

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"))	CG Docket No. 11-116
)	
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Truth-in-Billing and Billing Format)	CG Docket No. 98-170

**REPLY COMMENTS OF THE NATIONAL CONSUMERS LEAGUE,
CONSUMER ACTION, CONSUMER FEDERATION OF AMERICA, UTILITY
CONSUMERS' ACTION NETWORK, AND VIRGINIA CITIZENS CONSUMER
COUNCIL**

The National Consumers League (NCL), Consumer Action, Consumer Federation of America, Utility Consumers' Action Network, and Virginia Citizens Consumer Council (collectively "Public Interest Commenters") hereby respectfully submit the following reply comments in response to the *Notice of Proposed Rulemaking* ("NPRM") adopted by the Commission in the above-captioned dockets.¹

NCL, founded in 1899, is the nation's pioneering consumer organization. Our non-profit mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. Since 1992, NCL's Fraud Center has

¹ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, CG Docket No. 11-116; *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing Format*, CC Docket No. 98-170 (Rel. July 12, 2011) (hereafter "Cramming NPRM").

sought to protect consumers from online and telemarketing scams through consumer education, partnerships with law enforcement and anti-fraud advocacy.

Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper.

The Consumer Federation of America is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.

Founded in 1983 by concerned San Diego citizens, the Utility Consumers' Action Network, UCAN, a 501(c)3 non-profit, was formed to protect consumers from utility and corporate abuse. Since that time, UCAN's not-for-profit legal team has saved San Diego consumers billions of dollars in unfair utility rate hikes. UCAN brings legal actions, advocates policy initiatives, educates, and guards against corporate abuses in the energy, landline and wireless phone, internet, and gasoline industries, among many other areas.

The Virginia Citizens Consumer Council (VCCC) is a statewide grassroots membership organization. Its members are individual consumers, community and public interest organizations and others committed to the interest of Virginia consumers. By bringing together people and organizations from various parts of the Commonwealth, VCCC gives consumers a way to unite their voices to promote consumer issues and educate consumers. VCCC works with other organizations in Virginia and with consumer groups in other states as a member of the Consumer Federation of America.

INTRODUCTION

In response to the Cramming NPRM, the Commission received initial comments from a wide range of consumer and public interest groups, federal and state law enforcement agencies, public utility advocates, third-party service providers, billing aggregators, local exchange carriers (LEC's) and wireless carriers. Among virtually all commenters there was overwhelming consensus that cramming is a problem that deserves the Commission's attention. However, there was a clear demarcation as to what the Commission should do to address the issue. On one side, consumer and public interest groups, state attorneys general, utility consumer advocates and the Federal Trade Commission urged the Commission to adopt its proposed rules at the very least, and strongly consider more aggressive action such as banning wireline third-party billing. On the other side, the various participants in the third-party billing ecosystem – LEC's, wireless carriers, third-party service providers and billing aggregators – urged the FCC to allow the *status quo* to endure or, at the very least, allow industry participants the flexibility to address cramming through light-touch regulation.

Public Interest Commenters believes that the *status quo* is unacceptable. The record in this proceeding clearly demonstrates that cramming fraud hurts millions of consumers. More than a decade has passed since the industry promised to get its “house in order” and reign in the crooks that perpetrate cramming fraud. Unfortunately, as the Senate Commerce Committee's investigation of cramming vividly illustrated, the practice has only intensified as fraudsters learned to evade industry countermeasures. Far from reigning in the problem, evidence suggests that the three major actors in the third-party billing ecosystem – LEC's, billing aggregators and third-party service providers – continue to turn a blind eye to the rampant abuse of the third-party billing system by fraudsters.

The time has come for the Commission to take more aggressive action to address cramming once and for all. This is a solvable problem. Wireline third-party billing for so-called “enhanced” services is a hopelessly broken billing model. Recent legislative action in Vermont should be a model for common-sense consumer protection regulations

that allow legitimate third-party billed services while prohibiting third-party billing for services that bear little or no relation to the underlying wireline telephone service.

While the scope of cramming fraud – at this time - is not as great on wireless telephone bills, addressing cramming on wireline bills should not preclude the Commission from considering how wireless consumers can be better protected. Sensible disclosure rules and consideration of an opt-in rule for third-party billed charges could do much to prevent the epidemic of wireline cramming fraud from migrating to wireless services.

Finally, the Commission should refrain from adopting rules that preempt stronger state consumer protections against cramming.

DISCUSSION

I. THE RECORD CLEARLY DEMONSTRATES THE SCOPE OF THE CRAMMING PROBLEM

There is clearly a need for the Commission to do more to control cramming fraud. There is wide consensus among commenters, from state attorneys general,² public interest groups³ and state⁴ and federal⁵ consumer protection agencies that cramming continues to plague consumers in a major way. The record in this proceeding is unambiguous. The Senate Commerce Committee's Cramming Report found that a large portion of the \$2 billion in third-party charges placed on consumers' bills

² See e.g. Comments of New York State Attorney General *et al.* CG Docket 11-116 at 6 (filed October 24, 2011) ("In recent years, the Attorneys General have seen a dramatic rise in the number of cramming complaints;").

³ See e.g. Comments of the National Consumers League. CG Docket 11-116 at 4 (filed October 24, 2011) ("The evidence of substantial and widespread consumer harm from cramming is conclusive and strongly suggests that existing anti-cramming measures have failed to control the problem.").

⁴ See e.g. Comments of the National Association of State Utility Consumer Advocates. CG Docket 11-116 at 3 (filed October 24, 2011) ("cramming is a significant and ongoing problem that has affected consumers for over a decade. This observation is, if anything, an understatement.").

⁵ See e.g. Comments of the Federal Trade Commission. CG Docket 11-116 (filed October 24, 2011) ("The evidence gathered by the staff of the Senate Commerce Committee in its cramming investigation demonstrated the pervasive nature of the cramming problem on the third-party telephone billing platform.")

annually are fraudulent.⁶ The Commission notes that unauthorized charges are among the most frequent cause for billing-related complaints and estimates that 10-20 million American households receive crammed charges annually.⁷ In 2010, the Federal Trade Commission received more than 7,000 cramming complaints.⁸ Over the past two decades, the Federal Trade Commission and state law enforcement partners have brought more than two-dozen enforcement actions against suspected crammers.⁹

Despite this record, some industry commenters dispute the scope of the cramming problem or, worse yet, blame consumers for falling victims.

For example, one third-party service provider suggests that “buyer’s amnesia” or “buyer’s remorse” is the cause of widespread allegations of cramming.¹⁰ Public Interest Commenters urge the Commission to reject the “buyer’s amnesia” excuse out of hand as unsupported by the record.

AT&T more substantively disputes the scope of the problem by suggesting that the FCC’s estimates of the extent of the problem are overly broad and speculative. AT&T bases this argument on the fact that only a small fraction – 2,100 -- of its twelve million wireline subscribers who are billed for third-party charges submitted cramming complaints to the company in September 2011.¹¹

AT&T’s analysis of the scope of cramming fraud relies solely on the comparatively few customer complaints it has received in the context of its larger

⁶ See Majority Staff of Senate Committee on Commerce, Science, and Transportation, 112th Cong., Report on Unauthorized Charges on Telephone Bills, (July 12, 2011) (hereinafter “Senate Commerce Committee Cramming Report”) (available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=d2ba4f0b-6e03-4b23-8046-7dc9ea0d25d2) (accessed October 24, 2011).

⁷ See Federal Communications Commission, Cramming Infographic (June 22, 2011). (Available at: <http://transition.fcc.gov/cgb/cramminggraphic.pdf>) (Accessed October 24, 2011).

⁸ See Consumer Sentinel Network Data Book for January-December 2010, Appendix B3: Consumer Sentinel Network Complaint Category Details, at 80, Federal Trade Commission, March 2011. Online: <http://ftc.gov/sentinelVreports/sentinel-annual-reports/sentinel-cy2010.pdf>.

⁹ Comments of the Federal Trade Commission. CG Docket 11-116 at 1. (filed October 24, 2011).

¹⁰ Comments of PaymentOne Corporation. CG Docket 11-116 at 3. (Filed October 24, 2011).

¹¹ Comments of AT&T Inc. CG Docket 11-116 at 5-6. (Filed October 24, 2011).

third-party billed customer base. AT&T's analysis neglects to account for the inherently deceptive nature of cramming. Unauthorized charges on consumers' bills are designed to evade notice on multi-page phone bills. The relatively small charges and confusing descriptions combined with the increasing trend towards paperless billing and automatic payment (which, we argue, decreases the likelihood that consumers will closely monitor their bills) all likely contribute to a significant percentage of cramming charges going unnoticed and hence, unreported.

Further, even if the Commission accepts AT&T's complaint data at face value, it must still conclude that a significant problem exists. AT&T claims to have received 2,100 wireline cramming complaints in a single month. If we assume a constant complaint rate, AT&T receives approximately 25,200 wireline cramming complaints each year. This is more than double the annual wireline and wireless cramming complaint totals for the FCC and FTC combined. That a single local exchange carrier (albeit, the largest in the country) receives such a volume of cramming complaints should validate the Commission's analysis of the scope of the problem.

II. A BAN ON WIRELINE THIRD-PARTY BILLING WITH LIMITED EXCEPTIONS WOULD NOT BE BURDENSOME ON INDUSTRY

Several third-party service provider commenters correctly note that a complete ban on wireline third-party billing would be overly broad, affecting legitimate third-party billed services such as dial-1 long distance, dial around long distance, collect calling, and directory assistance services. It is for this reason that Public Interest Commenters urge the Commission to adopt regulations broadly modeled on successful state legislation in Vermont that prohibits wireline third-party billing with certain exceptions.¹² Specifically, any anti-cramming regulations adopted by the Commission that prohibit wireline third-party billing should exempt providers of services subject to the jurisdiction of the Commission. Services meeting this

¹² 9 V.S.A. § 2466(f) (as amended by 52 Vermont Laws § 78 (2011)). Available at: <http://www.leg.state.vt.us/docs/2012/bills/Passed/H-287.pdf> at 105. (Accessed October 24, 2011).

definition would include dial-1 and dial-around long distance services, collect calling, directory assistance, operator assisted telephone calls and inmate calling services.

A ban on wireline third-party billing should cover so-called “enhanced” services that bear little, if any, relation to the underlying telephone service. Services mentioned in the record which could fall into this category would include, but not be limited to, electronic facsimile, enhanced voicemail, website hosting, web design, search engine optimization, identity theft protection and “technical support.” The record demonstrates that such services are rarely, if ever, legitimately requested by consumers to be billed on their wireline telephone bills.

Several third-party service provider and billing aggregator commenters claim that “millions” of consumers find value in enhanced services such as those listed above and would be adversely impacted by a ban on wireline third-party billing.¹³ Public Interest Commenters contend that the FCC’s finding of a 0.1% consumer usage rate on such services¹⁴ is corroborated by the clear evidence in the FTC’s enforcement action against *Inc21* and other cramming operators which demonstrated that few, if any, consumers charged for enhanced services actually used the service.¹⁵

There is paucity of evidence in the record to dispute the findings of dozens of law enforcement actions, the FCC and FTC’s complaint data and the Senate Commerce Committee’s Cramming Report that third-party billing for enhanced services on wireline telephone bills are significant vectors for fraud. The third-party billing system should not be a source of fraud-related revenue for third-party service providers, billing aggregators and local exchange carriers. Banning the use of this system for enhanced services would not, therefore, deprive legitimate businesses of fairly acquired consumer revenues.

¹³ See e.g. Comments of Billing Concepts, Inc. CG Docket 11-116 at 2. (Filed October 24, 2011).

¹⁴ See Federal Communications Commission, Cramming Infographic (June 22, 2011). (available at: <http://transition.fcc.gov/cgb/cramminggraphic.pdf>) (accessed October 24, 2011).

¹⁵ See e.g. FTC v. INC21.com, No. C 10-00022 WHA (N.D. Cal.) (Memorandum Opinion and Findings in Support of Preliminary Injunction, entered February 19, 2010), at 4. Available at <http://www.ftc.gov/os/caselist/0923171/100301inc21memoopinion.pdf>.

III. THE COMMISSION SHOULD TAKE PROPHYLACTIC MEASURES TO CONTROL WIRELESS CRAMMING

A number of wireless telephone industry commenters argue that whatever regulations the Commission adopts, commercial mobile radio services (CMRS) providers should be exempted entirely from the rules or at least be allowed flexibility to address cramming through voluntary self-regulation.¹⁶

While we agree that the scope of the wireless cramming problem is not as great as wireline cramming at this time, we submit that the potential for cramming fraud on wireless devices is significant. We agree that there is ample evidence of legitimate third-party billed commerce on wireless telephone bills. Services such as downloadable ringtones, games and wallpapers are just a few of the products and services that consumers may want to buy via third-party billing.

We nonetheless urge the Commission to consider prophylactic measures that could protect consumers from cramming on wireless devices. As *Consumers Union et al.* noted in their initial comments, consumers' rights to dispute suspicious charges are unclear, while anti-cramming practices vary widely among wireless carriers.¹⁷ We therefore urge the Commission to consider applying its proposed disclosure rules to wireless carriers, including requirements that third-party service providers' contact information be provided and that all third-party service charges be clearly marked on the bill. We would also urge the Commission to consider the effectiveness of requiring consumer opt-in before any third-party charges can be billed on the wireless phone bill.

IV. FEDERAL ANTI-CRAMMING RULES SHOULD NOT PREEMPT STRONGER STATE PROTECTIONS

¹⁶ See e.g. Comments of Sprint Nextel Corporation. CG Docket 11-116 at 13. (Filed October 24, 2011).

¹⁷ Comments of Consumers Union *et al.* CG Docket 11-116 at 4. (Filed October 24, 2011)

Public Interest Commenters agree with comments submitted by both the California Public Utilities Commission (CPUC) and the New England Commissions regarding federal preemption of state anti-cramming regulations.¹⁸ In no case, should rules adopted by the Commission preempt stronger state laws and regulations against cramming.

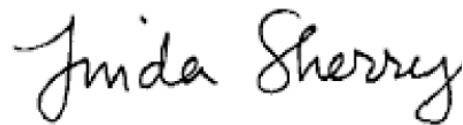
V. CONCLUSION

The record in this proceeding clearly demonstrates that wireline cramming is both a significant and solvable problem. The Commission should reject claims that continued industry self-regulation will adequately protect consumers from cramming fraud. The most effective solution to this problem is to simply prohibit third-party billing for services that are not related to the underlying telephone service. Such a solution would not be burdensome, since the record demonstrates that so-called “enhanced” services are almost entirely fraudulent in nature. By eliminating these services from the wireline third-party billing ecosystem, the Commission would do more to end cramming once and for all than all of the industry’s lackluster efforts over the past decade.

Respectfully submitted,



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¹⁸ Comments of Comments of the California Public Utilities Commission. CG Docket 11-116 at 15 (Filed October 24, 2011); and Comments of the New England Conference of Public Utilities Commissioners. CG Docket 11-116 at 20 (Filed October 24, 2011).



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