Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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	)	
Empowering Consumers to Avoid Bill Shock	)	CG Docket No. 10-207
	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
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REPLY COMMENTS OF CRICKET COMMUNICATIONS, INC.

Cricket Communications, Inc. ("Cricket") submits this reply to comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-referenced docket.[1] Cricket urges the Commission to exempt prepaid services from any bill shock rules it may adopt in this proceeding. The record does not support the need to include prepaid services in any such regulation, and thus, the burdens associated with complying with bill shock rules would be detrimental to the public interest.

I. THE RECORD SUPPORTS EXEMPTING PREPAID SERVICES FROM BILL SHOCK RULES

There is broad agreement in the record that prepaid services present no opportunity for bill shock because consumers will *never* exceed the limit of services for which they have already paid.[2] Commenters advocating adoption of the proposed rules do not dispute this basic premise --- they characterize the problem of bill shock as involving "shockingly high

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[1] Empowering Consumers to Avoid Bill Shock, Consumer Information and Disclosure, CG Docket No. 10-207, CG Docket No. 09-158, Notice of Proposed Rulemaking, FCC 10-180 (rel. Oct. 14, 2010) ("*Notice*").

[2] *See, e.g.*, Comments of Wireless Communications Association International, Inc., CG Docket No. 10-207, CG Docket No. 09-158 at 4 (filed Jan. 10, 2011) ("WCAI Comments"); Comments of Sprint Nextel Corporation, CG Docket No. 10-207, CG Docket No. 09-158 at 17 (filed Jan 10, 2011) ("Sprint Comments").

bills,"[3] "exorbitant payments,"[4] and "unexpected and costly wireless charges."[5] Cricket is sympathetic to the plight of consumers who face an unexpected bill that they cannot afford to pay. However, the record is clear that this scenario simply does not arise with prepaid services.[6]

Proponents of bill shock rules for prepaid services fail to present any evidence of bill shock in prepaid services. Nor does NASUCA's original proposal to impose alert requirements on prepaid wireless plans provide any basis for such regulation.[7] While many public interest organizations parrot NASUCA's call for alerts on prepaid plans, none of these comments provide any justification for such mandates.[8] Indeed, one reason consumers opt for prepaid plans over postpaid plans is because of the billing certainty that these plans offer.[9]

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3 Comments of the Center for Media Justice, et al, CG Docket No. 10-207, CG Docket No. 09-158 at 1 (filed Jan. 10, 2011) ("Center for Media Justice Comments").

4 Comments of the National Association of the State Utility Consumer Advocates, CG Docket No. 10-207, CG Docket No. 09-158 at 2 (filed Jan. 10, 2011) ("NASUCA Comments").

5 Comments of the New Jersey Division of Rate Counsel, CG Docket No. 10-207, CG Docket No. 09-158 at 5 (filed Jan. 10, 2011) ("New Jersey Division of Rate Counsel Comments").

6 *See, e.g.*, Comments of Tracfone Wireless, Inc., CG Docket No. 10-207, CG Docket No. 09-158 at 4 (filed Jan. 10, 2011) ("Tracfone Comments") (prepaid services do not implicate bill shock because it is not a billed service); Comments of Sandvine Incorporated, CG Docket No. 10-207, CG Docket No. 09-158 at 7 (filed Dec. 21, 2010) ("Sandvine Comments") (the bill is fixed at the outset in a prepaid service); *see also*, Comments of T-Mobile USA, Inc., CG Docket No. 10-207, CG Docket No. 09-158 at 26 (filed Jan. 10, 2011) ("T-Mobile Comments"); Comments of MetroPCS Communications, Inc., CG Docket No. 10-207, CG Docket No. 09-158 at 16 (filed Jan. 10, 2011) ("MetroPCS Comments"); Comments of AT&T Inc., CG Docket No. 10-207, CG Docket No. 09-158 at 62 (filed Jan. 10, 2011) ("AT&T Comments").

7 Notably, NASUCA's comments identify the extreme financial harm to customers from bill shock as the justification for adopting bill shock rules. However, the type of harm that NASUCA cites to – exorbitant payments that customers are pressured to pay under threat of damage to credit scores – simply does not occur with prepaid plans. *See* NASUCA Comments at 2-3.

8 *See generally*, Comments of AARP, CG Docket No. 10-207, CG Docket No. 09-158 at 4 (filed Jan. 3, 2011); New Jersey Division of Rate Counsel Comments at 15; Center for

Further, a wide range of wireless carriers – including prepaid service providers – are already providing usage alerts and management tools.[10] Intense retail competition in the prepaid segment provides a continuing incentive for prepaid service providers to offer usage management tools.[11] Cricket and other carriers compete based on price, customer service, and the functions and capabilities of the services offered. Thus, carriers have developed alert mechanisms and user-friendly management tools to differentiate their services and to attract and keep customers. In addition, prepaid service providers have other economic incentives to provide customer alerts. Carriers themselves may benefit by providing usage alerts to customers that remind or encourage them to purchase more minutes or additional usage before their limit is reached.[12] Therefore, mandated alerts are wholly unnecessary in the context of prepaid service plans.

II. SUBJECTING PREPAID SERVICES TO ALERT REQUIREMENTS IS CONTRARY TO THE PUBLIC INTEREST

Given that the record is devoid of any evidence of a bill shock problem with prepaid plans, there simply is no justification for imposing regulatory mandates that could

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Media Justice Comments at 6; Comments of New England Conference of Public Utilities Commissioners, CG Docket No. 10-207, CG Docket No. 09-158 at 11 (filed Jan. 10, 2011).

9 Comments of Onstar, LLC, CG Docket No. 10-207, CG Docket No. 09-158 at 4 (filed Jan 10, 2011) ("Onstar Comments"); MetroPCS Comments at 16.

10 *See, e.g.*, AT&T Comments at 11; Sprint Comments at 10-11; Onstar Comments at 2-3; Comments of Alaska Communications Systems, CG Docket No. 10-207, CG Docket No. 09-158 at 3 (filed Dec. 27, 2010) ("ACS Comments"); Comments of Rural Cellular Association, CG Docket No. 10-207, CG Docket No. 09-158 at 12-13 (filed Jan. 10, 2011) ("RCA Comments"); Tracfone Comments at 3; T-Mobile Comments at 23.

11 *See, e.g.*, WCAI Comments at 4-5 ("prepaid plans are the fastest growing segment of the mobile market," citing prepaid offerings of AT&T, Sprint and Clearwire); Sprint Comments at 8; MetroPCS Comments at 6; Onstar Comments at 4.

12 Tracfone Comments at 6.

increase the cost of providing service, as well as limit carriers' ability to offer innovative, low-cost services and otherwise meet the demands of their subscribers.[13]

Carriers are in the midst of deploying LTE and other 4G technologies that will help achieve the universal broadband goals of the National Broadband Plan. Investment in network infrastructure at this juncture is critical. Affordable wireless services offered by low-cost carriers like Cricket provide increased access to voice *and* data services by unserved or underserved populations, furthering the Commission's universal broadband goals. However, the cost to prepaid carriers of complying with the proposed usage alert requirements could hinder the ability of Cricket and carriers like it to bridge the digital divide.

Specifically, redesigning billing and other back-office systems and upgrading networks in order to deliver the proposed alerts are associated with significant costs.[14] The technological challenges of implementing the proposed alert requirements and the related expenses are considerable even for the largest wireless carriers.[15] Such expenses have a disproportionately greater impact on small and midsize carriers because they have fewer customers over which to spread large overhead costs.[16] In addition, prepaid service providers typically operate on low margins.[17] Thus, high fixed costs can drastically affect the cost of prepaid services and would risk putting affordable voice and broadband access out of reach for

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13 Comments of Mobile Future, CG Docket No. 10-207, CG Docket No. 09-158 at 6 (filed Jan. 10, 2011) ("Mobile Future Comments").

14 *See, e.g.*, MetroPCS Comments at 17-18.

15 *See, e.g.*, AT&T Comments at 32-34 (the burdens of implementing real-time alerts, particularly in the context of roaming, may not be feasible and present operational challenges even for a carrier of its size).

16 MetroPCS Comments at 18.

17 Comments of NTCH, Inc., CG Docket No. 10-207, CG Docket No. 09-158 at 4 (filed Jan 4, 2010).

consumers who cannot afford or qualify for service from other carriers.[18] Therefore, mandates designed to prevent bill shock are inappropriate for prepaid services and are contrary to the public interest. For the same reasons, Cricket supports comments proposing an exception from bill shock mandates (or alternatively, greater flexibility in implementing any mandates that the Commission adopts) for small and midsize carriers.[19]

Additionally, requiring prepaid carriers to comply with unnecessary regulatory requirements would stifle innovation and impede carriers' ability to satisfy customer demands. Usage alerts and management tools need to be tailored to the particular service offering, as well the usage patterns and profiles of a carrier's customers.[20] Carriers are in the best position to determine the form, substance and timing of any usage alerts.[21] As the Commission has acknowledged, the wireless broadband data market is still in its nascency, and consumer demands and usage patterns are evolving rapidly.[22] And as Cricket noted in its opening comments, there are more than the two "flavors" of prepaid services that the Commission identifies in the *Notice*. As new prepaid services are introduced, carriers will need to experiment to determine the consumer alerts and usage management tools that most effectively meet customer needs and that are consistent with the carrier's technological capabilities.[23] Sandvine's comments illustrate how prescriptive alert mandates could stifle innovation in service offerings.

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18 *See* MetroPCS Comments at 17.

19 *See* ACS Comments at 3; Comments of Rural Telecommunications Group, Inc., CG Docket No. 10-207, CG Docket No. 09-158 at 2-3 (filed Jan. 10, 2011) ("RTG Comments"); RCA Comments at 13; MetroPCS Comments at 18.

20 *See, e.g.*, MetroPCS Comments at 7-8; T-Mobile Comments at 18.

21 T-Mobile Comments at 26.

22 *See Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, FCC 10-201 at ¶94 (rel. Dec. 23, 2010); *see also*, MetroPCS Comments at 10.

23 T-Mobile Comments at 9.

While acknowledging that complex data plan rating schemes can pose challenges to the ability of service providers to allow real-time notification, Sandvine suggests that carriers adopt simpler plans in order to facilitate such real-time notice.[24] Regulatory restrictions that restrict service models and diminish consumer choice in this manner are not in the public interest. Instead, robust competition naturally leads to a diverse range of service offerings that allow consumers to choose the services and tools that best fit their needs.[25]

Likewise, a specific usage threshold for alerts, which some commenters propose for prepaid plans, may be unreasonable in practice and may not serve customer needs in all instances.[26] For example, subscribers of plans that have smaller allowances could receive multiple alerts in short succession.[27] In a daily plan like Cricket's PAYGo service, such frequent alerts may be an annoyance and of no use to customers. Cricket agrees with ACS that such needless alerts would be unwanted by subscribers and could be viewed as "regulatory spam."[28] Consumers would be better served by alerts that are tailored to the rate structure of the plan and the nature of the services, than by alerts dictated by prescriptive mandates.

III. CONSUMER EDUCATION AND DISCLOSURE OF USAGE MANAGEMENT TOOLS ADEQUATELY ADDRESS ANY CONCERNS REGARDING PREPAID SERVICES

Cricket supports comments urging the Commission to resolve any concerns regarding prepaid services identified in this proceeding through consumer education and

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24 Sandvine Comments at 2.

25 MetroPCS Comments at 3.

26 *See, e.g.*, Center for Media Justice Comments at 6 (advocating mandated notices by prepaid service providers when a subscriber has reached 80 percent of his or her current allotment of minutes, text or data to "enable prepaid mobile service users to more accurately budget their limited resources").

27 T-Mobile Comments at 19.

28 ACS Comments at 1.

awareness of available usage management tools.[29] Empowering consumers through education and disclosure is a more logical first step to resolving these issues than mandated alerts.[30]

Proponents of alert requirements for prepaid plans cite the need to help customers manage usage to allow them to ration prepaid amounts.[31] In particular, the Center for Media Justice cites Cricket's data service as an example of a prepaid service that requires notification that the customer is approaching the limit at which their service speeds may be throttled.[32] Cricket's policies on data usage are fully disclosed to customers, and thus, customers are on notice that speeds may be throttled within the particular data speed tier to which they subscribe. Under such a plan, customers are not left without service, nor will they be subjected to unexpected charges that they are required to pay. Thus, this scenario is outside of the scope of "bill shock" as defined in this proceeding. In general, when a prepaid service involves an allotted amount of minutes or data, customers are on notice based on the type of plan that the service needs to be consumed in a managed way. In other words, the limited nature of such a

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29 Comments of Verizon Wireless, CG Docket No. 10-207, CG Docket No. 09-158 at 15 (filed Jan. 10, 2011) ("Verizon Comments"); Mobile Future Comments at 9; Sprint Comments at 13; WCAI Comments at 11-12; Comments of CTIA – The Wireless Association, CG Docket No. 10-207, CG Docket No. 09-158 at 5 (filed Jan. 10, 2011).

30 MetroPCS at 7; *see also* RTG Comments at 2 (noting that the cost of implementing the alert requirements proposed are not justified by a problem that is easily solved through consumer education).

31 *See* Comments of the National Consumer Law Center, CG Docket No. 10-207, CG Docket No. 09-158 at 3 (filed Jan. 10, 2011); Center for Media Justice Comments at 6 (calling for alerts for roaming charges or certain other types of data usage that burn through a prepaid amount faster).

32 Center for Media Justice Comments at 7, n.8.

plan indicates to subscribers that services will be suspended or slowed if they exceed the amount of services for which they have paid.[33]

Mandated alerts are not a suitable means of helping consumers manage usage of prepaid services. Rather, consumer education on usage management and adequate disclosure of the available management tools are more appropriate.

IV. CONCLUSION

For the foregoing reasons and the reasons stated in Cricket's comments, Cricket respectfully requests that the Commission exempt prepaid services from any usage alert requirements adopted in this proceeding. The record reflects broad agreement that bill shock does not occur with prepaid service plans. There is no evidence in the record of a problem that warrants the proposed regulatory mandates, and the attendant costs, for prepaid services. Thus, the Commission should refrain from imposing unnecessary regulation on carriers that are striving to make low-cost services available to consumers who may otherwise be unable to access wireless services. Instead, consumer education and disclosure are the best means of empowering consumers.

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[33] AT&T Comments at 63 ("Because prepaid customers know that their service will be suspended if they exceed the amount of voice, messaging, or data services for which they have paid, these customers are particularly attentive to the need to stay within the bounds of their service allotment.").

Respectfully submitted,

- /s/ -

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