WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

May 17, 2011

VIA ECFS ***EX PARTE***

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Empowering Consumers to Avoid Bill Shock,* CG Docket No. 10-207*; Consumer Information and Disclosure,* CG Docket No. 09-158

Dear Ms. Dortch:

Cbeyond, Inc. ("Cbeyond"), through its undersigned counsel, hereby submits this letter in the above-referenced proceedings to urge the Commission to exempt corporate-liable[1] and business accounts from any "bill shock" regulations it decides to adopt. There are three reasons why the Commission should exclude these accounts from bill shock regulation.

First, as numerous parties have observed in this proceeding, mandatory notification requirements of the kind proposed in the *Bill Shock NPRM*[2] would not benefit the vast majority of business subscribers to mobile wireless service.[3] Cbeyond's own experience in providing wireless and

[1] Corporate-liable accounts are those accounts for which a corporation assumes responsibility for the payment of fees associated with the provision of wireless service to its employee or employees.

[2] *In the Matter of Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure,* Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (rel. Oct. 14, 2010) ("*Bill Shock NPRM*" or "*NPRM*").

[3] *See AT&T Comments* at 61 ("[B]usiness customers often find text messages alerting them to usage, overage, or roaming issues to be *annoying* rather than helpful.") (emphasis in original); *Sprint Comments* at 16 ("Sprint and its competitors offer business accounts sophisticated account management tools. As such, 'bill shock' protections are unnecessary in this context and, again, application to business accounts would greatly increase the complexity and cost of compliance without any benefit."); *Verizon Reply Comments* at 14-15 (quoting and supporting AT&T and Sprint's initial comments).

wireline services to business customers confirms this conclusion. Cbeyond's review of the complaints it has received from its business customers since the beginning of 2010 showed that, at most, 3.4 percent of those complaints concern billing issues (i.e., overage or roaming charges) that would be addressed by the requirements proposed in the *Bill Shock NPRM*. This is not surprising. Cbeyond provides extensive consultation with its customers both before they sign their contracts and after they become Cbeyond customers. Among the many issues that Cbeyond discusses with its customers are the details of their customer contracts, including the details of the pricing provisions in those contracts. It is therefore unlikely that Cbeyond's business customers would be surprised by roaming charges, overage charges, or the application of any other charges that might apply under the customers' service contracts with Cbeyond.

Second, there is no evidence in the record of this proceeding that overage charges or roaming charges have been a source of significant dissatisfaction for business customers. In the *NPRM*, the FCC relies on the *Bill Shock Survey*,[4] the 2009 *GAO Report*[5] and comments filed in this proceeding. None of these sources includes evidence regarding the extent to which U.S. business customers have complained about overage charges or roaming charges. For instance, the *Bill Shock Survey's* central finding – that 17 percent of cell phone users had experienced bill shock – referred only to those users with "a personal cell phone (i.e., one for which their employer does not pay the bill)."[6] The *GAO Report* found that approximately 10 percent of consumers were dissatisfied with their wireless service,[7] but made no findings with respect to business subscribers. Nor did any commenter submit data regarding business accounts.

Third, requiring firms that serve business customers to provide automatic notifications regarding usage limits and roaming would impose significant costs on such providers. In fact, these costs are likely to be more significant for carriers serving business customers because wireless services engineered specifically for business customers tend to be more complex than those engineered for residential consumers. For example, Cbeyond provides integrated wireless and wireline billing options to its business customers. In order to comply with the proposals in the *NPRM*, Cbeyond would likely need to decouple the billing functions for wireless and wireline services and then change the billing systems for those services within the integrated package of services that might trigger overage charges. This process risks degrading the operation of the integrated billing feature. It would also require complicated, and likely irritating, notifications to customers to explain the process. In addition, because Cbeyond provides the wireless component of its service on a resold basis, complying with the rules proposed in the *NPRM* would require a complex coordination with Cbeyond's underlying wholesale provider of mobile wireless services.

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[4] *Americans' Perspectives on Early Termination Fees and Bill Shock*, Survey Results, 2010 WL 2110745 (rel. May 26, 2010) ("*Bill Shock Survey*").

[5] GAO Report to Congressional Requesters, *FCC Needs to Improve Oversight of Wireless Phone Service* (Nov. 2009) ("*GAO Report*"), *available at* http://www.gao.gov/new.items/d1034.pdf.

[6] *Bill Shock Survey*, 2010 WL 2110745, at *1.

[7] *GAO Report* at 8.

In sum, given that there is no basis in the marketplace or in the record of this proceeding for concluding that overage charges or roaming charges are a problem in the business market, it does not make sense to require firms that serve that market to undertake disruptive and expensive changes to their businesses that compliance with the proposals in the *Bill Shock NPRM* would cause.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns regarding this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Matthew Jones

Counsel for Cbeyond, Inc.

cc (via email): Colleen Heitkamp
David Tannenbaum