

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Empowering Consumers to Avoid Bill
Shock Consumer Information and
Disclosure

CG Docket No. 10-207

CG Docket No. 09-158

**REPLY COMMENTS OF STATE COMMISSIONS:
CALIFORNIA PUBLIC UTILITIES COMMISSION;
NEBRASKA PUBLIC SERVICE COMMISSION;
VERMONT PUBLIC SERVICE BOARD; AND
VERMONT DEPARTMENT OF PUBLIC SERVICE**

The California Public Utilities Commission, the Nebraska Public Service Commission, the Vermont Public Service Board, and the Vermont Department of Public Service (collectively, the State Commissions) here briefly reply to the Comments filed in response to the FCC’s Bill Shock *Notice of Proposed Rulemaking (NPRM)*.¹ As indicated in our joint opening comments, real-time alerts and usage warnings “are essential to empower consumers to manage their [wireless phone] expenses.” Nothing commenters have filed persuades us that real-time alerts are unnecessary or infeasible.

¹ Notice of Proposed Rulemaking, *In the Matter of Empowering Consumers to Avoid Bill Shock*, CG Docket 10-207; *Consumer Information and Disclosure*, CG Docket 09-158, rel. October 14, 2010. Hereafter NPRM.

We continue to believe that “[o]nly up-to-date usage information [will] allow consumers to make informed decisions on their *immediate* usage....”²

I. NEED FOR ALERTS

Carriers contend that no need exists for bill shock regulation requiring real-time alerts.³ Notwithstanding that contention, the carriers explain in some detail that they provide customers with tools to monitor and control their usage.⁴ The State Commissions acknowledge the availability of these tools, but nonetheless remain convinced that alerts of the type the FCC has proposed and the State Commissions endorsed in our comments will enhance customers’ ability to avoid substantial charges for minutes used above the limits imposed by their respective plans. Simply put, the tools available to consumers today do not satisfy the need for real-time alerts, which would offer customers immediate information regarding their usage, and thus enable them to avoid overages if they wish to do so. Beyond calling for more consumer education, carriers’ comments do not acknowledge that customers may be unaware of the tools provided, may not understand how to use those tools, or may be unable to employ those tools effectively for a variety of reasons, including the possibility that up to five family members may be sharing the limited number of minutes. Voluntary, individual usage control is not the equivalent of receiving alerts in real time which could enable a customer to act on the spot when the

² Comments of State Commissions, California Public Utilities Commission, Nebraska Public Service Commission, Vermont Public Service Board, and Vermont Department of Public Service, January 10, 2011, p. 3 (emphasis added).

³ Comments of the Rural Telecommunications Group, p. 2; Comments of Sprint Nextel, p. ii, p. 3.

⁴ AT&T provides seven exhibits describing various tools; Comments of AT&T. Verizon provides five exhibits about “usage control” information and tools available to its customers; Comments of Verizon Wireless.

controls the subscriber may previously have implemented collide with unusual circumstances not contemplated by those control tools or are beyond the limits of those tools.⁵

The carriers recognize this in practice. As T-Mobile notes, “[r]egardless of the various account management tools and alerts that mobile providers offer to customers to help mitigate the likelihood of overages, overages will occur.”⁶ Thus, all the usage control tools arranged in advance may fail at some point and under some conditions. As the NPRM noted, there is some inconsistency in existing usage controls and alerts, even when the latter are provided, as well as inconsistency regarding what the controls cover or what alerts warn about.⁷ The FCC captured this concern in the NPRM:

While several mobile providers offer voluntary tools for consumers to set limits on their usage, consumers are often unaware of how to access these tools, or even that such tools are available. As a result, the protections against bill shock that are currently afforded by providers have proven insufficient for many consumers.⁸

⁵ Verizon calls these “usage management tools,” Comments of Verizon Wireless, p. 11.

⁶ Comments of T-Mobile USA, p. 4.

⁷ *NPRM*, ¶ 2.

⁸ *Id.* Verizon would like the burden to rest with the user and, therefore, recommends consumer education in place of real-time alerts. Verizon Wireless, p. 1. It is worth noting that Verizon Wireless charges extra for its usage controls; *id.*, p. 6. Consumers may also opt for more expensive unlimited voice and data plans making usage alerts superfluous. T-Mobile does not say whether a customer choosing to upgrade to a plan with usage alerts must agree to a new contract period.

Based on the carriers' comments, technical feasibility appears not to be an issue here.⁹ T-Mobile acknowledges that it currently provides, "for many of its service plans," alert warnings when the subscriber is close to reaching or has reached usage limits.¹⁰ Verizon Wireless applauds T-Mobile for sending "free text alerts to customers when they are close to reaching or have reached their Whenever Minutes bucket limit...."¹¹ For the Whenever Minutes plan, T-Mobile provides overage alerts. T-Mobile even provides the technical capability for the subscriber on a family plan to provide "text messages when another line on the account has approached and/or exceeded its bucket of minutes...."¹² Verizon Wireless itself "proactively reaches out to customers who are trending to exceed their monthly domestic voice, messaging, or data allowances by sending them a free text alert to their devices."¹³ Thus, *some* customers today get free real-time text alerts, while others must pay extra for them in order to get the plan that offers such alerts. T-Mobile contends that the existing real-time alerts it does provide cannot be easily adapted to implement the draft rules in the *NPRM*, and cites the costs of developing its Family Allowances alerting feature as a reason against mandating alerts more widely.¹⁴

⁹ As the *NPRM* noted at ¶ 18. That Verizon will provide usage alerts on a subscription basis proves that the issue is not one of technical feasibility.

¹⁰ T-Mobile, p. 5. T-Mobile notes that for its "Family Allowances Feature," "The authorized subscriber on a family plan can elect to receive text messages when another line on the account has approached and/or exceeded its bucket of minutes or has chosen to opt out of receiving the alerts." The Family Allowances Plan Feature costs an additional \$4.99 per month. *Id.*

¹¹ Verizon Wireless, p. 12.

¹² T-Mobile, p. 5; T-Mobile also provides various blocking tools, as do other carriers.

¹³ Verizon Wireless, p. ii.

¹⁴ T-Mobile, p. 17. "Hundreds of T-Mobile and vendor employees were involved, and T-Mobile spent millions of dollars on this project alone over more than eight months." *Id.*

Our support for real-time alerts in our Comments was not conditioned on cost issues. Absent verifiable showings that providing real-time overage alerts is in fact burdensome – if so, how, and at what incremental cost – the FCC should mandate such alerts. The carriers have provided detail about the usage control tools they offer their customers to track usage levels in real-time.¹⁵ These tools suggest that the carriers already have performed much of the technical work necessary to implement tracking usage levels in real-time, and incurred those costs. What remains, then, is imposition of a mandate that carriers provide alerts even without customer initiation of a usage level inquiry or selection of the “right” plan that would include real-time overage alerts.¹⁶ If all carriers are held to the same standard, there is no competitive disadvantage.¹⁷

II. IMPLEMENTATION ISSUES

Mindful of the concerns the rural carriers have expressed regarding a ramp up to provision of real-time alerts for roaming customers, the FCC could stagger compliance dates weighted to size of carrier and the percentage of customers for whom roaming records are not available to the billing carrier in real-time.¹⁸ This would be especially

¹⁵ T-Mobile claims that “in most cases, T-Mobile cannot process usage information in real time for transmission to consumers.” T-Mobile, p. 20. Yet T-Mobile also states that under its Roam Monitor & Control service for international roamers, it “sends additional text messages to subscribers when they have incurred \$50, \$100, \$200 and \$500 worth of international data roaming charges....” Id., p. 7.

¹⁶ Customers may have grandfathered plans which do not include real-time alerts, and upgrading to the “right” plan may necessitate entering into a new contract, which some customers may wish to avoid for a variety of reasons.

¹⁷ If the “tools for wireless users to monitor and limit usage already exist,” as the Rural Telecommunications Group asserts (Comments of the Rural Telecommunications Group, p. 2), the tools for wireless providers to monitor usage also exist. However, the issue is not “real-time on-line access to account information,” as the Rural Telecommunications Group contends, but rather is about real-time text alerts, or their equivalent, on the subscriber’s device when overages are about to kick in (Id., emphasis added).

¹⁸ Comments of Rural Cellular Association, p. 8.

valuable where implementation issues and deployment costs remain an issue.¹⁹ But it is all the more important for customers in rural areas to have real-time alerts. Because they live and/or work where business is conducted over greater distances, these customers are all the more susceptible to high roaming costs, which can and do bite unexpectedly. For these customers, overage alerts would be crucial. As noted in the State Commissions' Comments, "[w]hether the implementation schedule differs among large and small carriers, the same notification standards should apply to all carriers when uniform implementation is finally achieved."²⁰

We agree with Verizon Wireless about implementation deadlines: "If rules are ultimately adopted, carriers will need time to develop and implement new or updated systems and architecture that will be able to comply with the requirements.... Therefore, carriers should have an absolute minimum of 18 months to implement any adopted requirements."²¹

III. LEGAL AUTHORITY

Verizon Wireless contends that the proposed bill shock rule would be unlawful because 1) the factual predicate on which the FCC relies is "flawed" and "insufficient", 2) neither Title II nor Title III confers authority on the FCC to adopt such regulations, and 3) the proposed regulations would violate the carriers' First Amendment rights.²² None of these arguments have merit.

¹⁹ See Comments of Rural Cellular Association.

²⁰ Comments of State Commissions, p. 5.

²¹ Verizon Wireless, pp. 47-48.

²² Verizon Wireless, pp. 19-43; cf. Comments of AT&T, pp. 66-69.

A. Factual Predicate

The company first argues that the proposed rule lacks a solid factual basis, and thus, were the FCC to adopt the rules, it would do so in violation of the Administrative Procedure Act. Verizon disputes the validity of the “four items [offered] as justification for the proposed regulations: 1) the FCC’s Bill Shock Survey, 2) the recent GAO report, 3) complaint data from the FCC and the Better Business Bureau, and 4) the record developed in response to the FCC’s Public Notice on Bill Shock.²³ Verizon’s objections amount to nothing more than a heels-dug-in claim that any data which counters the carrier view that no problem exists are suspect and invalid. As an administrative body, the FCC has broad discretion to collect data, interpret it, apply it, and adopt rules based on it. The FCC has gathered data, reviewed it, offered parties the opportunity to comment on the data and the resulting proposed rules, and thus has complied with the APA. The fact that Verizon does not agree with the factual record or the proposed rules does not render either the process or the rules void.

B. Title II and Title III

Verizon contends that the FCC lacks authority under either Title II or Title III to implement rules requiring that CMRS providers send real-time alerts to their customers. Yet, the FCC has imposed numerous requirements on wireless carriers, from the mandate that they provide 911 service, to the mandate that they follow the FCC’s numbering resources optimization rules, to the mandate that they comply with the FCC’s Truth-in-Billing rules. Indeed, after initially exempting CMRS providers from the TIB rules, the

²³ Verizon Wireless Comments, p. 21.

FCC subsequently eliminated the exemption for CMRS providers from the requirement that “requires charges contained on telephone bills to be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered.”²⁴ It is difficult to grasp exactly what about the proposed real-time alerts would set them apart from these existing FCC rules, which apply to CMRS providers.

C. First Amendment

Verizon observes that the “First Amendment protects both the right to speak and the right *not* to speak”.²⁵ While this is certainly true, it is not the end of the legal discussion. Verizon is subject to a number of regulations, including those that arguably can impact speech. For example, the FCC’s Truth-in-Billing Rules, discussed above, imposed on Verizon Wireless the obligation to present its bills in readable format, and the bill must be truthful in its representation of rates, fees, and surcharges. A bill and the information it contains constitute a form of speech, and it is a form of speech that can be and is regulated.

Similarly, Congress has imposed upon CMRS providers obligations to send out emergency alerts.²⁶ To the extent that any wireless provider may have alleged those requirement violated its First Amendment rights, that argument has been settled and the FCC has adopted appropriate rules. The fact that Verizon does not want to send alerts to its consumers does not, in and of itself, mean that an FCC mandate that the carrier do so

²⁴ See *Second report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, FCC 05-55, CC Docket No. 98-170,, CG Docket No. 04-208, released March 18, 2005, ¶ 15.

²⁵ Verizon Wireless Comments, p. 35, emphasis in original.

²⁶ See 47 U.S.C. §§ 1201 *et seq.*

would violate its First Amendment rights. Again, Verizon is turning a policy disagreement into a legal impediment.

Indeed, a number of rules and regulations that arguably impinge on corporate commercial speech or conduct have been implemented and upheld, notwithstanding First Amendment objections. Among them are rules or statutes such as the Truth-in-Lending Act, cigarette advertising restrictions and on-package warnings, liquor advertising restrictions and warnings, and disclosure of privacy policies, just to name a few. The FCC should reject Verizon's First Amendment argument.

IV. CONCLUSION

For the reasons set forth here, the State Commissions continues to support an FCC mandate for bill alerts to customers so that they may better manage their wireless usage.

February 8, 2011

Respectfully submitted,

Frank R. Lindh
Helen M. Mickiewicz

By: /s/ HELEN M. MICKIEWICZ

Helen M. Mickiewicz

505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1319
Fax: (415) 703-4592
Email: hmm@cpuc.ca.gov

Attorney for the
California Public Utilities Commission

Nebraska Public Service Commission

/s/ Nichole Underhill Mulcahy
300 The Atrium Building
1200 N Street
Lincoln, Nebraska 68508
(402) 471-3101

Vermont Public Service Board

/s/ John D. Burke, Board Member
112 State Street
Montpelier, Vermont 05620
(802) 828-2358

Vermont Department of Public Service

/s/ Tamera S. Pariseau
112 State Street
Montpelier, Vermont 05620
(802) 828-5262