, Wireless phones depict icons that can be programmed to provide detailed information, *and*

**WHEREAS**, Consumers could have prompt and easily accessible usage information and avoid over-usage if all wireless phone screens displayed minutes used and remaining and/or a “Usage” icon that provides all account information including usage allowed, used and available, billing date, costs for overages for all services; *and*

**WHEREAS**, The FCC has reportedly received hundreds of complaints about unexpectedly outrageous cell phone bills ranging from hundreds to thousands of dollars;<sup>20</sup> *and*

**WHEREAS**, Some wireless carriers provide alerts and other means to curtail overages, primarily to customers with smart phones; *and*

**WHEREAS**, The National Association of Regulatory Utility Commissioners (NARUC) has consistently supported and encouraged full disclosure to consumers; *now, therefore be it*

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility

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<sup>19</sup> *Americans’ Perspectives on Early Termination Fees and Bill Shock, Summary of Findings* (rel. May 26, 2010), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-298414A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298414A1.doc).

<sup>20</sup> “Your tax dollars at work. “\$18,000 cell phone bill? ‘Bill shock’ in feds crosshairs” OC WATCHDOG (rel. May 13, 2010) available at: <http://taxdollars.ocreger.com,/2010/05/13>.

Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, urges all wireless carriers with the technical ability to provide usage alerts, icons and/or screen notices on mobile devices, or other alerts to voice, text, and data consumers in the United States with clearly understood and prompt information to monitor usage, to empower consumers, to avoid bill shock, and to ensure that consumers are fully informed prior to incurring charges for services in excess of those in a customer's calling plans; *and be it further*

**RESOLVED**, That NARUC urges the FCC to work with State commissions, consumer representatives, and industry to implement measures to achieve these objectives; *and be it further*

**RESOLVED**, That NARUC directs its General Counsel and policy staff to promote policies consistent with this statement at the federal level.

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*Sponsored by the Committees on Consumer Affairs and Telecommunications*

*Adopted by the NARUC Board of Directors July 21, 2010*