

Date of Hearing: May 9, 2011

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE

Steven Bradford, Chair

AB 1268 (Blumenfield) – As Amended: March 22, 2011

SUBJECT: Telecommunications: usage notification.

SUMMARY: Requires a provider of a mobile telephone service to alert the subscriber when the set of allotment of airtime or text messages has been reached. Specifically, this bill:

- 1) Specifies that a mobile telephone service is required to alert the subscriber when the set allotment of airtime or text messages has been reached; the notification may be accomplished by text message.
- 2) Specifies that each provider of a mobile telephone service needs to inform subscribers, at the point of sale, of the availability of this information and how it can be obtained.
- 3) Prohibits a mobile telephone service to charge the subscriber for providing notice of data usage information.

EXISTING LAW:

- 1) Requires a provider of a mobile telephone service to provide subscribers with a means of obtaining current and available information on the subscribers calling plan, or plans, and service usage.
- 2) Requires a provider of a mobile telephone company to provide subscribers with a means by which the subscriber can obtain current and available information on the subscriber's text messaging, internet usage, and charges.

FISCAL EFFECT: Unknown

COMMENTS: According to the author, "Californians are suffering from what has been called "bill shock." This occurs when a customer receives a bill for a cell phone device that is larger than the normal monthly bill. The Federal Communications Commission (FCC), the Government Accountability Office (GAO), and Consumer reports have all done studies confirming this phenomenon. Consumer Reports surveyed more than 58,000 wireless subscribers and found that approximately one in five subscribers had received a bill significantly higher than they had expected. Of these, 50% said the bill was greater than \$50 more than expected and 20% said it was greater than \$100 more than expected. The GAO found that 34 percent of wireless subscribers had experienced unexpected charges on their wireless bills. For consumers on a limited income, these charges can be devastating. For others, they prove an unpleasant shock that adds up over months. We should provide a uniform, baseline protection to California consumers that proactively alerts consumers when they have reached their voice, text, or data usage allotments. The technology to provide such proactive alerts already exists and should be used to protect our citizens. AB 1268 is needed not only for voice and text usage, but

for data usage. Data usage is expected to double each year for the next four years. This has led companies to roll back their unlimited data usage plans in favor of tiered plans. This will lead to the very real possibility that consumers will be hit with large data overage charges.” The author also points out that if telephone companies help customers keep track of their minutes by sending them reminders via text or voice, they would actually save since they wouldn’t have to spend more money on customer service. An example that the author’s office provides for why the bill is needed is that “for one Sprint plan, if the 4G network is available, usage is unlimited. If you are in an area with only 3G availability, you are on a limited usage plan. How is the consumer supposed to monitor when he or she is in a 3 or 4G area and adjust usage accordingly, especially if the consumer thinks he or she has an unlimited usage plan?”

1)Background: As mentioned above, there have been numerous studies completed which report that consumers are struggling with “bill shock,” receiving a bill for cellular phone use much larger than the anticipated monthly amount. The costs to consumers resulting from these unexpected charges can be significant. For example, two-thirds of bill shock complaints received by the FCC in the first half of 2010 were for amounts of \$100 or greater, and a few bill shock complaints even exceeded \$10,000 in disputed charges. News reports in recent years have frequently noted extreme instances of “bill shock.” A short-listing of such cases would include:

When Ted Estarija of Hayward, Calif., added his 13-year-old son to his Verizon account, he thought it would cost him an additional \$50 a month. He had the phone company restrict his son's calls and texts. Dad forgot about downloads. Estarija, who recently lost his job, now owes Verizon \$21,917.59. His bill shows that his son downloaded 1.5 million kilobytes of data. A Verizon spokeswoman told the station the company would work with Estarija to resolve the bill.

Richard Barbazette of Orange County had better luck with T-Mobile after using his smartphone to check e-mail during a trans-Atlantic cruise with his wife. About a week into the trip, a fellow traveler suggested that he and his wife, who were celebrating her recovery from breast cancer, make sure they weren't accruing international roaming charges. In fact they were, to the tune of \$3,336. After about five months of back and forth, T-Mobile forgave the fees, but only after a consumer group threatened to file a complaint with state regulators.

Letty Soriano from Chula Vista and her 16-year-old daughter, Janel, made a pact for their trip to Dubai to limit their international roaming charges on the girl's cell phone: Janel could text-message her friends but not call them. While in Dubai, Janel surfed the Internet the way she does at home, looking at YouTube videos and logging into MySpace. But using a cell phone while abroad incurs higher roaming charges than at home. T-Mobile charges \$15 per megabyte to use data services overseas. \$16,379 in data-roaming charges accrued by surfing the Internet. After Soriano complained to T-Mobile, the company offered a 25 percent discount on the data charges. But that's as far as it would go, saying Soriano never asked about overseas rates for using the Internet. But after receiving a phone call from a newspaper inquiring about the case, T-Mobile said in an e-mail message that it would waive the charges "as a sign of good will toward our customer."

Federal Communications Commission: The FCC was established by the Communications Act of 1934 and is charged of regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC’s recent survey confirms that as many as 30 million Americans have experienced such unexpected increases in their wireless bills, commonly referred to as “bill shock.” Bill shock can result from a number of causes such as an unexpected increase that comes from high roaming fees or exceeding a monthly allotment of voice minutes,

texts, or data consumption. The report found that this type of bill shock can be prevented by timely and easily accessible usage information. They added that “as mobile service is the fastest growing segment of the communications market, with more and more consumers taking advantage of the convenience and capabilities of mobile services, these unexpected charges result in significant expenditures of time, effort, and money for many American consumers each year.”

U.S. Governmental Accountability Office (GAO): On November 10, 2009, the GAO, which is an independent, nonpartisan agency that works for Congress often called the "congressional watchdog," released a report to Congress that addressed consumer satisfaction and problems with wireless phone service. The GAO report concludes that consumers face significant challenges in monitoring wireless usage and protecting themselves from substantial overage charges for exceeding their monthly allotment of voice minutes, text, and data. GAO points out that some wireless providers offer technological tools that allow consumers to limit usage, the effectiveness of these offerings is limited by opt-in requirements and, in some cases, additional fees for such offerings. They mention that many consumers are also unaware of such tools or how to access them. In addition, notification alerts currently available in the market today vary widely between service providers and by type of service covered.

2) How did the European Union implement “Bill Shock” Regulations?: The European Union (EU) enacted “bill shock” regulations in 2009 that do the following: require that an alert be sent free of charge and without undue delay to a roaming customer informing them of the fact that they will be subject to roaming charges when making or receiving a call or when sending an SMS message when entering a member state other than their home network, including basic pricing information on the roaming charges. The EU regulations also require providers to send a notification when data roaming services have reached 80% of an agreed financial or volume limit. When this financial or volume limit is exceeded, a notification must be sent to the customer indicating the procedure to be followed if the customer wishes to continue provision of this service. If the customer does not respond, the provider must cease to provide and charge the roaming customer for regulated data roaming services until the customer requests the continued provision of service. These regulations are more stringent than the regulations on this bill. As opposed to the EU, this bill would require the mobile telephone company to notify the subscriber when voice, data, and message service has reached their allotment time. Furthermore, at the point of sale the sales representative will be required to tell the subscriber how to obtain data usage information.

3) FCC’s Rulemaking 10-180: In October 14, 2004, the FCC adopted a notice of proposed rulemaking, with a 30 day period for comments and a 60 day period for the FCC to respond to comments, to require service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills. The FCC’s data, including both complaint and survey results, indicates that many mobile consumers experience sudden, unexpected increases in their monthly bills that are not caused by intentional changes in their service plans.

4) How do mobile phone providers currently provide voice, message, and data usage to subscriber? The FCC report found that usage alerts offered by mobile providers vary widely between service providers and by type of service covered. For example, AT&T offers no alerts for voice usage and provides alerts only after text overages are incurred. Data usage alerts are provided by AT&T before or after overages depending upon the service plan. As another

example, Sprint will send text or email alerts to certain subscribers on data plans before they reach their data limits, but will call subscribers by phone only after they “significantly” exceed their voice or text allotments. Verizon Wireless provides alerts if a consumer is trending or has exceeded an allotment on or about the 20th day of a billing cycle. Other service providers have similar inconsistencies. Thus, providers are not uniform in the kinds of alerts they offer, or in the types of overages that are covered by these alerts. The report found that 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. The conclusion was evidenced by the record compiled in this proceeding and the FCC’s own complaint data which indicate that large numbers of mobile consumers continue to experience bill shock each month. For example, approximately 10 percent of all wireless billing rate complaints filed at the FCC relate to voice, text, or data overages, along with overages due to roaming.

FCC’s Recommendation: The FCC’s recommendation is to provide consumers with timely information about their usage at 80% of their usage and 100% of their usage, similar to the EU, such as voice or text alerts when a subscriber is approaching or begins incurring overage or roaming charges, and clear disclosure of the available tools subscribers can use to limit usage and review their usage history. Currently, the FCC has closed their 30 day period for comments and will now open the 60 day period for the FCC to respond to those comments. There is no set date of when bill shock regulations will be implemented, but most likely it will be later this summer. Therefore, it might be premature to implement a statewide regulation when the federal government is in the process of implementing them at the national level. However, the author’s office claims that California should act to protect its consumers regardless of whether the FCC acts.

5) Comments Regarding FCC’s Notice of Proposed Rulemaking: Consumer Action and the National Consumers League commented on the proposal to help wireless consumers avoid bill shock. The mentioned that industry-wide early termination fees often lock consumer into multi-year contracts and that it creates a disincentive for consumers to cancel service in reaction to “bill shock,” and a disincentive as well for carriers to institute a proactive solution. They mention that the European Union “bill shock” regulations address the shortcomings of existing mechanisms for addressing this issue and that the United States should implement similar rules. This report also highlighted the fact that research estimates that more than 65% of consumers choose a wireless plan that does not fit their use patterns, with subscribers exceeding their monthly minute allowance 17% of the time by an average of 33%. They also highlighted the fact that mobile data use in the United States is projected to double every year for the next four years and that the trend is that US carriers are increasingly moving to cease providing unlimited data plans in favor of tiered plans.

Arguments in Support: Consumer Action, Consumer Federation of America, and TURN in support of AB 1268. Consumer Action mentions that, “through our consumer Hotline, we often receive complaints about shockingly large bills, including these recent examples: A husband and wife were charged \$6,500 in data roaming fees in less than 24 hours.” “A man who received a bill for over \$20,000 during his trip to Spain, after being told by his wireless carrier that he could use the device in that country for a flat fee of \$60 per month.” They believe that with a more proactive mechanism for informing subscribers, these consumers can ensure that their future bills will be in line with their expectations, and minimize the risk that an ordinary phone bill could

unexpectedly lead to financial hardship. They also mention that, “A common sales pitch for modern smartphones is that the devices can do so much, allowing users a breadth of access and features which seemed unimaginable until recently. From the consumer’s perspective, however, their devices sometimes can do too much, most notably when it comes to data roaming.” Consumer Federation of America added, “With mobile data usage rising and wireless companies implementing new plans with tiered limits, the problem of bill shock is likely to worsen. This bill takes a sensible approach to the problem by requiring consumers to be warned when they have reached their limits for voice, text, or data use. We do not believe that this would be difficult for wireless service providers to do. In fact, we would recommend that the legislation require that consumers be warned at some point before they have reached their limits so that they can take whatever measures are necessary to ensure that their service is not interrupted and avoid charges that they cannot afford to pay. This is the approach that we have recommended to the Federal Communications Commission.” TURN believes that, “the customer of record is oftentimes completely unaware of the overage charges because they have been incurred as a result of a lost or stolen phone, malfunctioning phone, network error, or other type of unauthorized use of the phone. While TURN supports this bill, there is the need for one point of clarification. As currently drafted, the bill allows this overage alert to be accomplished through text messaging. The bill should specify that the alert should only be sent by text message when the customer has texting capability and a plan that includes text messaging. Otherwise, this alert should be done by calling or emailing the customer. Clearly, if the overages are as a result of a lost or stolen phone, then sending a text to the phone will not serve to alert the actual account holder. If there is no response by the customer from a sent text alert, then the bill should require a follow up notice to the customer through alternative means such as email.”

Arguments in Opposition: AT&T, CTIA, T-Mobile, Verizon Wireless, and Sprint oppose this bill because they believe that this measure, “however well-intentioned, is unnecessary in light of the myriad consumer tools that already exist to monitor and control usage; could conflict with potential Federal Communications Commission (FCC) rules in the area; and could result in costly requirements that would ultimately be imposed on California’s wireless consumers.” CTIA mentions that FCC opened a proceeding on this issue in late 2010 and is currently scheduled to act on this investigation in its August, 2011 meeting. They add that the FCC has the jurisdiction and ability to mandate national rules that address the global nature of their wireless business, and that any discussion of California specific rules or regulation is premature and unnecessary. AT&T mentions that they notify customers once they have reached 65%, 90%, and 100% of their plan’s allotted usage and has a simple dial short code from their device such as, (Min#, Data#, Bal#). AT&T also has rollover minutes, which allows customers to bank unused minutes from previous months that can be used in the future. AT&T also mentioned that when a customer has an unusual use due to unforeseen circumstances, they enable them to back-date the effective date of their new plan in order to avoid any overage charges they would have otherwise incurred. Sprint expresses that the customer experience is critical to success in the wireless marketplace and a satisfied customer is a happy and long-term consumer and for that reason they have tools for consumers to prevent bill shock. Verizon wireless mentions that having a one size fits all prescriptive legislation is unnecessary for addressing an issue that service providers are already taking care of on behalf of their customers.

6) At what time is the consumer responsible? Currently, wireless providers have different methods of notifying or providing consumers usage information. This information is not hidden from the consumer and can be accessed at any time by phone, text message, or email. At the point of sale, the sales representative informs the consumer how they can check their usage

information. In regards to the examples of people who were being charged exorbitant fees for their mobile phone usage, the wireless company fixes those concerns, and if it doesn't happen the FCC does. An abundance of tools already exist to provide consumer with real-time usage information for free. In fact many of the mobile phone companies already provide a text message notification of your mobile phone usage. Furthermore, the FCC is in the process of considering extensive federal regulations to address "bill shock" therefore implementing a statewide guidelines might be too soon. The federal regulations are expected to be implemented later this summer. Therefore, it is unclear what the author intends to accomplish with this bill.

Similar Legislation:

AB 891 (De La Torre) 2007-08 Legislative Session. Required among other things, a contract or agreement for telecommunications services to be provided in the language in which the contract was negotiated, and required the contract to clearly and conspicuously disclose key rates, terms, and conditions of service to be provided or product to be purchased. Remained in Senate Inactive File.

AB 2385 (Ruskin) 2007-08 Legislative Session. Prohibited a business entity, in the business of aggregating or generating phone numbers into a directory or data base, from posting, displaying, selling or releasing to the public any phone number without first obtaining the express consent of the subscriber. Remained in Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Action
Consumer Federation of America (CFA)
The Utility Reform Network (TURN)

Opposition

AT&T
CTIA – The Wireless Association
Sprint
T-Mobile USA
Verizon Wireless

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