

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

In the Matter of)
)
Consumer Information and Disclosure) CG Docket No. 09-158

**COMMENTS OF
THE CENTER FOR MEDIA JUSTICE, CHICAGO MEDIA ACTION, CONSUMERS
UNION, ESPERANZA PEACE AND JUSTICE CENTER, MEDIA ACCESS PROJECT,
MEDIA ALLIANCE, MEDIA JUSTICE LEAGUE, MEDIA LITERACY PROJECT,
NATIONAL ALLIANCE FOR MEDIA ARTS AND CULTURE, NATIONAL HISPANIC
MEDIA COALITION, NEW AMERICA FOUNDATION, PEOPLE’S PRODUCTION
HOUSE, PUBLIC KNOWLEDGE, AND RECLAIM THE MEDIA**

The Center for Media Justice, Chicago Media Action, Consumers Union, Esperanza Peace and Justice Center, Media Access Project, Media Alliance, Media Justice League, Media Literacy Project, National Alliance for Media Arts and Culture, National Hispanic Media Coalition, New America Foundation, People’s Production House, Public Knowledge and Reclaim the Media (together, “Commenters”) respectfully submit these comments in response to the Commission’s Notice of Inquiry in the above-captioned docket.¹ Commenters urge the Commission to require wireless providers to supply automatic and free usage and roaming alerts to protect consumers from excessive increases in their monthly bills. Additionally, the Commission should establish clear disclosure rules for the true cost of services, including additional fees; meaningful information about terms of service restrictions and actions that monitor and interfere with subscriber use of services; and obstacles to ending or transferring service including early termination fees and device locking mechanisms.

¹ *Consumer Information and Disclosure*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Public Notice, FCC 09-158 (rel. May 11, 2010) (“*Notice*”).

I. INTRODUCTION

In the *Notice*, the Commission seeks comment on the feasibility of instituting usage alerts and cut-off mechanisms similar to those required under the European Union (EU) regulations. The EU regulations would provide consumers of wireless voice, text, and data in the United States a way to monitor, on a real-time basis, their usage of a wireless communications service, as well as the various charges they may incur in connection with such usage.² The Commission also seeks comment on the extent to which consumers – including consumers with disabilities – currently have the means to monitor their wireless usage and whether they are fully aware of the consequences of exceeding their allocations of voice minutes, text message limits, or data usage. Finally, the Commission seeks comment on the extent to which U.S. providers already offer usage alerts and at what cost.

Commenters support the Commission’s effort to ensure consumers are fully aware of the costs of their mobile service. The Commission’s recent survey on consumer “bill shock”³ underscores the need for requirements on mobile providers to more explicitly provide usage data to consumers through alerts and other efforts before they receive their bill. Similarly, specific disclosure requirements are also needed to better inform consumers of the additional charges associated with exceeding any usage limits or roaming on their wireless service. Commenters are particularly concerned about the impact of overage and roaming charges on low-income consumers, communities of color, and other disenfranchised communities that increasingly rely on a wireless service as their exclusive source for communication and Internet access.

² *Id.*

³ See John Horrigan and Ellen Satterwhite, “Americans’ perspectives on early termination fees and bill shock,” *Federal Communications Commission*, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298414A1.pdf (“Bill Shock Survey”).

Wireless serves as a gateway to the Internet for communities of colors, including individuals who access the mobile Internet, but do not go online at home with a wireline broadband connection.⁴ According to the FCC's most recent adoption report, Hispanics and African-Americans were more likely to access the Internet on their wireless handheld device or utilize a wireless broadband service on their laptop than Caucasians.⁵ African-American and Hispanics are also more likely than Caucasians to utilize their cell phone to send pictures, download games or applications, watch videos or movies, play or download music, send or receive a text message, and send and receive mail.⁶ Communities of color are also more likely to cut the cord and rely exclusively on wireless voice service in higher numbers. Hispanics are considerably more likely than non-Hispanic white adults or non-Hispanic black adults to be living in households with only wireless telephone service.⁷ Given the high rate of use of wireless services by individuals in these demographic groups, clear and prominent disclosures of overage and roaming charges are essential to protect communities of color and other disenfranchised communities the from unexpectedly high-bills as well as ensure their continued use and adoption of wireless services and broadband access.

Commission rules to require providers to supply freely available and automatic usage and roaming alerts to consumers are an important step in improving transparency and disclosure in wireless services. However, Commenters continue to urge the Commission to adopt protective and enforceable disclosure standards for mobile wireless advertising and point-of-sale materials,

⁴ See John B. Horrigan, "Broadband Adoption and Use in America," *Federal Communications Commission*, OBI Working Series Paper No. 1, at 23, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf.

⁵ *Id.*

⁶ See Jon P. Gant, Nicol E. Turner-Lee, Ying Li, Joseph S. Miller, "National Minority Broadband Adoption: Comparative Trends In Adoption, Acceptance and Use," Joint Center For Political and Economic Studies, at 36 http://www.jointcenter.org/publications1/publication-PDFs/MTI_BROADBAND_REPORT_2.pdf.

⁷ See "Wireless Only Households in the USA Rising," Cellular News, <http://www.cellular-news.com/story/43293.php>.

along with truth-in-billing rules to ensure consumer access to essential information about their wireless service.⁸

II. WIRELESS PROVIDERS' CURRENT DISCLOSURE ARE INSUFFICIENT AND REQUIRE COMMISSION ACTION

According to the Commission's "bill shock" survey nearly 30 million Americans have seen their cell phone bill increase suddenly from one month to next on at least one occasion.⁹ Moreover, 84 percent of those experiencing bill increases indicated their mobile provider did not contact them when they were about to exceed their allowed minutes, texts, or data downloads and 88 percent said that their provider did not even contact them after the bill suddenly increased.¹⁰ Of those experiencing "bill shock" over one-third of those bill increases were \$50 and above – in essence resulting in cost increases to consumers of at least double their standard monthly bill for cell-phone service.¹¹ As U.S. providers increasingly shift away from unlimited data plans to more tiered offerings with strict usage limits such as AT&T's new data plans, the chance of consumers incurring expensive overage charges is likely to increase.¹²

a. Current provider disclosures of overage fees for wireless voice minutes, text messages and data downloads are inadequate

Commenters have demonstrated in numerous Commission filings that the current disclosures made in advertisements, at the point of sale, and in monthly bills for mobile wireless services are woefully inadequate.¹³ Wireless service plan descriptions in advertising materials or

⁸ See Comments of Consumer Federation of America *et al.*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36 (October 13, 2009) ("Truth in Billing Comments").

⁹ See Bill Shock Survey.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² For example do nothing else but watch just 10 minutes of low-quality streaming video a day with your smartphone on AT&T's new standard tier plan, and expect an additional \$30 in overage charges; stream just one hour of music a day and incur additional charges of \$60. See <http://www.att.com/shop/wireless/plans/data-plans.jsp>. See also <http://www.att.com/standalone/data-calculator/index.html>.

¹³ See Truth in Billing Comments. See also Reply Comments of Consumer Federation *et al.* CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36 (October 28, 2009).

at the point of sale often promote “base rates” that fail to demonstrate the true cost of service.¹⁴ Essential information on overage charges for specific services is often buried in the fine print of advertisements, if at all. Consumers purchasing or researching wireless services on-line frequently must scour a provider’s website to be aware fully of all the potential charges they could incur, including overage charges and early termination fees (ETFs). Moreover, no two provider websites offer the information in the same format or place, making it even more difficult for consumers to find and compare information and terms of service. In particular, charges for roaming both domestically and internationally and fees for exceeding a plan’s voice minutes and text messages (usually charged on a per minute or per text basis) are rarely indicated on advertisements for services and typically are buried in the fine print of terms of service or in separate sections of a provider’s website.¹⁵ As the Commission has noted, “It is widely understood that information buried deep in the ‘fine print’ is far less useful to consumers than information displayed clearly and prominently.”¹⁶

As a result the wireless providers’ current marketing and billing practices lead to substantial confusion over the actual cost of a service and severely limit the ability of consumers to choose among plans and competing providers. This confusion is not just isolated to a small segment of wireless consumers. As evidenced by the FCC’s “bill shock” survey, sudden bill increases affected, almost equally, consumers from every demographic background including sex, age, race, and income level.¹⁷ Such a finding underscores a systemic problem in the wireless market and the need for the Commission action to require that providers fully, prominently, and more clearly disclose all cost information related to a wireless service.

¹⁴ *Id.* at 8.

¹⁵ See e.g. <http://www.wireless.att.com/cell-phone-service/legal/plan-terms.jsp#msg>.

¹⁶ *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry, FCC 09-68 (rel. Aug. 28, 2009)

¹⁷ Bill Shock Survey.

b. Current provider usage alerts and monitoring tools are insufficient

Although a number of providers have taken some positive steps to offer alerts and monitoring tools to consumer who are approaching their limits on voice minutes, text messages or data downloads, there are some significant problems with the current approaches. First, there is no consistency or standardization among wireless providers in terms of the alerts they provide. Some offer text alerts for voice minutes only,¹⁸ others for voice and text and some for all three services.¹⁹ Some offer alerts and monitoring information for free, while others provide them only as an add-on service.²⁰ Inconsistency and inaccuracy in disclosure are not virtues of a competitive marketplace, despite providers' occasional claims to the contrary, and providers should not be permitted to "compete" on the accuracy of the information they make available to their customers.

Second, it does not appear that any provider offers an alert, other than potentially the appearance of the letter "R" on devices that customer use, to warn consumers of the expensive charges they could incur when seamlessly roaming onto another provider's network either in the U.S or abroad.²¹ This is particularly problematic for those customers with wireless providers who lack a national footprint and do not offer free roaming as part of their service. Finally, providers usually require the consumer to opt-in for usage alerts and information, either by requesting the information directly via a text message to the provider, tracking their usage with monitoring tools on the provider's website, or paying an additional fee for an alert service. This is problematic because many consumers may have no idea that such alerts and information exist, or some may not be able to pay another fee just to receive a usage alert.

¹⁸ See e.g. <http://support.t-mobile.com/doc/tm24032.xml>.

¹⁹ See e.g. Ex Parte Presentation of AT&T, CG Docket No. 09-158, CC Docket No. 98-170, WC No. 04-36, (June 24, 2010).

²⁰ See e.g. http://support.vzw.com/faqs/Features%20and%20Optional%20Services/usage_controls.html.

²¹ See e.g. <http://www.mycricket.com/support/search/roaming>.

III. THE COMMISSION SHOULD ESTABLISH CLEAR DISCLOSURE RULES

The Commission should adopt consumer protections and should not rely on a voluntary code of conduct. Even though some providers have recently taken affirmative steps to improve consumer disclosures, the Commission cannot rely on the consistency or accuracy of voluntary commitments that are likely to ebb and flow depending upon the potential threat of regulation. Voluntary commitments to the FCC without accountability (regardless of service provider or context) have historically presented a poor track record for their ability to protect consumers, particularly when those commitments are intended to avoid regulation.²² Moreover, the language of the industry's voluntary CTIA Code is sufficiently vague that even perceived compliance by providers does not always result in meaningful disclosures to inform consumers, as evidenced by the complete lack of consistency among providers in offering consumer usage alerts and disclosures on overage and roaming fees.

Thus, the Commission should create clear disclosure rules to remedy the ongoing consumer harms caused by vague and misleading sales practices and inadequate disclosures of overage charges for voice minutes, text messages, data downloads and roaming. Specifically, the Commission should require all wireless providers to supply, at minimum, the following:

- Automatic and free message alerts to consumers notifying them if they are approaching the limit of their plan's allotted voice minutes, text messages, or data usage;
- Automatic and free message alerts to consumers notifying them once they have exceeded their monthly allotment of voice minutes, text messages or data usage; informing them of the subsequent cost per voice, text, or data unit; and asking them to opt-in to continue using the service on an a la carte basis;

²² See Truth in Billing Comments at 17 – 20.

- Automatic and free message alerts of pricing information if a customer roams onto another provider's network and will incur additional charges; and,
- Clear and prominent disclosure of any overage charges for exceeding a plan's allotted voice minutes, text messages, data downloads and roaming fees in advertisements, at the point of sale and on monthly bills.

a. Automatic and free usage alerts for voice minutes, text messages and data downloads

To protect consumers, the Commission should require wireless providers to supply automatic and free usage notifications directly to a subscriber approaching monthly usage limits for voice, text, and data services. Where possible, this notification should take the form of a free text message, a method already widely used by many providers to supply marketing and service information. This requirement would parallel similar truth-in-billing laws that require banks to notify card holders at the point-of-sale when they are in danger of being charged over the limit fees.²³ In line with the EU regulations, providers should notify customers with automatic and free text message alerts when they have reached 80 percent of the plan's limit for voice minutes, text messages, and data and another free and automatic notification after they have exceeded any default limit. For data-only customers, an email alert would seem the most appropriate format. These alerts should be provided automatically to consumers and not require them to opt in. These alerts must also provide information on overage charges a customer would incur for exceeding their plan's limits.

Providers should also tailor disclosures for non-English speaking customers. At the very least, if a provider advertises in a language other than English, it should be required to make disclosures in that language. In addition, if a provider targets non-English speaking communities

²³ *Id.* at 26.

in other ways, it should tailor its disclosures accordingly. For example, wireless providers already make these accommodations for customers with cell phones programmed for Spanish.

Similarly, providers should make appropriate accommodations for visually impaired customers, who may only have a voice plan, through the use of recorded audio alerts. These audio alerts could also be available to all consumers, if they choose to receive them instead of a text message.

b. Automatic and free alerts of roaming information

To further protect consumers from expensive and often unclear roaming charges, the Commission should similarly require automatic and free text message alerts when a consumer roams onto another provider's network. Such alerts should include the roaming fees for voice minutes, text messages and data. In line with EU regulation, for those customers who prepay for roaming or purchase plans with a specific amount of roaming minutes, providers should supply text message alerts if such customers are approaching 80 percent of their allotted roaming minutes and when they exceed those limits. As discussed above, alerts should be tailored for non-English speaking and visually impaired customers.

c. Clear and prominent disclosure of overage and roaming fees

The Commission should require prominent and clear disclosure in advertising, point-of-sale, and billing materials for mobile wireless services of any usage limits, overage charges and roaming fees associated with such services. Wireless voice, text, and data service bundles are heavily advertised on the "base" service price, even though each of these services comes with a usage limit and a steep overage fee for use above that limit. We urge the Commission to require wireless carriers to prominently disclose overage limits, overage charges and roaming fees in advertisements, at the point-of sale, and on the customer's monthly bill. For example,

advertisements should list any usage limit for voice minutes, text messages, or data transfer, and the advertisement should prominently disclose the price per voice minute, the price per 10 text messages, and the price per 1 GB of data usage over the limit (to establish a standardized comparison of usage costs across mobile wireless and fixed Internet access services).²⁴

Similarly, point-of-sale disclosures and service bills should clearly indicate both usage limits and overage fees for all services, as well as other pertinent information related to the consumer contract such as early termination fees.²⁵

In particular, consumers would substantially benefit from standardized disclosures of usage limits and overage and roaming fees. For example, the New America Foundation developed a sample truth in broadband label, based on a nutrition label and on the “Schumer box” required for lenders.²⁶ The label could be adapted to wireless services and made available in advertisements, at the point of sale, and in monthly bills to more clearly inform consumers of usage limits, overage fees, and roaming fees as well as enable consumer to easily compare different plans and providers.

IV. CONCLUSION

Commenters strongly support the Commission’s effort to bring greater transparency to consumers regarding all the potential costs associated with a wireless service. We believe the Commission should require providers to supply automatic and free usage and roaming alerts to protect consumers from excessive increases in their monthly bills. We further continue to urge the Commission to establish clear disclosure rules not just for usage limits, overage charges, and roaming fees, but for all the requisite information consumers need to make informed decisions

²⁴ See Reply Comments of Consumer Federation *et al.* CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36 (October 28, 2009) at 17.

²⁵ Truth in Billing Comments at 26 – 27.

²⁶ See Comments of the New America Foundation, CG Docket No. 09-158, (Sept. 25, 2009), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020385891>.

when choosing among wireless plans and providers. Such disclosures should include information on any additional fees; meaningful information about terms of service restrictions and any provider actions that monitor and interfere with a subscribers' use of services; and obstacles to ending or transferring service including early termination fees and device locking mechanisms.

Respectfully submitted,
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