

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

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

**Reply Comments of The American Consumer Institute**

The American Consumer Institute Center for Citizen Research (ACI) is a nonprofit (501c3) educational and research institute with the mission to identify, analyze and protect the interests of consumers in selected policy and rulemaking proceedings in information technology, health care, retail, insurance, energy and other matters.

**Summary**

In its NPRM, the Commission proposes rules to assist consumers in avoiding “unexpected charges” on their wireless bills. While unexpected charges are certainly undesirable, they do not by themselves make the case for government regulation. First, the Commission should establish that such overcharges are pervasive, that consumers lack the means to avoid such charges, and that the market will not address them. In consideration of these issues, ACI has reviewed the options available to consumers to manage their usage, and also surveyed consumers about their use of information and usage management tools made available by wireless providers. As detailed below, our survey indicated that consumers are generally aware of the tools, but that most choose not to use them.

Wireless providers currently offer a range of tools that enable consumers to keep track of their monthly usage, place some limits on usage, and reduce the possibility of unexpected charges. Some providers allow customers to retroactively change plans to accommodate overages. Carriers frequently issue credits when consumers report unexpected fees.

If customers are paying more for wireless services than they anticipated, then they most likely are using more service than they anticipated. If these overages are a concern, consumers can use these tools, upgrade their usage-based plans, or find another wireless provider. Since providers compete, in part, based on customer service, they have substantial incentives to improve their service and tell consumers about these tools. Indeed, wireless providers have been doing just that -- creating new tools to reduce billing complaints, winning and retaining customers by standing out among their competitors, and offering differentiated products, usage plans, and services to fit consumers' varied needs. For the Commission to regulate towards homogeneity would undermine service differentiation and, therefore, limit competition by reducing consumer choices.

Providing consumers with better information and management tools is certainly desirable, but forcing consumers and carriers into a set of one-size-fits-all solutions would add costs and limit choices without clear need or benefit. The genius of competitive markets is that consumers drive change by exercising their right to choose.

In our view, the Commission has not demonstrated that the proposed benefits of regulating bill shock would outweigh its costs. In fact, as this reply shows, the Commission has not properly sized the extent to which so-called "bill shock" exists, and, in fact, the Commission's own survey data do not correspond with its definition of bill shock. Therefore, we urge the Commission not to impose any regulations in this matter,

and we also call attention to President Obama's recent executive order calling on agencies to be cautious about imposing regulations.<sup>1</sup>

### **Commission's Survey is Flawed**

In this notice, the Commission cites its survey and states "that many mobile consumers experience sudden, unexpected increases in their monthly bills that are not caused by intentional changes in their service plans."<sup>2</sup> The Commission's notice goes on to state that this "confirms that as many as 30 million American have experienced such unexpected increases in their wireless bills, commonly referred to as "bill shock."

However, the Commission's "confirmation" is premature. In determining the extent of bill shock in the market, the Commission asked the following question – "*Has your cell phone bill ever increased suddenly, from one month to the next, even if you did not change the calling or texting plan for your phone.*" The question makes no mention of an "unexpected" increase and it does not eliminate those who experienced a sudden increase for "expected reasons," including those changing their wireless plans.<sup>3</sup> The words *even if* include both conditions: 1) those changing plans; and 2) those not changing plans.

Said differently, while identifying those consumers that experienced a sudden increase in their bill, the survey never makes a distinction between the respondents who changed their calling and texting plans and those who had not changed their calling and texting plans, despite explicitly stating so in the NPRM.<sup>4</sup> Since the Commission did not determine whether the increase was an "expected" or "unexpected change," a consumer switching from a 500 minute plan to an unlimited plan would have experienced a sudden change and would have responded "yes" to the question on the survey even though the increase in the bill was the expected result of a consumer action. That is not bill shock, either as the Commission has defined it or by common sense reckoning. It also is not bill

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<sup>1</sup> "Improving Regulation and Regulatory Review," Executive Order 13563 of January 18, 2011, at sec. 4; and President Obama, "Toward a 21<sup>st</sup>-Century Regulatory System," The Wall Street Journal, January 18, 2011

<sup>2</sup> This was noted in the NPRM, released 14, 2010, par.1, p.1.

<sup>3</sup> Q52 of the survey, at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-298414A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298414A1.pdf).

<sup>4</sup> Ibid.

shock when a customer adds a second phone to their existing plan; and it is not bill shock when a customer purchases a \$300 phone and has it charged to their monthly account, although a survey respondent could have answered with a “yes” under any of these circumstances.

In addition, survey research requires fair and balanced questions. If a question only solicits a response in one direction, it can be a leading question. For example, if we ask consumers if they ever had a bad day, we would find that many have. However, that result should not alarm the public, because if we had asked the same consumers about their good days, we would have collected very different results. Similarly, the Commission’s survey only asked if consumers saw increases “from one month to the next.”

The Commission’s survey results do not correspond with the statements in the NPRM and do not support the assertion that 30 million Americans have experienced bill shock, as defined by the Commission in its NPRM.<sup>5</sup> By connecting these inappropriate survey results to the emotive term *bill shock*, the FCC appears to taint their objectivity on the issue. In addition, a Nielsen survey suggests that the problem, while it may exist, is very small – around 1% of wireless consumers.<sup>6</sup> So the extent of the problem highlighted by the Commission appears to be grossly overstated and does not provide the clear support to justify rulemaking.

Therefore, if the Commission insists on new regulation it should take care to limit itself to minimally intrusive actions, so as not to impose costly regulations without evidence of meaningful benefits that will not otherwise be delivered. For a consumer, bill shock can happen on a roof, plumbing or auto repair; it can happen during a visit to the dentist, doctor or veterinarian; and it can happen during tax preparation, and so on.

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<sup>5</sup> NPRM, par. 1, p. 1.

<sup>6</sup> Letter from Judith L. Harris and Amy S. Mushahwar, ReedSmith LLP, Counsel to The Nielsen Company, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-207, 09-158, Attachment at 11, filed Dec. 17, 2010.

Compared to these examples, wireless services is the only market that offers tools that enable consumers to manage usage and minimize fees.

### **New Survey Data**

As part of the American Consumer Institute's Annual Consumer Pulse Survey, we asked five questions of wireless consumers in regard to the billing issue and usage management. In general, the data suggest that some consumers are unaware that wireless service providers offer tools to monitor usage, but it also shows that far more consumers know of many of these tools and choose not to use them. The fact that consumers choose not to use these tools in large numbers may suggest that they are not greatly concerned about unexpected fees. If that is correct, it also suggests that regulation is not in order.

The results provided here were based on a random nationwide telephone survey conducted from January 14, 2011 through January 19, 2011. The results of these survey questions are shown at the end of this filing, as an appendix. Of 1,001 consumers that participated in the survey, 68% (684 respondents) said that they subscribed to a wireless telephone service, while 23% said they did not, and 7% either refused or did not know.<sup>7</sup> Of those subscribing, one-third said that they used high-speed or broadband device, like a smartphone, iPhone, Blackberry, Droid or an Internet service card for their computer, while two-thirds said that they used a common wireless or cellular phone. These respondents were the base used for remaining questions.

The next question asked respondents if their wireless carrier allowed them to check their minutes and other usage from their cell phone.<sup>8</sup> Since all major wireless companies allow consumers to check their usage and balance via their website and wireless device, we can determine the extent to which consumers are aware of these tools.<sup>9</sup> The results to this question showed that only 7% of consumers believed that these tools were not available

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<sup>7</sup> See question #1 in the Appendix, starting on p 8.

<sup>8</sup> See question #2 in the Appendix.

<sup>9</sup> See "Comments of CTIA – The Wireless Association, FCC filing, CG Docket Nos. 10-207, 09-158, January 10, 2011, pp. 17 and 18.

and 15% did not know, while 77% were aware of these tools. From this, we conclude that most consumers are aware of these tools.

Next, we asked consumers about their frequency of use of these tools.<sup>10</sup> In this case, 43% of wireless consumers never checked their usage, 24% rarely did and another 7% did a couple of times a year. Among those that used these tools more often were 16% that checked their usage monthly and 10% checked weekly. In other words, only about 1 in 4 checked their usage with any regularity, despite most consumers knowing that these tools were available for their use by their provider.

All of the major wireless providers also have tools that allow consumers to set some form of limits on post-paid accounts. According to our next survey result, 40% of consumers were aware of these features, 20% did not believe that their provider offered these features and 39% were not sure.<sup>11</sup> Of the 40% that were aware of such features, only 12% (just 33 respondents) used them on a monthly basis.<sup>12</sup> In other words, making consumers aware that these tools are available does not mean that consumers will use them. In the end, it is an issue of consumer sovereignty. While consumers should know that these tools are available to them, they (and only they) should decide what information is needed to make better market decisions. We should not replace consumer choice with government directives.

### **Balancing Minimal Regulation and Consumer Protection**

On January 18<sup>th</sup>, the President Obama signed an executive order to require that federal agencies ensure that regulations are necessary and do not interfere with promoting economic growth. In an op-ed discussing on the order, the President said that, one element of this action is providing consumers with better information:

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<sup>10</sup> See question #3 in the Appendix.

<sup>11</sup> See question #4 in the Appendix.

<sup>12</sup> See question #5 in the Appendix.

*“...we are seeking more affordable, less intrusive means to achieve the same ends – giving careful consideration to benefits and costs.”<sup>13</sup>*

He also indicated that consumers should choose for themselves:

*“It means using disclosure as a tool to inform consumers of their choices, rather than restricting their choices.”<sup>14</sup>*

In summary, the industry already offers tools to help consumers understand their monthly usage and balance, while many other markets do not do the same. Requiring more from the industry will certainly increase its costs, but the benefits of this requirement may be elusive. The data suggests that many consumers know about these tools but choose not to use them. While the Commission has not determined the extent of the problem, other data suggests that about 1% of Americans experience a significant overage per year – a very small number. With all of this in mind, we remain unconvinced that the regulations proposed would produce more benefits than costs, as the President suggests they should. Therefore, we urge the Commission not to impose regulations in this matter.

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<sup>13</sup> “Improving Regulation and Regulatory Review,” Executive Order 13563 of January 18, 2011, at sec. 4; and President Obama, “Toward a 21<sup>st</sup>-Century Regulatory System,” *The Wall Street Journal*, January 18, 2011.

<sup>14</sup> *Ibid.*

American Consumer Institute Center for Citizen Research  
Annual Consumer Pulse Survey: 2011

**Q1. If you subscribe with a wireless telephone service, which device do you  
PRIMARILY use?**

	Age					Race					Gender		Wireless		
	<25	25-44	45-64	65+	DKRef	White	AA	Hispanic	Asian	Other	DKRef	Male	Fem	com- mon	broad- band
Total	9	20	19	40	39	22	35	28	17	44	19	24	25	-	-
Base	42	333	403	200	23	764	80	89	12	25	31	490	511	456	228
Does not subscribe	243	9	68	77	80	9	171	28	2	11	6	116	127	-	-
	24%	21%	20%	19%	40%	39%	22%	35%	17%	44%	19%	24%	25%	-	-
A common wireless or cellular phone	456	13	137	217	84	5	368	29	3	9	17	226	230	456	-
	46%	31%	41%	54%	42%	22%	48%	36%	25%	36%	55%	46%	45%	100%	-
A high-speed or broadband device, like a smartphone, iPhone, BlackBerry, Droid and Internet service card for laptop computers	228	18	102	84	19	5	174	17	4	1	5	115	113	-	228
	23%	43%	31%	21%	10%	22%	23%	21%	33%	4%	16%	23%	22%	-	100%
Not sure/DK/Other	74	2	26	25	17	4	51	6	3	4	3	33	41	-	-
	7%	5%	8%	6%	9%	17%	7%	8%	25%	16%	10%	7%	8%	-	-
Income (in 1000's of \$)															
	-----					-----					-----		-----		
	Total					Party					Labor				
	<25	25-49	50-74	75-	DKRef	Rep	Dem	Ind	Other	DK/Ref	Yes	No	DKRef		
Base	1001	113	216	176	121	153	222	296	282	250	73	100	165	808	28
Does not subscribe	243	51	73	36	15	12	56	57	76	66	18	26	32	205	6
	24%	45%	34%	20%	12%	8%	25%	19%	27%	26%	25%	26%	19%	25%	21%
A common wireless or cellular phone	456	47	89	89	62	74	95	154	113	116	31	42	80	364	12
	46%	42%	41%	51%	51%	48%	43%	52%	40%	46%	42%	42%	48%	45%	43%
A high-speed or broadband device, like a smartphone, iPhone, BlackBerry, Droid and Internet service card for laptop computers	228	6	38	38	35	60	51	65	76	49	19	19	41	181	6
	23%	5%	18%	22%	29%	39%	23%	22%	27%	20%	26%	19%	25%	22%	21%
Not sure/DK/Other	74	9	16	13	9	7	20	20	17	19	5	13	12	58	4
	7%	8%	7%	7%	7%	5%	9%	7%	6%	8%	7%	13%	7%	7%	14%

**Appendix**

**American Consumer Institute Center for Citizen Research  
Annual Consumer Pulse Survey: 2011**

**Q2. Does your wireless carrier allow you to check your minutes and other usage from your cell phone?**

	Age										Race							Gender				Wireless	
	<25	25-44	45-64	65+	DKRef	White	AA	Hisp	Asian	Other	DKRef	Male	Fem	com-	band								
Base: Q17=2 or 3 Wireless Subscriber																							
Yes	529	27	195	228	69	10	415	38	46	6	8	16	266	263	349	180							
	77%	87%	82%	76%	67%	100%	77%	83%	81%	86%	80%	73%	78%	77%	77%	79%							
No	49	3	13	23	10	-	36	5	4	1	-	3	32	17	30	19							
	7%	10%	5%	8%	10%	-	7%	11%	7%	14%	-	14%	9%	5%	7%	8%							
DK/Other	106	1	31	50	24	-	91	3	7	-	2	3	43	63	77	29							
	15%	3%	13%	17%	23%	-	17%	7%	12%	-	20%	14%	13%	18%	17%	13%							
Income (in 1000's of \$)																							
	-----				75-	-----				Party				Labor									
	<25	25-49	50-74	100	100+	DKRef	Rep	Dem	Ind	Other	DK/Ref	Yes	No	DKRef									
Base: Q17=2 or 3 Wireless Subscriber																							
Yes	529	43	97	98	81	101	109	169	144	135	40	41	99	416	14								
	77%	81%	76%	77%	84%	75%	75%	77%	76%	82%	80%	67%	82%	76%	78%								
No	49	5	15	6	2	10	11	16	18	8	4	3	7	42	-								
	7%	9%	12%	5%	2%	7%	8%	7%	10%	5%	8%	5%	6%	8%	-								
DK/Other	106	5	15	23	14	23	26	34	27	22	6	17	15	87	4								
	15%	9%	12%	18%	14%	17%	18%	16%	14%	13%	12%	28%	12%	16%	22%								



American Consumer Institute Center for Citizen Research  
Annual Consumer Pulse Survey: 2011

**Q4. Does your wireless provider allow you to set usage limits on your account in order to avoid extra charges?**

	Age					Race					Gender			Wireless		
	<25	25-44	45-64	65+	DKRef	White	AA	Hisp	Asian	Other	DKRef	Male	Fem	com- mon	broad -band	
Base:Q17=2 or 3 Wireless Subscriber	684	31	239	301	103	10	542	46	57	7	10	22	341	343	456	228
Yes	275	18	102	115	34	6	200	24	31	4	4	12	130	145	173	102
	40%	58%	43%	38%	33%	60%	37%	52%	54%	57%	40%	55%	38%	42%	38%	45%
No	139	8	40	57	32	2	104	13	13	2	5	2	80	59	98	41
	20%	26%	17%	19%	31%	20%	19%	28%	23%	29%	50%	9%	23%	17%	21%	18%
DK/Other	270	5	97	129	37	2	238	9	13	1	1	8	131	139	185	85
	39%	16%	41%	43%	36%	20%	44%	20%	23%	14%	10%	36%	38%	41%	41%	37%
Income (in 1000's of \$)																
	-----					Party					Labor					
Total	<25	25-49	50-74	75-100	100+	DKRef	Rep	Dem	Ind	Other	DK/Ref	Yes	No	DKRef		
Base:Q17=2 or 3 Wireless Subscriber	684	53	127	127	97	134	146	219	189	165	50	61	121	545	18	
Yes	275	19	68	48	41	39	60	82	84	69	14	26	57	212	6	
	40%	36%	54%	38%	42%	29%	41%	37%	44%	42%	28%	43%	47%	39%	33%	
No	139	20	27	21	20	24	27	41	37	33	16	12	28	108	3	
	20%	38%	21%	17%	21%	18%	18%	19%	20%	20%	32%	20%	23%	20%	17%	
DK/Other	270	14	32	58	36	71	59	96	68	63	20	23	36	225	9	
	39%	26%	25%	46%	37%	53%	40%	44%	36%	38%	40%	38%	30%	41%	50%	

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**Q5. How often have you used this option in the past year to manage usage limits on your account and avoid overcharges?**

	Age					Race					Gender			Wireless		
	<25	25-44	45-64	65+	DKRef	White	AA	Hispanic	Asian	Other	DKRef	Male	Fem	com-mon	broad-band	
Total	275	18	102	115	34	6	200	24	31	4	4	12	130	145	173	102
Base: Q21=1	275	18	102	115	34	6	200	24	31	4	4	12	130	145	173	102
Every month	33	1	13	14	3	2	22	4	4	-	-	3	18	15	26	7
	12%	6%	13%	12%	9%	33%	11%	17%	13%	-	-	25%	14%	10%	15%	7%
Some months, but not others	81	9	27	36	8	1	48	8	18	3	3	1	35	46	49	32
	29%	50%	26%	31%	24%	17%	24%	33%	58%	75%	75%	8%	27%	32%	28%	31%
I never use it	161	8	62	65	23	3	130	12	9	1	1	8	77	84	98	63
	59%	44%	61%	57%	68%	50%	65%	50%	29%	25%	25%	67%	59%	58%	57%	62%

  

	Income (in 1000's of \$)							Party					Labor		
	<25	25-49	50-74	75-100	100+ DKRef	Rep	Dem	Ind	Other	DK/Ref	Yes	No	DKRef		
Total	275	19	68	48	41	39	60	82	84	69	14	26	57	212	6
Base: Q21=1	275	19	68	48	41	39	60	82	84	69	14	26	57	212	6
Every month	33	5	8	8	1	3	8	9	5	10	4	5	4	27	2
	12%	26%	12%	17%	2%	8%	13%	11%	6%	14%	29%	19%	7%	13%	33%
Some months, but not others	81	7	23	14	17	7	13	23	32	20	2	4	17	64	-
	29%	37%	34%	29%	41%	18%	22%	28%	38%	29%	14%	15%	30%	30%	-
I never use it	161	7	37	26	23	29	39	50	47	39	8	17	36	121	4
	59%	37%	54%	54%	56%	74%	65%	61%	56%	57%	57%	65%	63%	57%	67%