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 NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

On October 14, 2010, the Commission put out for public comment proposed regulations that would require wireless providers, using widely available technology, to provide consumers of wireless services – voice, text and data – with simple alerts designed to protect such consumers from the sudden, unexpected and often exorbitant charges commonly known as "bill shock."[1] The National Association of State Utility Consumer Advocates ("NASUCA")[2] filed comments in support of the proposed regulations. Likewise, comments of other consumer advocates supported the proposed regulations.[3]

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[1] Notice of Proposed Rulemaking, FCC-10-180 (rel. Oct. 14, 2010) ("NPRM"). The NPRM was published in the Federal Register on November 26, 2010. On December 17, 2010, the comment date was extended to January 10, 2011.

[2] NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[3] Comments of the Massachusetts Office of the Attorney General ("Mass AG"); Comments of the National Consumer Law Center (NCLC") and Advocates for Basic Legal Equality ("ABLE") (collectively, "NCLC/ABLE"); Comments of the New Jersey Division of Rate Counsel ("NJ DRC"); and Center for Media Justice, et al. . The Mass AG, NCLC and NJ DRC are members of NASUCA.

In these reply comments, NASUCA will address certain of the key themes in others' comments, especially those of the wireless industry. The overwhelming theme in those comments is that the Commission should not adopt regulations to protect consumers from bill shock, because competition and the competitive marketplace provide customers with adequate protection.[4] As NASUCA has stated on numerous occasions, on behalf of its members and the consumers those members represent, this rationale is fundamentally flawed.

First of all, the carriers say that they have devised solutions that help customers avoid bill shock.[5] The need to devise such solutions, however, simply underscores and confirms the problems and the need for solutions. Meanwhile, new complaints continue to surface.[6]

The claimed carrier solutions, moreover, have not proven effective in preventing the shocking bills. AT&T, for example, states that it provides its customers, at all stages of the subscriber relationship, with the tools they need to manage their consumption of wireless services, including personalized point-of-sale disclosures, tools for monitoring usage and, in many circumstances, free text and e-mail alerts concerning usage, overages, and international roaming, thus purportedly making it easy for customers to keep abreast

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[4] Comments of CTIA – The Wireless Association® ("CTIA") at 2; Comments of Verizon Wireless ("Verizon") at [i]; Comments of Sprint Nextel Corporation ("Sprint") at ii; Comments of AT&T Inc. ("AT&T") at 1.

[5] Comments of T-Mobile USA, Inc. ("T-Mobile") at i; Comments of the Rural Cellular Association ("RCA") at 3; Verizon Comments at i.; Sprint Comments at ii; AT&T Comments at 1.

[6] As reported just two days ago, an unsuspecting consumer was allegedly hit with a $300 charge when she sent text messages to a friend with an area code in Arkansas and received responses from Norway. The company reportedly offered a credit of $36. See http://articles.philly.com/2011-02-06/business/27104414_1_texting-bill-shock-face-charges.

of their usage and prevent unexpected charges.[7] Yet an AT&T customer reports charges of $9,100, or $200 per minute, when his 14-year-old son watched 45 minutes of YouTube video on his telephone while in Guatemala. According to the consumer, "[n]o roaming notification message was received, no confirmation dialog box warning of fees, … nor warning of any kind prior to viewing the video. The first negative notification was 14 hours later ...." Moreover, messages that were received misled the boy into believing there would be no additional charges.[8]

T-Mobile similarly states that it teaches its retail sales representatives about the need to "right-fit" the customer at the point of sale, by reviewing the material terms and conditions of a customer's plan and highlighting any limitations on use and additional fees that may be incurred for exceeding those limits.[9] Yet a T-Mobile customer reports incurring roaming charges on a trip to London in excess of $3,000, "over 50% as much as the cost of my 14-day transatlantic cruise," because the sales clerk trained by T-Mobile, although setting up the G-1 phone and giving him a brief description of the features, neglected to brief him on the magnitude of the data roaming charges or the automatic nature of the downloading that could occur. He felt he "was being played for a fool and . . . taken advantage of because of his relative lack of sophistication in G-1 technology and protocols and the unasked for settings imbedded in the G-1's" at the point of sale.[10]

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[7] AT&T Comments at 9.

[8] Comments of Sean R. Murphy at 3, 5. The studied comments raise point-of-sale issues as well. *Id*. at 8.

[9] T-Mobile Comments at 3.

[10] Comments of Richard Barbazette (Complaint Letter to T-Mobile).

Other individual commenters echo a like concern.[11]

As indicated in NASUCA's initial comments, "The market provides no solution. If it did, the problem would not have persisted as long as it has."[12] As stated in at least three similar contexts last year, in order for the market to work in this fashion, consumers must first suffer harm.[13] Judicial authority supports this position in the context of another abusive billing practice in the telecommunications industry.[14]

When companies are not restrained from engaging in abusive practices, the practices tend to become acceptable. That tendency reduces the likelihood that switching to another company will actually provide a solution. In positive terms, the setting of standards serves the vital public policy and function of making an abusive practice unacceptable and, correspondingly, of raising the standard of conduct within the industry to an acceptable level.

NASUCA would also be remiss if it failed to observe once again that abusive and anticompetitive early termination fees often further inhibit the ability of consumers to vote effectively with their feet. The persistence of these fees further lessens the likelihood

[11] Comments of Floyd Whetzel ("Taking personal responsibility for monitoring and tracking usage would still be prudent, but for those occasions where the customer doesn't know, doesn't understand, or simply humanly miscalculates usage, these measures would definitely help"); Comments of Douglas Foster ("Carrier contracts are very hard for some people to understand and at least they will have the safeguard of a notice before experiencing sticker shock").

[12] NASUCA Initial Comments at 2 (footnote omitted).

[13] Cite to 10-92, 6/26/10; 04-645 etc 8/26/10. others

[14] *FTC v. Verity Intern., Ltd.*, 335 F. Supp.2d 479, 499 (S.D.N.Y. 2004) ("[T]he difficulty with defendants' position is that it would require consumers first to suffer an injury and then to find and implement a solution to avoid being injured again. Meanwhile, defendants profit from this injury, as many consumers who are fearful of incurring damage to their credit ratings pay the bills ...."

of an effective marketplace solution to the bill shock problem.[15]

If and to the extent a carrier has devised adequate solutions, moreover, what reason could it have for opposing the adoption of minimum standards? After all, if and to the extent it meets such standards, the rules would disadvantage only those of its competitors that fail to meet the standards. Perhaps the argument is a knee-jerk reaction against regulation.[16] Regardless, it fails to provide a legitimate reason for failing to see the solutions are provided.

Carriers argue against "one-size-fits-all" standards.[17] The argument is an argument against standards. It should be rejected as such.

Likewise, the pleas of the smaller and rural carriers should be rejected.[18] There is no reason why a consumer should be denied protections against bill shock simply because the consumer has – wisely or unwisely, or for whatever reason – chosen to take service from a smaller or rural carrier.

The prepaid carriers assert that their business model protects consumers.[19] But as the low-income advocates note, the low-income customers of prepaid carriers –

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[15] See Comments of Tammy Wilson ("There are multiple carriers to choose from, but they all have pretty much the same plans and one can't easily switch when you are basically forced into 2-year contracts"); Comments of Matthew Gary: "[T]he purpose of my letter is to inform you that they, Verizon, are using a practice that is costing taxpayers big money. Here's the deal, if you sign a 2 year contract and get a nice fancy phone, they will provide the phone at a discount because they will make up the difference in the 2 year contract. At the end of the 2 years, and the phone is depreciated, they do not lower your contract price. So, after 2 years and your phone is working fine, they will continue to charge you at the same high rate. In other words, I'm paying them extra for nothing. They have already recouped their costs. This makes no sense. It promotes waste. It penalizes the thrifty, and it is a rip-off."

[16] T-Mobile Comments at i.

[17] Comments of MetroPCS Communications, Inc. ("MetroPCS") at 4; AT&T Comments at 1.

[18] See, RCA Comments at 3; MetroPCS Comments at 4-5; Comments of the National Telecommunications Cooperative Association ("NTCA") at 1.

[19] Comments of Nexus Communications, Inc. ("Nexus") at [2-3]. MetroPCS Comments at 1; Comments of TracFone Wireless, Inc. ("TracFone") at 2; Comments of OnStar, LLC ("OnStar") at 1..

especially Lifeline customers – also need and deserve protections against unanticipated loss of service.[20]

In its initial comments, NASUCA urged the adoption of a requirement similar to the European requirement that providers must cease to provide a service if the consumer does not respond to the overage notification.[21] Commenter Sean R. Murphy provides cogent additional supporting rationale why the Commission should include such a requirement.[22]

The National Association of Regulatory Utility Commissioners ("NARUC") accurately points out that the responsibility to protect consumers is a shared federal and state responsibility.[23] State regulatory commissions, state consumer advocates, and state courts must play key roles in the protection of consumers.[24]

Almost in unison, the industry cites a "study" by The Nielsen Company, self-proclaimed "the world's foremost provider of data and insights into the mobile market," as support for the proposition "that the problem is not remotely [sic] as large as presented."[25] The Nielsen Company's comment filed in the record is a slide presentation. It contains no backup data and no detailed explanation of methodology. Oddly, although filed publicly, it is marked "confidential and proprietary."

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[20] NCLC/ABLE Comments at 1-2.

[21] NASUCA Comments at 4.

[22] Murphy Comments at 1, 9: "The proposed regulations ... do not go far enough .... [They create] a 'customer's word' vs. the 'company's word' in any disagreement over delivery of a notification. ... Notifications are helpful, but the cap is solid. Any overage beyond the cap is not the customer's responsibility unless specifically authorized by the customer…. The credit card industry has done this for years ...."

[23] NARUC Comments at [6-7]; see also Comments of California Public Utilities Commission, et al.

[24] See NASUCA Init. Comments at 6 & n. 16.

[25] CTIA Comments at 1; 26-30; AT&T Comments at 2-3, 26-17; T-Mobile Comments at 13-14; Sprint comments at 5-6; Mobil Future Comments at 8; see Nielsen Company Comments at 2 .

Even when considered on its own terms, the Nielsen Company comment shows that the largest shocks come more frequently to certain consumers, suggesting that those customers should not be "shocked" by their bills. That is scarcely a reason to continue to subject those customers to such bills. And it ignores the plight of the millions of consumers who are indeed shocked by infrequent overage charges.

Similarly, even if one accepts Nielsen's and the industry's numbers that "only" one percent of American cell phone customers experience a "significant" overage once or twice a year, the calculation ignores Americans who experience overages in amounts less than double their normal bills, which according to Nielsen totals 13.3 million, or more than 10% of customers. And the number of remaining individuals experiencing a "significant" overage once or twice a year is still **nearly 3.5 million![26]**

Finally, the wireless companies observe that they issue credits.[27] Too often, however, consumers experience difficulty attempting to persuade the companies to issue the credits. They often give up in frustration, especially when the amounts at issue are not particularly large. Companies exploit their ability to collect abusive charges.[28] Because companies can issue the credits only when pressed to do so, and can pocket the

[26] See Nielsen Company Comments at 11; AT&T Comments at 3; Sprint Comments at 5.

[27] ATT Comments at 2, 27; Sprint comments at 6; CTIA comments at 3, 24, 27.

[28] See *FTC v. Verity Internat'l, Ltd.*, 124 F.Supp.2d 193, 203 (S.D.N.Y. 2000): "The practical reality here is that many consumers who receive bills simply pay them. Others are not willing to engage in extended debates with billers, as they lack the time or energy or simply are fearful that an alleged creditor will damage their credit ratings and thus limit their access to credit unless they pay as demanded .... [Companies] capitaliz[e] on the inattention and fear of consumers or on the disparity of power between them and the persons they bill to extract payments which, in many cases, probably are not rightfully theirs."

money when not pressed, the abusive practices remain profitable despite the credits. The credits thus provide no incentive for the companies to stop the abusive practices.[29]

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[29] See *In re Canales Complaint*, 637 N.W.2d 237, 245 (Mich. App. 2001) "without heavy fines there would be insufficient incentive for ... providers to stop slamming because they would simply reimburse those customers who complain of the switch, but continue to collect fees from the other slammed customers").