

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

**COMMENTS OF CONSUMERS UNION,
CENTER FOR MEDIA JUSTICE, CONSUMER FEDERATION OF AMERICA,
NATIONAL CONSUMER LAW CENTER - ON BEHALF OF ITS LOW-INCOME
CLIENTS, AND PUBLIC KNOWLEDGE**

Consumers Union, Center for Media Justice, Consumer Federation of America, National Consumer Law Center, on behalf of its low-income clients, and Public Knowledge (Public Interest Commenters) respectfully submit these Comments in response to the Commission's Notice of Proposed Rulemaking in *In the Matter of Empowering Consumers to Avoid Bill Shock Consumer Information and Disclosure*.¹ The Commission has correctly found that cramming is a "significant and ongoing problem." According to *Consumer Reports*® magazine, "[c]ramming, a major rip-off in the 1990s that involved placing unauthorized charges on telephone bills, is back with some new twists. Last year [there were thousands of] complaints about cramming charges on landline, cellular, and VoIP accounts. And the growing use of cell

¹ See 26 FCC Rcd 10021 (2011) (Cramming NPRM).

phones as a payment device, for activities such as charitable contributions and mobile banking, creates fertile ground for crammers.”² To protect consumers, especially in these tough economic times, Public Interest Commenters urge the Commission to not only adopt additional disclosure rules, but to also adopt an opt-in mechanism for third-party billing.

I. THE COMMISSION SHOULD REQUIRE AN OPT-IN MECHANISM FOR THIRD-PARTY BILLING

Public Interest Commenters appreciate the Commission’s initiative to require more disclosure regarding third-party billing. However, we believe the Commission should go further and provide an opt-in mechanism to allow for third-party billing. This opt-in mechanism would better protect consumers and should apply to all providers, regardless of technology.

A. Evidence Strongly Suggests Third-Party Billing Is Not Reliable.

The Commission itself has noted that “cramming consistently ranks among the top billing-related complaints received by the Commission involving wireline telephone service.”³ It has noted also that other entities have recognized cramming as a serious problem; the Federal Trade Commission (FTC) has pursued litigation against crammers, state governments and consumer organizations have received complaints, and Congress launched an investigation into cramming.⁴

Indeed, the Senate Committee on Commerce, Science, and Transportation’s investigation into cramming uncovered that despite the Commission’s truth-in-billing requirements, which require disclosure of third-party charges on telephone bills, “thousands of consumers still regularly complain to the [FTC] and the FCC about cramming, while state and federal authorities continue to bring law enforcement actions against individuals and companies for cramming.

² *Consumer Reports*®, “Beat The New ‘Cramming’ Scams,” July 28, 2010.

³ Cramming NPRM at ¶19.

⁴ *See id.* at ¶¶22-36.

These cases have shown that consumers continue to be scammed out of millions of dollars through cramming.”⁵ More importantly, the Cramming Investigation determined that the “evidence obtained and analyzed by Committee staff suggests that third-party billing on landline telephones has largely failed to become a reliable method of payment that consumers and businesses use to conduct legitimate commerce.”⁶

B. Consumers Should Opt-In to Receive Third-Party Charges, Regardless of Technology.

Because of the apparent abuse and costs related to cramming, providers should first receive consumer consent to receive third-party charges on their landline, VoIP, or wireless bills. Although the majority of complaints thus far have been related to wireline service, it is safe to expect that cramming could become as significant of a problem for wireless users unless the Commission acts to protect consumers now. Indeed, the Cramming Investigation found that “cramming on wireless telephone bills appears to be a problem as well.”⁷

Further, as the Cramming Investigation noted, in the 1990’s, “[f]or the first time, telephone numbers became a payment method equivalent to credit card numbers. Consumers and businesses could purchase products or services with their telephone numbers and the charges for the services would later appear on their telephone bills.”⁸ While this was initially thought of as a convenience for consumers, “cramming quickly emerged as an unintended consequence.”⁹

⁵United States Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, Majority Staff, Staff Report for Chairman Rockefeller, “Unauthorized Charges on Telephone Bills” at i (July 12, 2011) (“Cramming Investigation”).

⁶ *Id.* at ii.

⁷ *Id.* at 6.

⁸ *Id.* at i.

⁹ *Id.* at i.

Similarly, there is evidence that cramming on mobile devices could become a larger problem for wireless users.

For example, as mobile phones have become more ubiquitous, the marketplace has produced many ways to pay using mobile phones, including charges directly to prepaid phone deposits and phone bills. According to *Consumer Reports*[®] magazine, for those consumers who allow for direct-to-phone bill charges on wireless devices, their rights in this area are unclear. Any protections that exist are based on the wireless carrier's contract, and they vary widely.

Consumers Union reviewed the contracts of 18 wireless carriers to find out what kind of baseline protections they contained; none provided protections for mobile payment transactions that are as strong as those guaranteed by law when consumers use a credit card or debit card.¹⁰ Consumers may have some rights under state laws or public utility agency rules, but those also vary from state to state.

It is apparent that despite prior efforts to prevent cramming, cramming continues to remain a prevalent problem on landlines and has great potential to become a significant problem for users of mobile devices. To get ahead of the problem and to protect consumers from fraudulent practices, the Commission should ensure that providers first receive consumer consent to receive third-party charges on their landline, VoIP, or wireless bills.

II. THE COMMISSION SHOULD REQUIRE FURTHER DISCLOSURE FOR ALL TECHNOLOGIES.

Public Interest Commenters agree with the Commission that further clear and conspicuous disclosure is necessary to protect consumers from unauthorized costs on their bills.

¹⁰ See Michelle Jun, Senior Attorney, Consumers Union, "Mobile Pay or Mobile Mess: Closing the Gap Between Mobile Payment Systems and Consumer Protections" at <http://www.consumersunion.org/pdf/Mobile-Pay-or-Mobile-Mess.pdf>.

Thus, for consumers who opt-in to receive third-party billing charges, we urge the Commission to strengthen rules that would require landline, mobile, and VoIP providers to separate third-party charges on bills from the provider's charges. We also agree that landline, mobile, and VoIP providers would have to include, on all telephone bills and on their websites, a notice that consumers may file complaints with the FCC and provide the Commission's contact information for the submission of complaints.¹¹

Additionally, we urge the Commission to require landline, mobile, and VoIP providers to provide accurate contact information for third-party vendors on their telephone bills. This is especially necessary since the Cramming Investigation found that telephone companies were not helpful or responsive to consumer complaints.¹² Thus, having the ability to contact the third-party biller is critical and can only be accomplished through accurate contact information.

Finally, we urge the Commission to require landline, wireless, and VoIP providers to screen third parties for prior rule violations or other violations of law before agreeing to place their charges on telephone bills. As the Cramming Investigation found, “[b]ecause telephone companies do not have their own processes to determine if a consumer has ‘authorized’ a charge, once a company engaged in cramming has obtained a consumer’s telephone number, it is a simple process to have the charge placed on the consumer’s telephone bill.”¹³ Thus, it is clear that a process must be in place that protects consumers from charges by third-parties that have already violated the law. Plus, since providers act as “gatekeepers to their billing and collection systems, and they distribute the revenue that third-party vendors generate by placing charges on

¹¹ See Cramming NPRM at ¶¶50-51.

¹² See Cramming Investigation at 41.

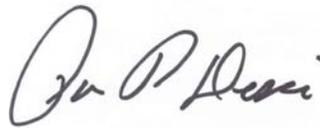
¹³ *Id.* at 12.

their customers' telephone bills" these providers should ensure that bad actors are not placing third-party charges on consumer bills.¹⁴

III. CONCLUSION

It is apparent that cramming is a prevalent problem. Thus, Public Interest Commenters urge the Commission to not only adopt additional disclosure rules, but to also adopt an opt-in mechanism for third-party billing. This is an appropriate and reasonable method to protect consumers, especially in these tough economic times.

Respectfully Submitted,



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¹⁴ Cramming Investigation at 36.