

**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
)	

REPLY COMMENTS OF VERIZON WIRELESS

John T. Scott, III
Vice President & Deputy General Counsel

Catherine M. Hilke
Counsel

VERIZON WIRELESS
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 589-3740

Filed: February 8, 2011

TABLE OF CONTENTS

I.	SUMMARY	1
II.	WIRELESS CARRIERS ARE SUPPLYING CUSTOMERS WITH MULTIPLE OPTIONS TO MANAGE THEIR USAGE.....	2
III.	THE COMMISSION SHOULD REJECT CALLS FOR PARTICULAR REQUIREMENTS AS UNNECESSARY, UNLAWFUL, AND HARMFUL.....	9
IV.	ANY RULES ADOPTED BY THE COMMISSION SHOULD APPLY TO ALL CONSUMER WIRELESS SERVICES	14
V.	CONCLUSION	16

**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
)	

REPLY COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby responds to the initial comments submitted in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned docket.¹

I. SUMMARY

The record shows that the wireless industry is making available to customers an increasing range of tools that customers can use to monitor and control their wireless usage. In contrast, the record fails to show why it is necessary for the Commission to intrude into the competitive wireless market by mandating additional ways that service providers must communicate with their customers about usage. Advocates for new rules requiring specific usage tools do not provide facts that could justify new regulation, do not supply a data-driven cost-benefit analysis, and do not overcome the multiple legal obstacles that exist. The correct model for meeting consumers’ needs in today’s highly competitive wireless market is to continue to rely on providers’ own incentives to satisfy consumers and on consumer education, rather than new rules.

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

In addition, the Commission should reject several proposals in the record that, if adopted, would cause particular harm to consumers. As many parties demonstrated in initial comments, an overly rigid and detailed regulatory scheme that micromanages exactly how and when providers contact customers with usage information, and what they must say, would impose substantial unnecessary costs on carriers and consumers and could result in unintended harm for consumers. Thus, the Commission should not require alerts to be provided in “real-time” or require carriers to suspend service to a customer who has not opted in to continued service. The FCC also should reject calls to require carriers to discontinue service unless a customer affirmatively opts-in to continue his or her service. As the State Commissions note, a user unable to contact their wireless company to ‘opt-in’ could be shut off from use of his or her wireless device at a critical point and time.² In addition, the Commission should allow carriers to determine the form, substance, and timing of usage alerts because carriers are in the best position to maximize the operational efficiency of distributing alerts. Further, the Commission should reject several proposals that are outside the scope of this proceeding. Finally, if the Commission ultimately adopts rules, they should apply to all consumer wireless services, including those provided by rural and smaller carriers.

II. WIRELESS CARRIERS ARE SUPPLYING CUSTOMERS WITH MULTIPLE OPTIONS TO MANAGE THEIR USAGE.

The record in this proceeding overwhelmingly demonstrates that wireless consumers already have a variety of usage management tools available to them, and that carriers are responding to their customers by continually refining and expanding those tools. As most commenters argued, there is no factual basis for imposing alerting requirements.

² State Commissions Comments at 4.

Numerous parties detailed the wide variety of mechanisms wireless consumers have available to monitor and control their wireless usage. While these tools may vary from carrier to carrier, that is the result of competitive differentiation, as each company determines the best ways to attract and retain the customers it seeks. As Mobile Future noted, “The competitive wireless industry is already providing, and will continue to develop, an array of innovative tools and information to satisfy the needs of customers by helping them avoid unexpected charges.”³ There are in any event a number of common approaches to providing usage information. For example, most carriers currently provide customers a means of checking their wireless usage in multiple ways – online, by dialing a code on their phone, and/or by calling customer service.⁴ Indeed, according to the American Consumer Institute, 77 percent of wireless subscribers say that their service provider currently offers tools that allow them to monitor and control their usage.⁵ In addition, many carriers provide customers with alerting capabilities at varying increments of usage.⁶ A large number of applications also are available in different application stores for free or a minimal cost.⁷ All of these resources help consumers to access data on their wireless usage when and where they want it.

³ Mobile Future Comments at 1.

⁴ AT&T Comments at 11-12 (describing how AT&T customers may obtain their wireless usage information by dialing a shortcode, online through “myWireless,” or on their handsets’ MyWireless App); RCA Comments at 3 (“many RCA members have already adopted internal practices and procedures to address billing concerns directly with their customers. Also, some RCA members are currently testing programs that allow customers to re-rate their plan.”); Sprint Comments at 10; T-Mobile Comments at 4-5.

⁵ Reply Comments of American Consumer Institute at 5-6.

⁶ Verizon Wireless Comments at 2-3, 7, 8-9; AT&T Comments at 17, 19-20; T-Mobile Comments at 5-6.

⁷ Mobile Future Comments at 4-5 (detailing 3G Watchdog, Mobile Minutes Tracker Premium for BlackBerry devices, the BlackBerry e-office Mobile Data Alerter, the iPhone Cell

While the available tools vary slightly between carriers, as the Blooston Rural Wireless Carriers noted in their comments, “[n]othing 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 [of] the non-uniformity that exists in the industry today.”⁸ To the contrary, the variety of tools available shows that the competitive marketplace is working.⁹ The adoption of rules simply to ensure all consumers are receiving identical alerts and services would undermine one of the core benefits of a competitive marketplace—service differentiation.

The record also shows that a number of service options are available to consumers who are particularly concerned about controlling usage. Indeed, “[c]ompetition in the wireless industry has given rise to diverse wireless business models, some of which are designed specifically to make certain that customers do not exceed the monthly sums they have budgeted for their mobile communications.”¹⁰ For example, a variety of prepaid options are available to consumers from a number of wireless carriers.¹¹ “Pre-paid service already offers the ultimate

Usage Tracker, CellPlan Tracker, CellTime Tracker 2.05, Minutes PLUS, and My Data Usage Pro).

⁸ Blooston Rural Wireless Carriers Comments at 4.

⁹ MetroPCS Comments at 3-4 (“[T]he fact that MetroPCS and many other carriers in the industry have voluntarily implemented many of the tools proposed in the NPRM indicates that competitive market forces are working. While the Commission cites with alarm its finding that ‘usage alerts vary widely between service providers and by the type of service covered,’ MetroPCS sees these variations as evidence that market forces are causing competitors to differentiate their products and services. Robust competition naturally will lead to variations in service offerings and consumers always have the ability to choose the carrier whose package of services and tools best fits the consumer’s needs. Rather than being concerned, the Commission should be pleased that competitive forces have caused carriers to differentiate their products which increases the prospect that consumers will get what they want.”).

¹⁰ MetroPCS Comments at 12.

¹¹ *See, e.g.*, Cricket Comments at 2-3; CTIA Comments at 15; MetroPCS Comments at 9-10; Nexus Communications Comments at 2.

form of account management. . . . Once the limit of the pre-paid service is reached, no further service – and therefore no further charges.”¹² Similarly, unlimited service plans are available for consumers who want to pay the same amount every month and never want to worry about exceeding an allowance of minutes, messages, or data.¹³ Nationwide one-rate service plans also are available to consumers who do not want to pay domestic roaming fees.¹⁴ And “service options that provide . . . reduced charges, or capped charges for overages are also becoming increasingly available in the marketplace.”¹⁵

In contrast to detailed information placed in the record showing that consumers have access to ample resources to manage their usage, proponents of regulation failed to produce evidence of a widespread problems that an alerting mandate would resolve.¹⁶ Most rely either on anecdotal, unsupported assertions, or on reports that have already been refuted, particularly the FCC’s survey and the GAO report.¹⁷ As Verizon Wireless detailed in its initial comments, and in expert reports that it filed in the record, both of these surveys suffer from numerous,

¹² Alaska Communications Systems Comments at 3-4.

¹³ *See, e.g.*, CTIA Comments at 16; MetroPCS Comments at 9.

¹⁴ Mobile Future Comments at 3; MetroPCS Comments at 12-14;

¹⁵ Mobile Future at 3 (citing U.S. Cellular’s “Overage Cap,” T-Mobile’s overage free plan and reduced overage fee plan for webConnect mobile broadband customers, AT&T’s DataPro and DataPlus plans, which provide customers with additional data in buckets).

¹⁶ *See, e.g.*, NTCA Comments at 1 (“There is no evidence of widespread ‘Bill Shock.’”).

¹⁷ *See, e.g.*, NASUCA Comments at 1 (“The NPRM well documents the need for action.”); NARUC Comments at 5 (relying on the FCC study and GAO report as justification for regulation).

serious flaws which render their conclusions invalid.¹⁸ The FCC therefore cannot rely on them as justification for the proposed regulation.

The only commenter that attempts to submit new data purporting to show a systemic bill shock problem is Consumers Union, et al. Consumers Union relies on a survey conducted by Consumer Reports that allegedly showed that approximately one in five subscribers received a bill that was significantly higher than they had expected and that half of those who reported such bills said the bill was at least \$50 higher than expected.¹⁹ However, Consumers Union simply reported the survey's supposed conclusions, without submitting the survey itself or supporting data or analysis. Without that information, and the ability of interested parties to evaluate the data, the Commission cannot rely on this survey.²⁰

Moreover, a recent study by the Nielsen Company ("Nielsen") directly contradicts Consumers Union's claims.²¹ The Nielsen study found that only approximately one percent of consumers experience a significant overage in any given year.²² In addition, the Nielsen study concludes that a typical consumer that experiences an overage pays between \$18 and \$21 for voice overages and between \$2 and \$4 for data overages.²³

¹⁸ Verizon Wireless Comments at 20-27, Exhibits 4-6.

¹⁹ Consumers Union Comments at 2.

²⁰ See Verizon Wireless Comments at n. 146 (citing *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 666 (1994)).

²¹ Letter from Judith L. Harris, Counsel to The Nielsen Company, to Marlene H. Dortch, FCC, CG Docket Nos. 10-207, 09-158, Attachment (filed Dec. 17, 2010).

²² *Id.* at 11.

²³ *Id.*

Further, as MetroPCS aptly notes, “[w]hile the Commission’s proposals may be well-intentioned, the harms from these regulations could significantly outweigh any benefits.”²⁴ Specifically, adoption of the proposed regulation would increase significantly the cost of providing wireless services to the public.²⁵ And “any increase in cost to a service provider is ultimately borne by the customer.”²⁶ But since carriers are already responding to consumers billing concerns, adoption of the proposed regulation would result in little benefit to consumers.²⁷ Indeed, any adopted regulation would “necessarily fall short of the dynamic, diverse solutions that the wireless ecosystem is already providing . . . [while] hindering innovation and depriving consumers of new and creative business plans, rate offerings, customer services, and mobile application tools.”²⁸

Finally, the record demonstrates that the Commission’s usage alert proposal suffers from a number of legal infirmities. Specifically, as detailed above, the proposed rule lacks the factual predicate required by the Administrative Procedure Act.²⁹ In addition, the Communications Act does not provide the Commission with the requisite statutory authority to adopt the proposed rule for text messaging and data services.³⁰ While Public Knowledge argues in a recent *ex parte* that

²⁴ MetroPCS Comments at 4.

²⁵ *See, e.g.*, MetroPCS Comments at 4; Verizon Wireless Comments at 45; AT&T Comments at 42-52.

²⁶ Blooston Rural Wireless Carriers Comments at 2.

²⁷ *See, e.g.*, MetroPCS Comments at 4.

²⁸ Mobile Future Comments at 6. *See also* Blooston Rural Wireless Carriers Comments at 2-3.

²⁹ *See supra* 2-7. *See also* Verizon Wireless Comments at 20-27;

³⁰ CTIA Comments at 34-41; AT&T Comments at 66-69; Verizon Wireless Comments at 28-35.

text messaging and data services offered with a voice service are subject to Title II regulation,³¹ its reference to its own petition seeking a declaratory ruling to classify these services under Title II underscores that they are not so classified today. Moreover, as the voluminous record opposing Public Knowledge’s petition demonstrated, the Commission could not classify text messaging under Title II consistent with court precedent that “[t]he mere fact that [providers] are common carriers with respect to some form of telecommunications does not relieve the Commission from supporting its conclusion that [providers] provide [another service] on a common carrier basis.”³² In other words, any one service must be considered separately from other service offered by the provider in determining whether the Commission may regulate the service as common carriage. And the bundling of a telecommunications service with an information service does not automatically convert the information service into a telecommunications service subject to common carrier regulation. Public Knowledge’s argument that Title III confers broad consumer protection authority on the Commission similarly finds no basis in the language of that title, which, as Verizon Wireless demonstrated in its initial comments, was to empower the Commission to manage the airwaves.³³ The record also shows that the Commission’s proposed rule raises substantial First Amendment concerns.³⁴

³¹ Letter from Harold Feld, Public Knowledge, to Marlene H. Dortch, FCC, CG Docket Nos. 10-207 & 09-158, WT Docket No. 08-7 (filed Feb. 4, 2011).

³² *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d at 1481; *see NARUC II*, 533 F.2d at 608 (“it is at least logical to conclude that one can be a common carrier with regard to some activities but not others”). *See also* Comments of Verizon Wireless on Petition of Public Knowledge, et al. for a Declaratory Ruling that Text Messaging and Short Codes are Title II Services, WT Docket No. 08-7 (filed Mar. 14, 2008); Reply Comments of Verizon Wireless, WT Docket No. 08-7 (filed Apr. 14, 2008).

³³ *See* Verizon Wireless Comments at 28-32.

³⁴ *See* CTIA Comments at 41-43; Verizon Wireless Comments at 35-43.

In light of this record, and as supported by multiple commenters, the Commission should reject calls for adoption of a mandatory usage alert requirement and instead focus on consumer education efforts.³⁵ Better consumer education will respond to any legitimate concerns there may be regarding consumer confusion without stifling the development of innovative account management tools.

II. THE COMMISSION SHOULD REJECT CALLS FOR PARTICULAR REQUIREMENTS AS UNNECESSARY, UNLAWFUL, AND HARMFUL.

Several commenters argue that the Commission’s proposed rules do not go far enough and that more detailed regulation is necessary, but do not explain why. The Commission should reject these proposals. It should also ignore a few commenters’ attempts to insert irrelevant, unrelated proposals into this proceeding that have been raised in other proceedings.

Real-Time Notifications. Several commenters argue that the Commission should mandate that usage alerts be provided in “real-time.”³⁶ These commenters assert that “only up-to-date usage information would allow consumers to make informed decisions on their immediate usage, whereas issuing alerts some time after the overages have occurred would be pointless [as t]he damage would already be done and extra fees incurred.”³⁷ As several other

³⁵ See, e.g., Mobile Future Comments at 9; CTIA Comments at 5-6; Verizon Wireless Comments at 19.

³⁶ State Commissions Comments at 3; Consumers Union Comments at 3; NECPUC Comments at 7.

³⁷ State Commissions Comments at 3. See also Consumers Union Comments at 3 (“[N]otifications work best to help consumers avoid penalty fees when such alerts are provided in a time and context that allows consumers to make an informed decision.”); NECPUC Comments at 7 (“In order for mandatory alerts and data disclosures to be truly effective, then they should be provided to consumers in real-time. It is commonsense to conclude that if there is a longer lag time between real-time usage and mandatory alerts and disclosures, then a higher probability exists for consumers to exceed their allotted usage. . . . Therefore, it would be

commenters in this proceeding explain, however, real-time alerting is not feasible given existing architecture and industry processes.³⁸ A real-time reporting rule could require carriers to completely replace billing and other systems as constant account monitoring would be necessary. In addition, less-burdensome non-real-time alerting alternatives are already available.

Mandatory Usage Caps. Several commenters also urge the Commission to require wireless carriers to discontinue service to a customer unless the customer affirmatively opts in to using additional wireless services that are not covered by his monthly allowance.³⁹ As the State Commissions note, however, “[r]equiring certain affirmative steps to ‘opt-in’ before allowing the user to continue could be potentially burdensome to the user. . . . A user unable to contact the wireless company to ‘opt-in’ could be shut off from use of his or her wireless device at a critical point, a step inconsistent with state disconnection rules.”⁴⁰ Indeed, abruptly suspending service for this reason could result in severe financial or personal consequences.⁴¹

While Consumers Union argues that a “strong opt-in mechanism would empower consumers to signal their assent to incurring penalty fees,”⁴² consumers already assented to

counterproductive for the Commission not to require that mandatory alerts and data disclosures be provided in real-time.”).

³⁸ See, e.g., AT&T Comments at 32-33; CTIA Comments at 32-33; T-Mobile Comments at 20-21.

³⁹ Consumers Union Comments at 2-3; NASUCA Comments at 4; National Consumer Law Center Comments at 6.

⁴⁰ State Commissions Comments at 4.

⁴¹ See, e.g., AT&T Comments at 62 (“suspending service at the wrong time could harm a customer’s ability to conduct business, with financial consequences far outweighing the amount of any potential overage”); Verizon Wireless Comments at 43-44.

⁴² Consumers Union at Comments 5. Verizon Wireless also takes issue with Consumers Union’s claim that overage charges are “penalty fees.” They are not. Overage charges are fees for consumers’ use of wireless services that are not already included in their monthly service fee.

overage charges when they accepted their service agreement. Specifically, when customers sign up for service plans with a limited number of minutes, messages, and/or data, they specifically agree to pay overage charges associated with any usage above their monthly allowance.⁴³ These overage charges are disclosed to customers at the time they agree to a service plan and are readily available to customers in numerous places post-sale. If customers do not want to be subject to the risk of overage charges, they can subscribe to either an unlimited service plan (where no overages will occur) or a prepaid service plan (where service ends when the customer's allowance is reached). To mandate automatic cessation of service for all customers regardless of their preference would clearly harm consumers.

Alert Details. A few commenters urge the Commission to mandate how, when, and what usage alerts carriers send customers. For example, the State Commissions ask that usage alerts should be sent to all devices on an account and that both voice and text alerts should be sent.⁴⁴ Other commenters, however, suggest that only text alerts be sent.⁴⁵ In addition, the New Jersey Division of Rate Counsel indicates that alerts should be sent to consumers when they reach 80 percent and 95 percent of their monthly allowance⁴⁶ while NTCH suggests that alerts be sent when consumers are within 200 minutes and 100 minutes or 20 MB and 10 MB of their monthly

⁴³ National Consumer Law Center claims that requiring an affirmative act from customers prior to incursion of charges outside a service plan is not unprecedented because Federal law requires consumers be given notice before a fee is imposed for using an ATM outside of the consumer's network. National Consumer Law Center Comments at 6. In that situation, however, unlike here, consumers have not accepted a contract with the ATM provider indicating that a fee will be charged for the customers' use of such ATM.

⁴⁴ State Commissions Comments at 3.

⁴⁵ NTCH Comments at 2; Tru Comments at 2.

⁴⁶ New Jersey Division of Rate Counsel Comments at 11.

allowance.⁴⁷ Consumers Union argues that carriers should be required to provide cost information in usage alerts.⁴⁸

The Commission should reject these proposals, which would exacerbate the problems with any alert requirement. Such specific mandates would clearly skew what carriers offer customers away from what the competitive market would otherwise drive them to do, and risk picking winners and losers among competitors. As Mobile Future notes, “[t]he flexibility to experiment and quickly respond to subscriber demands and complaints is critical for continued innovation and satisfying the needs of customers.”⁴⁹ Thus, if the Commission ultimately decides to adopt mandatory usage alerts, it should provide carriers with maximum flexibility to implement such alerts and not micromanage when and how carriers implement usage alerts.

In addition, carriers’ networks are designed differently so a single approach may not be feasible for all carriers. For example, all carriers may not be able to provide customer-specific rate information in a usage alert, particularly if the carrier offers a wide variety of different service plans and thus different information would need to be included in alerts to different customers. And since this information is readily available from other sources, as noted by the Northeast Conference of Public Utilities Commissions, its inclusion in a usage alert is unnecessary.⁵⁰

⁴⁷ NTCH Comments at 2-3.

⁴⁸ Consumers Union Comments at 4.

⁴⁹ Mobile Future Comments at 6. See also T-Mobile Comments at 9 (“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.”).

⁵⁰ NECPUC Comments at 9 (“Contrary to EU requirements, specific pricing information should not be included in any automatic alerts at this time.”).

International Roaming Alert. The Commission should reject Consumers Union’s proposal that wireless carriers be required to send a notification to consumers when a device reconnects to a non-roaming network (after having been connected to a roaming network).⁵¹ According to Consumers Union, “[t]his would allow consumers to postpone high-cost roaming usage until they have returned to a network whose use would incur standard monetary or volume charges.”⁵² In an international context, however, consumers know when they reenter the United States, rendering any such notification redundant and annoying to consumers.

Pricing Proposals. Several commenters also ask the Commission to dictate wireless carrier pricing.⁵³ These proposals, however, are outside the scope of this proceeding and in any event lack any demonstrated factual or legal justification. In addition, such mandates would be unprecedented in the wireless industry. Carriers compete vigorously on pricing and, as a result, consumers benefit from the wide variety of service plans that are available today.⁵⁴ Regulation of wireless carrier rates would inhibit this competition, ultimately limiting the options that are available to wireless consumers.

⁵¹ Consumers Union Comments at 4.

⁵² *Id.*

⁵³ NJ Rate Counsel Comments at 16 (“One way that carriers could assist consumers in avoiding rate shock is to offer a plan by which ‘low-volume’ consumers, that is, those with limited usage packages, could roll over unused minutes of voice, data, and/or text to subsequent months. A requirement to provide such an option would help consumers manage their plans.”); NTCH Comments at 3-4 (“The Commission should ameliorate the problem by limiting the penalty charges to no more than two or three times the in-plan rates.”); Consumers Union Comments at 4-5 (“commenters strongly encourage (and ask the Commission to encourage) the development of industry best practices to permit subscribers to purchase additional fixed allotments of voice minutes, text messages, or data at standard rates, rather than paying typically higher overage penalty rates”).

⁵⁴ *See, e.g.*, Comments of Verizon Wireless, WT Docket No. 10-133, at 46-65 (filed July 30, 2010).

Other Proposals. Several commenters request Commission action on matters that are completely irrelevant to the Commission's NPRM.⁵⁵ These parties fail to demonstrate why these extraneous issues are pertinent to this proceeding. In any event, these issues have already been raised in separate, unrelated proceedings.⁵⁶ The Commission should decline to address any of these issues here.

IV. ANY RULES ADOPTED BY THE COMMISSION SHOULD APPLY TO ALL CONSUMER WIRELESS SERVICES.

If the Commission nevertheless concludes that regulation is necessary, it should apply such regulation only to consumer wireless services. These rules should not apply to business customers. As Sprint noted in the initial round, “[b]usiness accounts often have dozens if not hundreds or thousands of users with complex billing arrangements typically managed by a telecom account specialist. . . . As such, ‘bill shock’ protections are unnecessary in this context.”⁵⁷ In addition, as AT&T stated, “business customers tend to be more sophisticated and knowledgeable about their service options and how to manage them. . . . Consequently, business

⁵⁵ MetroPCS Comments at 11 (“[T]he Commission should increase competition in the wireless data market by moving forward quickly and effectively in its data roaming proceedings.”); RCA Comments at 16-17 (“Instead of imposing unnecessary and costly billing notification obligations on rural and regional carriers, the FCC should foster competition in the wireless marketplace by ending handset exclusivity, mandating automatic roaming and ensuring interoperability among the 700 MHz spectrum bands.”).

⁵⁶ See Docket No. 05-265 (seeking comment on whether roaming obligations should be extended to data services); RM-11497 (proposing prohibitions on exclusive handset arrangements); RM-11592 (proposing handset interoperability requirements for devices operating in the 700 MHz Band).

⁵⁷ Sprint Comments at 16.

customers often find text messages alerting them to usage, overage, or roaming issues to be annoying rather than helpful.”⁵⁸

Such regulation, however, should apply to all consumer wireless services, including those provided by rural and smaller carriers. As several commenters note, “imposing burdensome regulatory mandates on only the larger wireless providers would distort the robustly competitive wireless marketplace by disfavoring those providers and favoring smaller ones, [thereby violating] the Commission’s longstanding principle of competitive neutrality.”⁵⁹ In addition, if the Commission determines that regulation is necessary to protect consumers from bill shock, then “[s]ubscribers of regional and/or rural mobile providers also should be protected from bill shock and receive the benefits of the Commission’s consumer protection regulations.”⁶⁰

Some commenters nevertheless argue that rural and smaller carriers should be exempt from the Commission’s proposed rules because of the costs associated with compliance.⁶¹ These commenters are correct that there will be significant costs associated with network and billing system upgrades.⁶² The costs associated with implementation, however, are not purely fixed. To the contrary, requisite costs increase as the number of customers that must receive usage

⁵⁸ AT&T Comments at 61.

⁵⁹ AT&T Comments at 63-64. *See also* NECPUC Comments at 10-11 (“[U]niform application of these rules to all mobile communications services would more appropriately correspond to the Commission’s competition policies involving the mobile services marketplace.”).

⁶⁰ Consumers Union Comments at 7. *See also* NJ Rate Counsel Comments at 12 (“[A]ll consumers, regardless of where they reside, should be able to control their wireless usage.”).

⁶¹ *See* Alaska Communications Systems Comments at 2-3; Blooston Rural Wireless Carriers at 2; NTCA Comments at 1; MetroPCS Comments at 17-18; RCA Comments at 3; RTG Comments at 4.

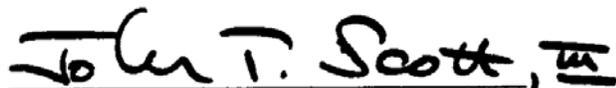
⁶² MetroPCS Comments at 17-18; RCA Comments at 3; Blooston Rural Wireless Carriers Comments at 2.

alerts increases. Indeed, the proposed regulation could cost larger carriers many millions of dollars to implement. Thus, smaller carriers will not be disproportionately affected. In any event, if the Commission determines that regulation is necessary to protect consumers despite these costs, that same protection must be granted all consumers, not just those that choose a larger provider.

V. CONCLUSION

In sum, the record in this proceeding demonstrates that the appropriate model for meeting wireless consumers' needs in today's competitive marketplace is to rely upon providers' strong incentives to satisfy consumers, rather than a prescriptive and costly rule that would limit the flexibility of providers to respond to their customers. The Commission, however, should help educate consumers about the variety of usage management tools available today. Verizon Wireless looks forward to partnering with the Commission in that effort.

Respectfully submitted,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

John T. Scott, III
Vice President & Deputy General Counsel

Catherine M. Hilke
Counsel

VERIZON WIRELESS
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 589-3740

Filed: February 8, 2011