

**Before the
Federal Communications Commission
Washington, D.C. 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 THE NEW JERSEY DIVISION OF RATE COUNSEL

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SUMMARY

Based on its review of initial comments, the New Jersey Division of Rate Counsel (“Rate Counsel”) continues to support fully the efforts of the Federal Communications Commission (“FCC” or “Commission”) to empower consumers of wireless services by providing them with tools to monitor and to control their usage so that they are not “shocked” when they receive bills from wireless providers. Industry comments predictably assert that competition as well as existing, voluntary, industry-provided bill management tools render government-mandated bill shock rules unnecessary, protest that the rules would be costly and time-consuming to implement, assert that there is insufficient evidence to justify the rules, and argue that the rules would inhibit innovation and investment. Regulators and consumer advocates generally welcome the rules, urge federal-state cooperation and collaboration regarding wireless consumer protection (both as is encompassed by the proposed rules as well as regarding future FCC policy-making), and recommend timely implementation of the rules.

As Rate Counsel has previously stated, the rules would provide long-overdue consumer protection against high charges in an industry that lacks effective competition. Equipping consumers with tools to monitor and to control their increasing usage of wireless services will enable markets to work more efficiently, while allowing providers to continue to innovate and to invest above and beyond the “baseline” requirements. Without the rules, the status quo is tipped unduly in favor of industry, which benefits from a situation where consumers otherwise will continue to be inadequately informed and equipped to control their wireless usage.

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I. INTRODUCTION

Pursuant to the schedule set forth by the Federal Communications Commission (“FCC” or “Commission”), the New Jersey Division of Rate Counsel (“Rate Counsel”) files these reply comments regarding the FCC’s proposed rules for preventing wireless “bill shock.”¹

As Rate Counsel predicted,² comments submitted in opposition to the FCC’s proposed rules raised the following points:

¹ / Initial comments were submitted by diverse entities. For example, some of the comments filed were by industry (e.g., CTIA-The Wireless Association (“CTIA”), T-Mobile USA, Inc. (“T-Mobile”), Verizon Wireless (“Verizon”), AT&T, Inc. (“AT&T”), Sprint Nextel Corporation (“Sprint Nextel”), and the Rural Cellular Association); and consumer advocates and regulators (e.g., the Massachusetts Office of Attorney General (“Massachusetts Attorney General”), the National Association of State Utility Consumer Advocates (“NASUCA”), the National Association of Regulatory Utility Commissioners (“NARUC”), the New England Conference of Public Utility Commissioners (“NECPUC”), public utility commissions in California, Nebraska and Vermont along with the Vermont Department of Public Service (“state commenters”), Disability Rights Advocates (“DRA”), Center for Media Justice, et al. (“Public Interest Commenters”)). Rate Counsel responds to some but not all of the initial comments.

² / See, e.g., Rate Counsel , at 7-8 (cites omitted), stating:

- There is insufficient evidence of a problem to warrant the rules;
- Industry already provides tools for controlling usage;
- Competition and companies' interest in satisfying their customers to avoid defection to other carriers provide sufficient incentives for providers to assist consumers with controlling their usage, and therefore government mandates are unnecessary;
- Rules will inhibit investment and innovation;
- The proposed rules are burdensome and costly;
- Industry requires "sufficient time" to implement any new rules; and
- The Commission lacks the authority to adopt the proposed rules.³

Because Rate Counsel (and others) has already addressed many of these points in its initial comments, these reply comments do not repeat all of the recommendations set forth in Rate Counsel's initial comments.

II. EXISTING INDUSTRY PRACTICES

Although industry asserts that providers already offer customers "the information they need to make informed decisions about wireless products and services,"⁴ as well as tools for

Rate Counsel anticipates that industry members likely will oppose the proposed rules, asserting that they are not necessary, are costly to implement, or should be adopted in weaker versions. Industry commenters so far have generally asserted that the marketplace is competitive and that purported competition creates incentives for providers to make information and tools available and so regulatory requirements are unnecessary.

³ / Rate Counsel addresses many of these issues in these reply comments, but does not address the arguments concerning the FCC's authority to implement the rules (*see, e.g.*, CTIA, at 34-44 and Verizon, at 19-42). Rate Counsel assumes that the FCC is fully aware of the scope of its legal authority.

⁴ / T-Mobile, at 2; *see also*, Verizon, at 1-13; Sprint Nextel, at 2.

avoiding bill shock, industry has failed to demonstrate that existing tools are sufficient, and also has failed to demonstrate that the imposition of government-mandated “baseline” tools would be superfluous. Industry comments describe their emphasis on customer service, including the provision of various monitoring tools.⁵ These efforts are to be commended, but they should not be viewed as a substitute for the FCC’s imposition of baseline consumer protection requirements. Furthermore, contrary to CTIA’s claim that new requirements “could restrict carriers’ ability to offer innovative new account management tools,”⁶ the proposed rules simply set forth baseline requirements. Comments fail to demonstrate that the FCC’s proposed rules would prevent carriers from seeking to gain customer satisfaction or from continuing to emphasize high quality customer service. Furthermore, to the extent that carriers already provide consumers with tools, the FCC’s rules should not present a burden.

Initial comments also propose that the Commission work with carriers to educate consumers about the tools that industry already provides.⁷ Rate Counsel does not oppose collaborative FCC-industry efforts to ramp up educational efforts, but consumer education is only one element of consumer protection, and should not be relied upon as a substitute for sound rules.

III. EVIDENCE OF NEED FOR BILL SHOCK TOOLS.

Many comments assert that the NPRM places undue weight on the GAO Report and the FCC’s Bill Shock Survey, and that bill shock is not as pervasive a problem as the NPRM would

⁵ / See, e.g., CTIA, at 8-14; T-Mobile, at 2-8.

⁶ / CTIA, at 9.

⁷ / CTIA, at 5; Verizon, at 1, 19.

seem to suggest.⁸ Comments emphasize customer satisfaction with wireless service.⁹ Rate Counsel is not persuaded by comments that seek to demonstrate that the FCC has exaggerated bill shock problems. As consumers increasingly rely on wireless service for voice, texting, and access to the Internet, the constantly changing array of service options, rates, fees, and charges creates a mind-boggling collection of information that consumers must sort through in order to seize control of their wireless bills. Empowering consumers with tools is entirely compatible with an efficient marketplace: well-informed consumers make more efficient purchasing decisions. By contrast, ill-informed consumers make less efficient purchasing decisions, and that inefficiency translates into higher revenues for the wireless industry. Rules such as the ones that the FCC proposes reasonably address the market distortions that now exist.

IV. COMPETITION

Rate Counsel is far less sanguine about the sufficiency of existing market pressure to yield adequate tools than are industry members. Contrary to the assertions made by industry,¹⁰ and as Rate Counsel and others amply demonstrate in initial comments,¹¹ the level of competition that exists in today's wireless markets is insufficient to cause wireless providers to "empower" consumers adequately to manage their wireless bills. Instead, the industry's economic incentive to increase revenues is greater than is its incentive to empower consumers to limit their wireless charges.

⁸ / See, e.g., CTIA, at 23-30; T-Mobile, at 11-13; Sprint-Nextel, at 4-6.

⁹ / See, e.g., Verizon, at 13-15.

¹⁰ / See, e.g., CTIA, at 2, 6-8, 16, 19-21; Verizon, at 2, 13; Sprint Nextel, at 3.

¹¹ / Rate Counsel, at 8-9; NASUCA, at 2-3; Massachusetts Attorney General, at 5-6.

Initial comments extol the advantage of relying on competition to create adequate incentives for providers to satisfy their customers rather than “on prescriptive regulations that would limit the flexibility of providers to respond to consumers’ evolving needs.”¹² Rate Counsel welcomes innovation and responsiveness to consumers by the wireless industry.¹³ For those carriers that already provide their customers with a wide array of tools to monitor and to control usage, the FCC’s “baseline” rules can be easily met and should not prevent carriers from going above and beyond those rules with creative options. For those carriers that do not yet offer their customers these tools, the rules are a necessary requirement to encourage them to do so. Rate Counsel appreciates Verizon’s theoretical concern about “regulatory externalities,”¹⁴ that is, costs created by regulation’s constraint on industry’s flexibility, but is confident that the FCC will issue rules that set forth basic consumer protection measures that also permit industry’s innovative designs to flourish.

V. RULES’ IMPACT ON INVESTMENT AND INNOVATION

Rate Counsel acknowledges that the wireless industry is “highly dynamic.”¹⁵ Initial comments fail to demonstrate, however, that baseline tools would inhibit continuing innovation and investment by the wireless industry. Government-mandated requirements for safety belts, catalytic converters and other features have not prevented the automobile industry from creating a host of imaginative and innovative design changes in cars. The FCC’s proposed rules simply

¹² / *See, e.g.,* Verizon, at 15.

¹³ / *See, e.g.,* Sprint Nextel, at 3, 6-12, describing its concerted and successful efforts to improve customer satisfaction by diverse means, including, among others, providing tools for monitoring usage.

¹⁴ / Verizon, at 16.

¹⁵ / T-Mobile, at 8.

establish a “floor” for consumer protection. Industry would retain the flexibility to innovate above and beyond this floor. Initial comments fail to demonstrate that the proposed rules would tie the hands of industry.¹⁶

Rate Counsel is not persuaded by CTIA’s attempt to draw an analogy to other contexts, such as credit cards and the Medicare Part D prescription drug program.¹⁷ Rate Counsel concurs that consumers have the “responsibility to monitor their own accounts,”¹⁸ but, contrary to CTIA, Rate Counsel supports fully the FCC’s proposed rules to ensure that consumers possess the tools necessary to carry out that responsibility.

VI. COST OF IMPLEMENTING RULES

Based on its review of initial comments, Rate Counsel is concerned that wireless providers will use the proposed rules as an excuse to raise fees and charges for consumers.¹⁹ Comments assert that the NPRM under-estimates the cost of implementation of the rules.²⁰ Comments also observe that consumers will bear system change costs because the system changes will divert industry resources “away from other initiatives that would meet consumers’ fundamental needs for affordable, reliable, and high-speed mobile service.”²¹

¹⁶ / See, e.g., T-Mobile, at 8-11 (asserting, among other things, that regulations could reduce a “provider’s flexibility to respond quickly and proactively to evolving market conditions”). *Id.*, at 9.

¹⁷ / CTIA, at 21-22.

¹⁸ / CTIA, at 23.

¹⁹ / See, e.g., CTIA, at 33 (referring to significant costs for carriers).

²⁰ / See, e.g., T-Mobile, at 16-17.

²¹ / T-Mobile, at 17; *see also*, CTIA, at 3-4.

Verizon refers to the “Usage Controls” that it offers its customers for \$4.99 per line per month.²² Although it is essential that consumers have the option to establish usage controls, Rate Counsel is not aware of any cost basis for Verizon’s monthly fee. It is surprising that it could cost Verizon five dollars each month to configure the software to stop usage – presumably once Verizon sets the usage cap, the costs should cease.

Despite industry’s assertion to the contrary, the wireless industry is not characterized by robust competition.²³ The industry’s costs are unexamined and there is no evidence that the rates and fees that wireless providers charge are those that would prevail in a competitive market. In light of industry’s protest that the rules would be costly to implement and the lack of sufficient competition, Rate Counsel urges the Commission to monitor the fees and prices that the wireless industry charges consumers.

VII. TIME NECESSARY TO IMPLEMENT THE RULES

As Rate Counsel observed in initial comments,²⁴ industry has been alerted for many months to changes along the lines that the NPRM encompasses. The fact that the FCC may seek to implement bill shock rules in a timely manner should, therefore, come as no surprise. The recommendation that the FCC provide the industry with 18 months for implementation,²⁵ should be viewed critically. Rate Counsel urges the speedy implementation of the proposed rules, with

²² / Verizon, at 6.

²³ / See Rate Counsel, at 8-9.

²⁴ / Rate Counsel, at 13.

²⁵ / Sprint-Nextel, at 15.

phased-in implementation as necessary. The wireless industry has had ample notice of the FCC's intent to issue bill shock rules.²⁶

Industry claims that new rules would require new software, and billing and network modifications, as well as potentially implicating intercarrier relationships and third party billers (for example where roaming is concerned).²⁷ Rate Counsel does not consider the analogy to industry's implementation of E911 and local number portability to be apt.²⁸ These two requirements were far more complex. Furthermore, industry's request for "sufficient time" to implement requirements is not helpful²⁹ because it does not indicate how much time would be sufficient. Rate Counsel supports NECPUC's recommendation that the FCC establish a uniform deadline, but permit limited properly supported waivers as needed.³⁰

VIII. SCOPE OF REGULATIONS

Industry recommends that if, contrary to comments opposing new regulations, the FCC nonetheless imposes them, then the FCC should not be overly prescriptive but instead should allow providers flexibility for differing customer disclosure procedures and alerts.³¹ Rate Counsel does not oppose leeway, provided that minimum standards are met.

²⁶ / See, e.g., NECPUC, at 2-3 (referring to the FCC's August 28, 2009 Notice of Inquiry and the FCC's May 11, 2010 Public Notice).

²⁷ / See, e.g., T-Mobile, at 27; Verizon, at 47-48.

²⁸ / T-Mobile, at 27.

²⁹ / *Id.*, at 27-28.

³⁰ / NECPUC, at 12.

³¹ / See, e.g., T-Mobile, at 18; Sprint-Nextel, at 14.

IX. FEDERAL-STATE COORDINATION

Rate Counsel concurs with commenters that recommend that any FCC rules should unambiguously recognize state's authority to enforce federal rules.³² Collaborative federal-state action and cooperative enforcement efforts are essential to ensure that consumers benefit fully from the rules that the FCC adopts.³³ Rate Counsel also supports regulators' request that the FCC include an affirmative statement that its rules and regulations not preempt states' consumer protection authority or their ability to institute new protections or regulations, provided that they do not interfere with the FCC's regulations.³⁴

Recommendations that the FCC collaborate with states in the future as the FCC continues to develop federal wireless consumer protection policy are reasonable.³⁵ Such collaboration should involve state consumer advocates as well as state regulators.

X. BROADER DISCLOSURE ISSUES

Initial comments suggest that "bill shock is frequently indicative of the need for broader wireless consumer protection regulations"³⁶ and "urge the Commission to address the broader

³² / NARUC, at 4, 6-7; NECPUC, at 3.

³³ / See NARUC, at 6-7, citing 47 U.S.C.A. §332(c)(3)(A) (regarding "customer billing information and practices and billing disputes and other consumer protection matters," which are reserved to states).

³⁴ / NARUC, at 7; NECPUC, at 3.

³⁵ / NECPUC, at 13.

³⁶ / *Id.*, at 4.

issues in the near future.”³⁷ Rate Counsel continues to support the FCC’s broader review of wireless consumer protection regulations.³⁸

XI. REPLY TO COMMENTS REGARDING SPECIFIC PROPOSED RULES

Rate Counsel supports notification when and as consumers approach limits.

Some oppose mandated fixed levels for usage alerts, contending that they would be arbitrary, lead to customer confusion, not always provide meaningful information to consumers, and distract or aggravate consumers.³⁹ Rate Counsel supports the FCC’s proposal that mobile providers “actively provide consumers with notification messages to assist them in managing the costs of using their service and ensure that subscribers are not shocked by overage or roaming charges” and that such notification be provided when a subscriber is approaching her plan’s allotted time for voice, text, or data usage.⁴⁰ In response to carriers’ concerns, Rate Counsel continues to recommend that consumers be allowed to opt for different notification thresholds (including the option to opt-out of notifications all together, provided that consumers can opt back in, with both the opt-in and opt-out options offered free of charge),⁴¹ leaving carriers leeway to design any alternatives that they believe to be less “annoying” or useful.⁴²

³⁷ / *Id.*, at 5.

³⁸ / *See* Rate Counsel, at 17. The FCC states that forms of bill shock that are related to consumers’ confusion about the underlying terms and conditions of service plans are beyond the scope of this proceeding, but that “the Commission intends to address these broader disclosure issues at a later date.” NPRM, at fn 4.

³⁹ / *See, e.g.*, T-Mobile, at 18-19.

⁴⁰ / NPRM, at para. 20.

⁴¹ / NECPUC, at 6-7.

⁴² / *See* concerns raised by T-Mobile, at 18-20.

According to some,⁴³ the Commission should not require that carriers provide mandatory alerts in real time because of billing and network system limitations. However, as NECPUC aptly observes, “[i]t 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.”⁴⁴ Therefore, alerts should be provided within the shortest lag technically and economically feasible. Verizon’s recommendation that carriers “have the flexibility to send alerts at *appropriate* intervals,”⁴⁵ lacks any specific guidance for the FCC as to how to define “appropriate.”

Comments also assert that the Commission should not mandate the specific delivery mechanism for usage alerts.⁴⁶ Rate Counsel recommends that consumers be given the option to choose the means by which they are notified. Notifications by text messaging may be the common choice, as the nation increasingly relies on text messaging, but other consumers may prefer a voice notification. To the greatest extent possible, consumers should be given the choice about and control over the tools with which they are equipped to monitor and control their usage.

Rate Counsel supports NECPUC’s recommendation that mandatory alerts and disclosures be offered free of charge and that they not count toward usage limits.⁴⁷ Rate Counsel also supports DRA’s recommendation that wireless providers “communicate in an accessible manner

⁴³ / See, e.g., T-Mobile, at 20-21; Verizon, at 45.

⁴⁴ / NECPUC, at 7. See also, State Commenters, at 3.

⁴⁵ / Verizon, at 45 (emphasis added).

⁴⁶ / See, e.g., T-Mobile, at 23-24.

⁴⁷ / NECPUC, at 6.

with subscribers who have disabilities that affect their ability to use standard forms of communication.”⁴⁸

Consumers should receive notification when they are about to incur international or other roaming charges that exceed normal rates.

It appears that unexpected charges for domestic roaming are uncommon,⁴⁹ and therefore mandatory alerts appear necessary only for international roaming charges. According to some, mandatory alerts for international roaming are unnecessary because, unlike their European counterparts, U.S. consumers travel less frequently to different countries and therefore are less likely to be caught unaware, and also because international roaming alerts may not be feasible, depending on the international roaming partners of the U.S. providers.⁵⁰ However, it also appears that industry already possesses the ability to provide international roaming alerts,⁵¹ and, therefore, providing a one-time international alert does not appear to be unduly burdensome and would assist consumers in making informed purchasing decisions when they travel.

Methods for reviewing and capping usage should be clearly conveyed to all consumers.

Rate Counsel disagrees with those opposing the adoption of specific regulations regarding tools for disclosing information to consumers.⁵² If providers are already making disclosures and updating their disclosure practices,⁵³ a government mandate to do so and to meet

⁴⁸ / DRA, at 1.

⁴⁹ / T-Mobile, at 24.

⁵⁰ / *See, e.g.*, T-Mobile, at 24-25.

⁵¹ / *See, e.g.*, Verizon, at 9 (describing the fact that Verizon “sends a free text to customers when they turn on their phone in a foreign country that uses the same air interface as the customer’s handset”) and Sprint-Nextel, at 10 (describing the “welcome message” that Sprint-Nextel sends its subscribers when they first register in a foreign country).

⁵² / *See, e.g.*, T-Mobile, at 25-26.

⁵³ / *See, e.g., id.*, at 25.

baseline disclosure requirements should then not be burdensome to industry. Providers certainly could submit suggested “baseline” information to the FCC.

Customers of prepaid services also merit protection.

Rate Counsel is not persuaded by comments that argue that because prepaid customers pay in advance for specific amounts, usage alerts are superfluous.⁵⁴ Simply because there is a limit to the usage does not mean that consumers would not benefit from being alerted to their usage.⁵⁵

The rules should cover all mobile data services.

NECPUC supports a requirement that alerts be mandated for all services that mobile wireless providers offer, including voice, text and data, as we transition to a more data-centric market.⁵⁶ Rate Counsel concurs.

The Commission should require providers to offer a rollover option, which would assist consumers in avoiding bill shock.

Rate Counsel reiterates its recommendation regarding rollover options. Specifically, carriers could assist consumers in avoiding rate shock by offering 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.

⁵⁴ / *See, e.g.*, T-Mobile, at 26.

⁵⁵ / NECPUC, at 11 (discussing, among other things, the possibility that low-income consumers may not be able to afford to add to their prepayment option, and, so presumably, need tools to monitor and control their usage).

⁵⁶ / NECPUC, at 10-11.

XII. CONCLUSION

For those providers that already offer tools to consumers to manage their wireless bills, a government mandate should not be onerous, and providers are free to offer additional and innovative tools to supplement the required “bare minimum.” For those providers that do not yet offer tools to prevent bill shock, a government mandate to do so is long overdue.

Rate Counsel urges the Commission to consider not only the recommendations set forth in these reply comments, but also those that Rate Counsel included in its initial comments. Rate Counsel welcomes timely implementation of rules by the Commission. In those instances where the Commission may seek yet more detailed information from the industry, the Commission could hold a focused workshop on specific matters,⁵⁷ but if it does so, should include consumer representation, such as through the participation by the National Association of State Utility Consumer Advocates.

Respectfully submitted,

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⁵⁷ / Sprint-Nextel, at 15.