

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, NATIONAL CONSUMER LAW CENTER - ON
BEHALF OF ITS LOW-INCOME CLIENTS, AND PUBLIC KNOWLEDGE**

Consumers Union, Center for Media Justice, National Consumer Law Center, on behalf of its low-income clients, and Public Knowledge (Public Interest Commenters) respectfully submit these Reply Comments in the Commission’s Notice of Proposed Rulemaking in *In the Matter of Empowering Consumers to Avoid Bill Shock Consumer Information and Disclosure*.¹ Specifically, Public Interest Commenters respond to Comments that suggest that additional rules to protect consumers from cramming are not necessary or that the Commission does not have the authority to adopt cramming rules applicable over all relevant platforms.

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

I. ENFORCEABLE RULES WILL BEST PROTECT CONSUMERS FROM CRAMMING.

Some Commenters have suggested that cramming either is not a significant problem or that regulations are not necessary and voluntary measures will sufficiently protect consumers.² However, numerous Commenters, including state Attorneys General³ and the Federal Trade Commission,⁴ have found that cramming is a widespread problem that must be dealt with by the Commission.

The record in this proceeding provides a significant amount of evidence which verifies cramming is a prevalent issue for wireline services. For example, both the Federal Trade Commission and Senate Commerce Committee found there are few, if any, legitimate uses for landline third party billing.⁵ Additionally, the Virginia State Corporation Commission Staff found that “there is scant evidence of any consumer benefits derived from third-party billing” and that “cramming has created significant and sustained consumer harm....”⁶ The Minnesota Attorney General also concluded that cramming “is one of the most – if not the most – common telecommunications-related complaints that Minnesota consumers have filed with this Office in recent years.”⁷

Similarly, the Senate Commerce Committee’s report found that cramming in fact appears to be a problem on wireless bills.⁸ Moreover, one of the nation’s largest consumer markets,

²See e.g., Comments of AT&T, Inc. at 5-8; Comments of Verizon and Verizon Wireless at 2-9.

³See e.g., Comments of State Attorneys General from NY, OR, TN, MD, IN, KY, MS, NV, IA, NH, AK, DE, GA, WA, NM, and AL at 6-10.

⁴See e.g., Comments of the Federal Trade Commission, at 3-4, (FTC Comments).

⁵See FTC Comments at 3; Staff Report for Chairman Rockefeller, “Unauthorized Charges on Telephone Bills,” Jul. 12, 2011 at ii (Staff Report for Chairman Rockefeller).

⁶Comments of Virginia State Corporation Commission Staff at 6.

⁷Comments of Minnesota Attorney General Lori Swanson at 2.

⁸See Staff Report for Chairman Rockefeller at 6.

California, already applies its state cramming rules to wireless bills.⁹ Cramming prevention is particularly important in light of the increasing use of mobile payment systems.¹⁰ For instance, in 2010, mobile payments reached \$16 billion in gross dollar volume and are expected to increase over 1200% to \$214 billion by 2015.¹¹ The potential for false third party billing charges is ripe in such a rapidly expanding industry, and the Commission must act now to protect consumers from potentially billions in financial harm.

Based on the evidence in the record, it is clear that cramming is and will continue to impact consumers, regardless of technology. It is imperative the Commission act quickly to protect consumers from further harm. Thus, Public Interest Commenters urge the Commission to require an opt-in mechanism for third party billing, regardless of technology, as well as further disclosure for all technologies.

II. THE COMMISSION HAS THE LEGAL AUTHORITY TO REQUIRE AN OPT-IN MECHANISM AND FURTHER DISCLOSURE FOR ALL TECHNOLOGIES.

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

⁹See Comments of the California Public Utilities Commission and the People of the State of California at 8-11.

¹⁰See 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>.

¹¹*Id.* at 1.

providers would have to include, on all telephone bills and on their websites, a notice that consumers may file complaints with the Commission and provide the Commission's contact information for the submission of complaints.¹²

However, several parties argue the Commission does not have the authority to regulate third party billing services provided by carriers¹³ or that the Commission does not have the authority to adopt cramming rules with respect to data subscribers.¹⁴ However, the Communications Act ("the Act") clearly provides the Commission with the authority to ensure that all wireline and wireless providers (including in the context of VoIP and data providers) engage in practices that are honest, consistent, and easy to understand. Thus, the Commission has the authority to adopt not only additional disclosure and billing rules, but to adopt also an opt-in mechanism for third-party billing.

Additional Disclosure and Billing Rules and Adoption of Opt-In Requirements

Pursuant to the Act, the Commission is required to ensure carriers' practices and charges are "just" and "reasonable."¹⁵ Section 201(b) clearly gives the Commission the authority to adopt disclosure and billing rules. Indeed, the Commission has previously determined that it has the authority to enact disclosure and cramming type rules pursuant to section 201(b):

Section 201(b) requires that all carrier charges, practices, classifications, and regulations "for and in connection with" interstate communications service be just and reasonable, and

¹²See Cramming NPRM at ¶¶ 50-51.

¹³See Comments of AT&T, Inc., at 17; see Comments of MetroPCS Communications, Inc, at 16 (suggesting the Commission does not have authority to regulate charges for non-telecommunications services, primarily disclosures for third party services).

¹⁴See Comments of CTIA at 19.

¹⁵See 47 U.S.C. §§ 201(b), 332(c)(1)(A).

gives the Commission jurisdiction to enact rules to implement that requirement.¹⁶

Thus, implementing requirements to protect consumers from deceptive and unknown charges on a carrier's bill clearly falls within a charge or practice for which the Commission can adopt rules.

Similarly, the Act further authorizes the Commission to “determine and prescribe what will be the just and reasonable charge ... and what classification, regulation, or *practice* is or will be just, fair, and reasonable....”¹⁷ Here, the Commission clearly has the authority to determine that it is a reasonable and fair practice for carriers to implement an opt-in mechanism for consumers to be charged by third party billers.

Application of Opt-in and Disclosure Requirements to All Platforms

The Commission has previously determined that it has the jurisdiction to protect and promote consumer protections regarding billing practices for both wireline and wireless services.¹⁸ The Commission has also exercised authority over VoIP¹⁹ and data providers.²⁰

More importantly, consumers today can purchase an array of formerly separate voice and data (and video) services from a single provider offering them on either a wireless or wireline

¹⁶Federal Communications Commission, *In the Matter of Truth-In-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 7492 (1999) at ¶¶ 21, 24 (First Truth-In-Billing Order).

¹⁷*See* 47 U.S.C. §§ 205(a) (emphasis added).

¹⁸*See e.g., In the Matter of Truth-in-Billing and Billing Format, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, 20 FCC Rcd 6448 (2005) at ¶ 5 (Second Truth-in-Billing Order).

¹⁹*See e.g., Federal Communications Commission, In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, *Declaratory Ruling*, 25 FCC Rcd 15651, ¶¶ 6, 15 (2010) (Commission requires VoIP providers to comply with reporting and contribution requirements under the Universal Service Fund, E911, and Communications Assistance for Law Enforcement Act obligations).

²⁰Federal Communications Commission, *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, FCC 11-52, Appendix C ¶¶ 3, 7 (adopting data roaming requirement “for facilities-based providers of commercial mobile data services regardless of whether these entities are also providers of commercial mobile radio service.”).

platform – often paying for all such services on a single bill. The Commission therefore should apply uniform standards for each type of service and technological platform, protecting consumers equally without respect to arbitrary distinctions based on historically disparate regulatory treatment of former service “silos.” As the Commission found more than a decade ago, “[i]n a world of bundled packages and multiple service providers, clear and truthful bills are paramount.”²¹

Furthermore, the Commission has Title I authority to extend its rules to data and VoIP providers. Generally, the Commission can use its ancillary jurisdiction in circumstances where: (1) the Commission’s general jurisdictional grant under Title I covers the subject of the regulations and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.²²

Title I clearly grants the Commission jurisdiction to adopt rules that govern the practices of data and VoIP providers. The Commission explicitly stated in its Internet Policy Statement that although data services like broadband Internet access were no longer considered a Title II service,²³ the Commission would assert jurisdiction over broadband services pursuant to Title I, and would not hesitate to impose obligations “necessary to ensure that providers of telecommunications for Internet access or Internet Protocol-enabled (IP-enabled) services” operate in a manner that delivers services made “affordable, and accessible to all consumers.”²⁴

²¹See First Truth-in-Billing Order, 14 FCC Rcd 7492 at ¶ 14.

²²See *Am. Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

²³While Public Interest Commenters may dispute the correctness of this determination, for purposes of these Comments, we acknowledge that the Commission at this time would be more likely to issue rules or regulation covering data and VoIP practices pursuant to Title I, rather than Title II, of the Act.

²⁴Internet Policy Statement, 20 FCC Rcd 14986 at ¶ 4 (2005).

The Supreme Court also noted that the Commission “remains free to impose regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction.”²⁵

Adopting consumer protections is reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities. The Commission has previously noted that in adopting the Act:

Congress intended to facilitate the introduction by private firms of new consumer services, service providers and technologies by promoting the development of competition and deregulation in all telecommunications markets. The Act instructs the Commission and state public utility commissions to open telecommunications markets to competition and to reform universal service support mechanisms to ensure their consistency with competitive markets. *The proper functioning of competitive markets, however, is predicated on consumers having access to accurate, meaningful information in a format that they can understand.* Unless consumers are adequately informed about the service choices available to them and are able to differentiate among those choices, they are unlikely to be able fully to take advantage of the benefits of competitive forces.²⁶

Thus, the Commission has ancillary jurisdiction to protect consumers from cramming by ensuring that they have the choice to opt-in (rather than opt-out) for third party billing services and have accurate, meaningful information to understand their bills with respect to third party billing services.

III. CONCLUSION

It is apparent that cramming is a prevalent problem. Thus, Public Interest Commenters urge the Commission to use its clear statutory authority to not only adopt additional disclosure

²⁵*National Cable & Telecom. Ass’n v. Brand X Internet Svcs.*, 545 U.S. 967 (2005).

²⁶Federal Communications Commission, *In the Matter of Truth-In-Billing and Billing Format [Corrected Version], First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 7492 at ¶ 2 (1999) (emphasis added).

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,

A handwritten signature in black ink, appearing to read "Parul P. Desai". The signature is written in a cursive, flowing style.

Parul P. Desai, *on behalf of Public Interest Commenters*
Policy Counsel
Consumers Union
1101 17th Street, NW
Suite 500
Washington, D.C. 20036

December 5, 2011