

**Before the
Federal Communications Commission
Washington, D.C. 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)	CC Docket No. 98-170

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, and Clyburn issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we seek comment on proposed rules designed to assist consumers¹ in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as “cramming.”² The

¹ “Consumers,” as used herein, refers to all users or purchasers – including residential or business – of a product, good, or service.

² The Commission has concluded that placing unauthorized charges for or in connection with telephone service constitutes an unjust and unreasonable practice in violation of Section 201(b) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 201(b). *See, e.g., Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (imposing a forfeiture for a company’s practices of cramming membership and other unauthorized fees on consumer telephone bills). As discussed in greater detail below, the cramming entity can be the customer’s own telecommunications service provider or an unaffiliated third party that may or may not be a common carrier. These third-party charges can be for additional telephone services or unrelated products and services, such as chat lines, diet plans, and horoscopes.

record compiled in this proceeding to date, including the Commission's own complaint data, suggests that cramming is a significant and ongoing problem that has affected consumers for over a decade, and has drawn the concern of Congress, states, and other federal agencies.³ In fact, cramming is the most common billing-related wireline complaint after the categories for rates and for billing credits, refunds, or adjustments that were promised by carriers but not received.⁴ The substantial volume of wireline cramming complaints that the Commission, the Federal Trade Commission ("FTC"), and states continue to receive suggests the ineffectiveness of voluntary industry practices and highlights the need for consumer safeguards.

2. Moreover, reports of cramming likely understate the magnitude of the problem because consumers face significant challenges in detecting and preventing unauthorized charges on their telephone bills. Because many consumers are unaware that third parties can place charges on their telephone bills, they fail to recognize the need to review their bills to identify charges for products or services they have not authorized. The growing use of electronic billing and automatic payments exacerbates the difficulties consumers face in detecting unauthorized charges on their telephone bills. In addition, those engaged in the practice of cramming often use schemes, such as charging only small amounts or labeling the charges in a way that makes them appear to be associated with a subscribed-to telecommunications service,⁵ designed to minimize the possibility of detection.⁶ As a result, unauthorized charges can often go undetected for substantial periods of time, resulting in significant costs to consumers.⁷

³ See *infra* Sec. III; see also FTC Reply Comments; 25 State AGs Joint Comments. Unless otherwise noted, all comments and reply comments referenced herein refer to submissions in response to the Commission's *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158; CC Docket No. 98-870; WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380 (2009) ("Consumer Information NOI"). Those comments and reply comments were due by October 13 and 29, 2009, respectively. A complete list of commenters in that proceeding including the full commenter names associated with the abbreviations used herein, can be found in Appendix B hereto.

⁴ See FCC Quarterly Reports on Informal Consumer Inquiries and Complaints: <http://transition.fcc.gov/cgb/quarter/welcome.html>.

⁵ Crammed charges often use labels like "voicemail" or "web services," which likely make the charges look like they are associated with services a phone company normally provides. See Press Release, Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands (Mar. 31, 2011) ("The services typically offered . . . include voicemail services, electronic fax services, webhosting, online gaming, and e-mail."), available at http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=165806cd-d931-4605-aa86-7fafc5fd3536&MonthDisplay=3&YearDisplay=2011.

⁶ See, e.g., 25 State AGs Joint Comments at 9.

⁷ For example, a recent FTC investigation found that one company had crammed unauthorized charges on the telephone bills of thousands of consumers and small businesses over a five year period resulting in millions of dollars in charges for services they never agreed to buy. See FTC Halts Massive Cramming Operation That Illegally Billed Thousands, www.ftc.gov/opa/2010/03/inc21.shtm (rel. March 1, 2010). See also *FTC v. Inc21.com Corporation*, 745 F. Supp. 2d 975 (N.D. Ca. 2010).

3. Although, as referenced above, the Commission has determined that the practice of cramming is an unreasonable practice in violation of Section 201(b) of the Act⁸ and has adopted Truth-in-Billing rules that are designed in part to address cramming,⁹ the volume and type of consumer complaints show that additional safeguards are necessary to enable consumers to protect themselves from cramming. Therefore, we propose rules that would require wireline carriers to: (1) notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their websites, of the option to block third-party charges from their telephone bills, if the carrier offers that option; and (2) place charges from non-carrier third-parties in a bill section separate from carrier charges. In addition, we propose rules that would require both wireline and Commercial Mobile Radio Service (“CMRS”) carriers to include on all telephone bills and on their websites the Commission’s contact information for the submission of complaints.¹⁰ We also seek comment on other proposals suggested in the record, including blocking all third-party charges.

4. In the past, cramming has been a problem associated primarily with wireline telephone bills. More recent evidence, however, raises a similar concern with unauthorized charges on CMRS bills, such as those of providers of wireless voice service.¹¹ Therefore, we seek comment

⁸ See, e.g., *Long Distance Direct, Inc.*, *supra*; *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, FCC-11-89 (rel. Jun. 16, 2011) (\$4.2 million proposed forfeiture); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, FCC-11-91 (rel. Jun. 16, 2011) (\$3 million proposed forfeiture); *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, FCC-11-90 (rel. Jun. 16, 2011) (\$3 million proposed forfeiture); *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, FCC-11-88 (rel. Jun. 16, 2011) (\$1.5 million proposed forfeiture) (together, the “June 2011 NALs”).

⁹ See *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492 (1999) (“First Truth-in-Billing Order”), Order on Reconsideration, 15 FCC Rcd 6023 (2000) (“Order on Reconsideration”); *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) (“Second Truth-in-Billing Order”) *vacated in part sub nom. Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006) (invalidating preemption of certain state requirements for CMRS bills).

¹⁰ We emphasize that nothing on which we seek comment herein inhibits the ability of the Commission to act upon complaints relating to unauthorized charges pursuant to its existing authority under Section 201 while this proceeding is pending. Rather, the proposals set forth herein are intended to explore *additional* safeguards designed to inform consumers about cramming and allow them to protect themselves from the practice.

¹¹ Approximately 16 percent of cramming complaints received by the Commission from 2008-2010 relate to wireless service. See generally FCC Quarterly Reports on Informal Consumer Inquiries and Complaints. The cramming complaint numbers were determined by Commission staff from the set of complaint data used to produce these reports. According to complaint data from the FTC, approximately ten percent of cramming complaints received in 2010 concerned wireless phone bills. See Consumer Sentinel Network Data Book for January-December 2010, Appendix B3: Consumer Sentinel Network Complaint Category Details, at 80: <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>; see also July 19, 2010 announcement by the Attorney General of Florida of a \$600,000 settlement with T-Mobile concerning unauthorized billing for third-party charges on consumers’ cell phone bill including charges for “free” ringtones and other unauthorized cell phone content and third party mobile content subscription services: http://myfloridalegal.com/_852562220065EE67.nsf/0/436AA6C513FB479D8525776500636836?Open&Highlight=0,t,mobile,%24600,000. The Florida AG’s office has reached similar settlements with AT&T and Verizon Wireless.

on whether we should extend any of the other proposed protections discussed herein to consumers of CMRS.

5. We believe that our proposals will offer clarity to consumers and carriers regarding the Commission's commitment to protecting consumers from cramming. By proposing these measures, we hope to empower consumers to prevent, detect, and resolve issues relating to the long-standing consumer problem of cramming.

II. BACKGROUND

A. How Cramming Occurs

6. The United States Senate Committee on Commerce, Science, and Transportation, which is investigating wireline cramming issues, describes cramming as follows:

Many U.S. telephone companies allow vendors to place third-party charges on their customers' [wire]line telephone bills. Once a vendor obtains a telephone company's approval to place third-party charges on its telephone bills, a consumer's telephone number works like a credit card or debit card account number for that vendor. An approved vendor can accept a consumer's telephone number as a means of payment and can place a charge for a product or service on the consumer's telephone bill. Cramming occurs when the third-party charge placed on a consumer's telephone bill is unauthorized.¹²

7. Information about the practice of cramming obtained during recent investigations by the Commission's Enforcement Bureau is somewhat more detailed. Cramming generally involves at least three parties – the customer, the carrier that generates the bill, and the crammer – and usually also involves a billing aggregator.

8. In a typical cramming case, the cramming company and billing aggregator need only an active telephone number for the targeted consumer, which can be obtained from a telephone directory, to place unauthorized charges on the consumer's telephone bill. Pursuant to a contract between them, the billing aggregator supplies the carrier with the consumer's telephone number and the amount to be charged, and requests that the charge be placed on the consumer's telephone bill. The billing aggregator generally does not need the consumer's name or address for the cram to take place. Proof of consumer authorization is not generally provided to or required by the carrier. The carrier may not require the aggregator to clearly identify the good, product, or service for which the consumer is being charged. The process works similarly if the vendor contracts directly with the carrier rather than using an intermediary billing aggregator.

¹² See http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=4b968841-f3e8-49da-a529-7b18e32fd69d&MonthDisplay=3&YearDisplay=2011.

9. If the consumer pays the crammed charge, the carrier remits the payment to the aggregator or to the vendor, depending upon whether an aggregator is involved. In addition, the vendor compensates the billing aggregator and the carrier for their services. The carrier is compensated by the vendor or the billing aggregator for the billing-and-collection service it has provided. The billing aggregator is compensated by the vendor to manage transactions with the carrier.¹³ The carrier also may receive additional compensation from the billing aggregator or vendor for each consumer complaint or inquiry it handles regarding the crammed charge. Similarly, the billing aggregator may be compensated by the vendor for handling interactions with the consumer regarding the crammed charge.

B. Voluntary Industry Practices

10. In 1998, the Commission undertook an initiative, in conjunction with the nation's local exchange carriers ("LECs") and providers of billing-and-collection service, to address the problem of unauthorized charges on consumer telephone bills. The industry responded to the Commission's request with a voluntary code of "best practices" designed to prevent such charges.¹⁴ According to these best practices: (1) bills should be comprehensible, complete, and include information the consumer may need to discuss and, if necessary, dispute billed charges with the carrier; (2) consumers should be provided with options to control whether a third party may include charges for its products and services in their telephone bills; (3) consumer authorization of services ordered should be appropriately verified; (4) the LECs should screen products, services, and third-party service providers prior to allowing their charges on the telephone bills; (5) clearinghouses that aggregate billing for third-party providers and submit that billing to LECs should ensure that only charges that have been authorized by the customer would be included; (6) the LECs should continue to educate consumers as to their rights and the process for resolution of disputes; and (7) each LEC should provide appropriate law enforcement and regulatory agencies, as well as other LECs, with various categories of data to assist in controlling carrier inclusion of unauthorized charges on a subscriber's bill.¹⁵

C. Truth-in-Billing

11. In 1999, the Commission released the *First Truth-in-Billing Order* to address concerns over growing consumer confusion related to billing for telecommunications services and an increase in the number of entities willing to take advantage of this confusion through practices such as "slamming" and cramming.¹⁶ The Commission concluded that Truth-in-Billing

¹³ See June 2011 NALs *supra* note 8; see also *FTC v. Inc21.com*, 745 F. Supp. 2d at 994-995 (describing cramming similarly).

¹⁴ See Anti-Cramming Best Practices Guidelines, http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html ("Best Practices Guidelines").

¹⁵ Statement of William Kennard, Chairman, Federal Communications Commission on the Release of Local Exchange Company Best Practices to Combat "Cramming," 1998 WL 406058 (Jul. 22, 1998); see also Best Practices Guidelines.

¹⁶ See *First Truth-in-Billing Order*, 14 FCC Rcd at 7494, para. 3 ("Slamming" is the unlawful practice of changing a subscriber's selection of a provider of telephone service without that subscriber's knowledge or permission.). See also 47 U.S.C. § 258 ("Illegal changes in subscriber carrier selections").

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requirements were necessary to deter carriers from engaging in unjust and unreasonable practices, including cramming, in violation of Section 201(b) of the Act.¹⁷ Citing as its authority Sections 201(b) and 258(a) of the Act,¹⁸ the Commission chose to adopt a flexible approach by adopting “broad, binding principles” to promote truth-in-billing, rather than mandating more detailed rules to govern the details or format of carrier billing practices.¹⁹

12. In general, those Truth-in-Billing principles, which are codified at section 64.2401 of the Commission’s rules,²⁰ require that customer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new provider (*i.e.*, one that did not bill the customer for service during the last billing cycle); (2) contain full and non-misleading descriptions of the charges that appear therein; and (3) contain clear and conspicuous disclosure of any information that the consumer may need to make inquiries about, or to contest charges on the bill.²¹

13. In the 2005 *Second Truth-in-Billing Order*, the Commission reiterated and emphasized the prohibition against misleading information on telephone bills and provided examples of improper line-item charges and descriptions.²² It also extended the requirements concerning charge descriptions to CMRS carriers.²³

D. Consumer Information and Disclosure Notice of Inquiry

14. On August 27, 2009, the Commission adopted the *Consumer Information NOI* to explore other possible ways to protect consumers and empower them to determine their best choices among the array of options available to them in the rapidly evolving marketplace for communications services and plans.²⁴ In relevant part, the *Consumer Information NOI* noted that

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¹⁷ See *First Truth-in-Billing Order*, 14 FCC Rcd at 7506, para. 24.

¹⁸ Section 201(b) requires that common carriers’ “practices ... for and in connection with ... communications service, shall be just and reasonable, and any such ... practice ... that is unjust or unreasonable is hereby declared to be unlawful” 47 U.S.C. § 201(b). Section 258(a) makes it unlawful for any telecommunications carrier to “submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.” 47 U.S.C. § 258(a).

¹⁹ See *First Truth-in-Billing Order*, 14 FCC Rcd at 7498, para. 9.

²⁰ See 47 C.F.R. § 64.2401.

²¹ See *First Truth-in-Billing Order*, 14 FCC Rcd at 7496, para 5; see also 47 C.F.R. § 64.2401.

²² See *Second Truth-in-Billing Order*, 20 FCC Rcd. at 6460-6462, paras. 25-29. For example, the Commission indicated it is misleading to represent discretionary line item charges in any manner that suggests such line items are taxes or charges required by the government. *Id.* The Commission also eliminated the prior exemption for CMRS carriers from the requirement that billing descriptions be brief, clear, non-misleading and in plain language. *Id.* at 6456, para. 16.

²³ See *id.* at 6456-6458, paras. 16 – 20.

²⁴ See *Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP-Enabled Services*, Notice of Inquiry, 24 FCC Rcd. 11380 (2009) (“*Consumer Information NOP*”).

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consumers continued to file complaints about the inclusion of unauthorized charges on their bills,²⁵ and questioned whether the Truth-in-Billing rules have been effective in making telephone bills easier to understand.²⁶ To better understand the nature and magnitude of the problem, the Commission sought comment on the extent to which cramming remains a problem for consumers and why.²⁷

15. In response to the *Consumer Information NOI*, several state and federal regulatory and law enforcement entities, as well as consumer organizations, filed comments stating that unauthorized charges continue to be a substantial problem for consumers.²⁸ For example, the FTC stated that it receives numerous complaints relating to unauthorized charges on telephone bills.²⁹ These commenters noted that consumers often have difficulty detecting unauthorized charges on their bills. One reason for these difficulties cited was that third parties often impose low dollar amounts for their crammed services in an attempt to evade detection by consumers.³⁰ Another was the lack of consumer awareness that third parties can even use telephone bills as a mechanism to bill for their products or services.³¹

16. These commenters have suggested a number of measures to address cramming. These include: (1) requiring the telecommunications carrier to offer customers the option to block third-party billing;³² (2) requiring carriers to undertake due diligence measures to screen each third-party service provider as well as the billing aggregator, if any, before permitting a third-party charge to be placed on the carrier's telephone bill;³³ (3) enhancing cooperation among law

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²⁵ See *id.* at 11393, para. 41.

²⁶ See *id.* at 11392, para. 36.

²⁷ See *id.* at 11393-94, para. 41.

²⁸ See, e.g., CPUC Comments at 2-5; CUB Comments at 5 (observed a dramatic increase in the amount of cramming in recent years); Minn. AG Comments at 1-2 (cramming is a substantial problem for consumers in Minnesota); NASUCA Comments at 42-56 (cramming remains a serious problem); 25 State AGs Joint Comments at 9-10 (cramming remains a problem); UCAN Comments at 2, 9-11 (cramming continues to be a problem); FTC Reply Comments at 9 (cramming is a significant area of increasing consumer complaint).

²⁹ See FTC Reply Comments at 9. The FTC, which has limited jurisdiction over telecommunications carriers, has primarily targeted third-party vendors that charge for services that are not common carrier services, as well as billing aggregators, in actions to address cramming. See *id.* at 10; 15 USC §45(a)(2) (limiting the FTC's jurisdiction to prohibit unfair practices by excluding those involving "common carriers subject to the Acts to regulate commerce....").

³⁰ See, e.g., 25 State AGs Joint Comments at 9.

³¹ See, e.g., Minn. AG Comments at 6-7; 25 State AGs Joint NOI Comments at 9.

³² See, e.g., CPUC Comments at 4-5; CUB Comments at 5; Minn. AG NOI Comments at 6-7; 25 State AGs Joint Comments at 10; UCAN Comments at 9; FTC Reply Comments at 15.

³³ See, e.g., UCAN Comments at 9; FTC NOI Reply Comments at 12. Although some third-party vendors submit charges directly to telephone companies for placement on the telephone bill, many contract with a billing
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enforcement entities including sharing of complaints among state and federal regulators;³⁴ (4) clarifying that consumers may find unauthorized charges not only on their LEC bills but also on bills for CMRS and Voice over Internet Protocol (“VoIP”) service;³⁵ and (5) requiring that third-party billers be identified and provide their contact information on the telephone bill.³⁶

17. By contrast, industry commenters contend that no regulatory mandates are necessary to address cramming.³⁷ They argue that all carriers have incentives to protect subscribers from unauthorized charges and take adequate measures to do so.³⁸ These alleged safeguards include complying with all federal and state laws, taking corrective measures against third-party billers that exceed specified complaint levels, pre-screening and monitoring service providers, offering blocking options, and expeditiously resolving complaints relating to disputed charges.³⁹

18. As a follow-up to the comments received in response to the *Consumer Information NOI*, during the first quarter of 2011, Commission staff met with numerous telecommunications service providers and consumer advocacy groups to discuss the various issues consumers face, including the practice of cramming.⁴⁰

III. EVIDENCE OF A CRAMMING PROBLEM

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aggregator. The billing aggregator supplies information to the telephone companies about the vendor’s business, submits the third-party charges to the telephone company, and often fields any complaints and inquiries from consumers.

³⁴ See FTC Reply Comments at 12.

³⁵ See NASUCA Comments at 42.

³⁶ See, e.g., Billing Concepts Comments at 4 (recommends inclusion of a toll free number for the service provider); CPUC Comments at 5 (in favor of inclusion of the identity and contact information for the actual third party service provider); FTC Reply Comments at 13 (seeks inclusion of the contact information for whichever party is best able to resolve any disputes relating to the charge).

³⁷ See, e.g., Qwest Comments at 32-34; Verizon Comments at 54.

³⁸ See, e.g., Verizon Comments at 48; Qwest Reply Comments at iii, 10.

³⁹ See, e.g., AT&T Comments at 16; Sprint Comments at 20-22; Verizon Comments at 42-48; Qwest Reply Comments at 9-14.

⁴⁰ See, e.g., Letter from Olivia Wein, Staff Attorney, National Consumer Law Center, to Marlene Dortch, Secretary, FCC (February 3, 2011) (CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36) (“NCLC Letter”); Letter from John Breyault, Vice President of Public Policy, Telecommunications and Fraud, National Consumers League, to Marlene Dortch, Secretary, FCC (February 4, 2011) (CG Docket No. 09-158) (“NCL Letter”); Letter from Breck Blalock, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC (February 9, 2011) (CG Docket No. 09-158, GC Docket No. 10-207) (“Sprint Feb. 9 Letter”); Letter from Chris Riley, Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, FCC (February 9, 2011) (Docket Nos. 10-207, 09-158, 98-170, 04-36) (“Free Press Letter”); Letter from Matthew F. Wood, Media Access Project, to Marlene Dortch, FCC (Feb. 11, 2010) [sic] (CG Docket No. 10-207) (“MAP Letter”).

A. Federal and State Agencies

1. Commission Inquiries and Complaints

19. The Commission tracks and reports both inquiries and informal complaints that consumers file with it. During 2008 to 2010, the Commission received between 2,000 and 3,000 cramming complaints each year.⁴¹ As noted above, cramming consistently ranks among the top billing-related complaints received by the Commission involving wireline telephone service.⁴² Of the cramming complaints received from 2008 to 2010, 82 percent related to wireline consumers and 16 percent to wireless consumers.⁴³ Because the record in this proceeding suggests that consumers are often unaware such charges can even be placed on their bills, that efforts are made by third parties to avoid drawing attention to unauthorized charges, and that consumers are often unaware of how to file complaints disputing such charges, the number of cramming complaints likely substantially understates the actual extent of this problem.⁴⁴

20. We note that, as a result of one recent Commission investigation regarding a seemingly erroneous usage charge, Verizon Wireless performed an internal review and concluded that approximately 15 million of its customers were, or may have been, erroneously billed data charges of \$1.99 per megabyte (“MB”) dating back to November 2007 and continuing for a period of years. The Commission and Verizon Wireless resolved the matter by entering into a Consent Decree requiring Verizon Wireless to issue refunds to its affected customers totaling approximately \$52.8 million, make a \$25 million voluntary payment to the U.S. Treasury, and implement a compliance plan, with periodic reports to the Commission, designed to eliminate cramming.⁴⁵

21. As noted above, on June 16, 2011, the Commission released four Notices of Apparent Liability for Forfeiture (“NALs”), proposing an aggregate of \$11.7 million in forfeitures against a number of long distance resellers for apparent cramming violations. The actions came in response to consumer complaints to the Commission, in which the complaining parties stated that they did not sign up for the service in question, had no contact with the reseller prior to

⁴¹ See generally FCC Quarterly Reports on Informal Consumer Inquiries and Complaints (2008-2010). The cramming complaint numbers were determined by Commission staff from the set of complaint data used to produce these reports. During the years of 2008, 2009 and 2010, the Commission received 2,157; 3,181; and 2,516 annual cramming-related complaints, respectively.

⁴² *Id.*

⁴³ *Id.* The remaining two percent of complaints reflect those that do not make clear whether the carrier at issue is wireline or wireless.

⁴⁴ See, e.g., Minn. AG Comments at 4-7; 25 State AGs Joint Comments at 9; see also *FTC v. Inc21.com*, 745 F. Supp. 2d 975 (Court relied upon a survey of defendant crammer’s customers showing that less than 5% of them were aware that the crammed charges were on their bills); see also FCC complaints 10-C00196562-1 (“charges appear ... as a line item that is not obvious unless a customer scrolls for such detail”); 10-C00203445-1 (“[t]hese are very small charges which can be easily overlooked”); 10-C00210315-1 (charges included in a bill for two years before subscriber noticed and complained); 10-CO0185133-1 (subscriber did not realize charge was from a third party because it appeared to be a valid “voice mail” charge).

⁴⁵ See *Verizon Wireless Data Usage Charges* (Consent Decree), 25 FCC Rcd. 15105 (Enf. Bur. 2010).

being billed for the service, and never used the service. In each case, the reseller billed for its services using a billing aggregator, which provided the consumer's telephone number to the local telephone company, which then placed the charges on the consumer's telephone bill. The unauthorized charges appeared on thousands of telephone bills. In each NAL, the Commission concluded that the reseller apparently operated a constructively fraudulent enterprise, in which it billed consumers for services that they never ordered or authorized.⁴⁶

2. Federal Trade Commission

22. The FTC has been pursuing litigation against crammers. In one case, a survey relied upon by the court in granting the FTC's motion for summary judgment and denying the defendants' cross motion showed that only five percent of the "customers" of the defendant affiliated group of companies knew that the defendants' charges were on their telephone bills.⁴⁷

23. In response to the 2009 *Consumer Information NOI*, the FTC filed Comments confirming that cramming is a significant area of increasing consumer complaints.⁴⁸ At that time, the FTC stated that it had received more than 3,000 consumer complaints relating to unauthorized charges on telephone bills in the previous 12 months.⁴⁹ The FTC reported receiving over 7,000 complaints in 2010 relating to unauthorized charges on telephone bills.⁵⁰ It commented that placing unauthorized charges on telephone bills harms consumers because they are likely to pay them, simply because they appear on their bills.⁵¹ The FTC also noted that, even if the individual consumer incurs only a small dollar amount in unauthorized charges, the aggregate cost to all consumers can be substantial.⁵² The FTC cited one case, *FTC v. Nationwide Connections, Inc.*, in which a company had used a billing aggregator to place more than \$30 million of fabricated collect call charges on the phone bills of millions of consumers.⁵³ The FTC recently hosted a forum at which numerous state and federal officials and representatives of consumer groups highlighted the serious and ongoing nature of this problem for consumers.⁵⁴

⁴⁶ See June 2011 NALs *supra* note 8.

⁴⁷ *FTC v. Inc21.com*, 745 F. Supp. 2d at 996.

⁴⁸ FTC Reply Comments at 9.

⁴⁹ *Id.*

⁵⁰ 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. <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>.

⁵¹ As noted above, increasing numbers of consumers use automatic payment or debit mechanisms and may pay before noticing any unauthorized charges.

⁵² FTC Reply Comments at 9-10.

⁵³ *Id.* at 11 (citing *FTC v. Nationwide Connections, Inc.*, No. 06-80180).

⁵⁴ See http://www.ftc.gov/opa/2011/05/cramming_info.shtm (forum held on May 11, 2011).

24. The FTC treats cramming as both “deceptive” and “unfair” conduct under the FTC Act.⁵⁵ It reported that courts have upheld its determination that unauthorized billing constitutes an unfair act or practice on a number of occasions.⁵⁶ The FTC has primarily targeted third-party vendors that are not common carriers, and billing aggregators that coordinate such third-party charges, in enforcement actions to stop cramming.⁵⁷ It has pursued a number of such actions, and has suggested that additional safeguards addressing the role of common carriers, which are subject to the Commission’s jurisdiction, are necessary to protect consumers.⁵⁸

3. State Government Complaints

25. Although the *Consumer Information NOI* did not specifically seek cramming complaint data from state and local governments, several such entities, as well as consumer groups, noted in their comments and *ex parte* filings that, in recent years, they each have received a growing number of cramming complaints from consumers. As discussed below, additional actions taken by some state governments since the NOI was released show that the states are continuing to address cramming as a significant problem.

26. *Twenty-Five State Attorneys General*. In their Joint Comments, 25 State Attorneys General stressed the extent and seriousness of the cramming problem.⁵⁹ They noted that, “despite both the success of state-federal regulatory cooperation in fighting cramming and Attorney General lawsuits against crammers for violations of consumer protection laws, cramming remains a problem. The profitability of cramming and the ease with which crammers can submit unauthorized charges continues to make it an attractive business model, and complaints are once again on the rise.”⁶⁰

27. *National Association of State Utility Consumer Advocates*. NASUCA reported “a steady stream of complaints of frauds and abuses as well as negligent practices, all resulting in unauthorized charges for such telephone services as long distance calls, directory assistance, 800 calls, 900 calls, calling card calls and repair services... voice mail services... [and] internet services of various types, including web hosting or web page services, e-mail services, and online yellow page services.”⁶¹

⁵⁵ 15 U.S.C. § 45(a).

⁵⁶ See FTC Reply Comments at 10.

⁵⁷ See, e.g., *FTC v. Inc21.com*, 745 F.Supp.2d 975 (judgment for over \$37,970,000 in unauthorized charges); *FTC v. Nationwide Connections, Inc.*, Stipulated Final Judgment Against Willoughby Farr, Case No. 06-80180-CIV-RYYSKAMP/VITUNAC (S.D. Fla. Feb. 13, 2008) (judgment for over \$34,400,000 in unauthorized charges).

⁵⁸ FTC Reply Comments at 9-15.

⁵⁹ These include Attorneys General of Arizona, Arkansas, Connecticut, Delaware, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington, West Virginia, Wyoming, and American Samoa.

⁶⁰ See 25 State Attorneys General Joint Comments at 9.

⁶¹ See NASUCA Comments at 44-45, 50, 52.

28. *California*. Under its rules, the California Public Utilities Commission (“CPUC”) requires reports of cramming complaints from wireline carriers and billing aggregators.⁶² Wireline carriers and billing aggregators reported to the CPUC that, in 2009, they had received 132,398 cramming complaints from consumers.⁶³ They reported that they had received 120,554 cramming complaints from consumers in 2010.⁶⁴

29. In addition to tracking complaints received by carriers and aggregators, the CPUC tracks and handles complaints that come to it directly. The CPUC reported that, in 2009, it received 2,420 cramming complaints directly from consumers consisting of 2,298 complaints regarding wireline bills, 116 regarding wireless bills, and six complaints regarding VoIP bills.⁶⁵ In 2010, the CPUC received 2,782 cramming complaints directly from consumers: 2,630 regarding wireline bills, 126 regarding wireless bills, and 26 regarding VoIP bills.⁶⁶

30. In another analysis, the CPUC separated cramming cases into two categories: those involving unauthorized charges from the billing carrier itself and those involving charges from a third party. The CPUC stated in its Comments that it had received 3,876 cramming complaints from November 1, 2008 to October 5, 2009 and that 3,002 of these complaints concerned third-party billing.⁶⁷ The CPUC also noted that it had “successfully prosecuted twelve formal cramming cases under [California’s] anti-cramming statutes and rules, resulting in total fines of more than \$60 million and total restitution of more than \$13 million for California consumers.”⁶⁸

⁶² See Letter from Phillip Enis, Program Manager, California Public Utilities Commission, to Stephen Klitzman, Deputy Chief, Office of Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC (April 5, 2011) (“CPUC Letter”). Prior to 2011, the CPUC did not receive wireless cramming complaint data from wireless carriers and their billing aggregators. Beginning in January 2011, however, the CPUC required wireless carriers to submit as a proxy for complaints quarterly reports to the CPUC of the total number and amount of wireless refunds they issued to California consumers, including those for cramming. For just a three month period of Jan. 1, 2011-March 31, 2011, about half of wireless carriers and third party billing aggregators required to report informed the CPUC they had issued 724,491 refunds to California consumers totaling \$7,148,692. See Letter from Jeannette Lo, Program Manager, Utilities Enforcement Branch, California Public Utilities Commission, to Stephen Klitzman, Deputy Chief, Office of Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC (June 8, 2011).

⁶³ See CPUC Letter.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* According to the CPUC, there are several reasons for the discrepancies between the number of cramming complaints the CPUC received directly from consumers and the much larger number of cramming complaints reported to the CPUC by wireline carriers and billing aggregators. These include: (1) a CPUC requirement that directs consumers to complain first to the carrier before filing a complaint with the CPUC; (2) a liberal refund policy of many carriers which obviates the need for consumers to complain to the CPUC; (3) consumers may be more familiar with the carriers than with the CPUC complaint process. See CPUC Letter (citing *Final Decision Adopting California Telephone Corporation Billing Rules*, Decision (D.) 10-10-034, adopted Oct. 28, 2010 at 40).

⁶⁷ See CPUC Comments at 4.

⁶⁸ *Id.* at 2-3.

31. *Illinois*. The Office of the Attorney General in the State of Illinois reported an increase “in cramming complaints every year from 2003 to 2008, with complaints remaining at an elevated level from 2008 to the present. These complaints primarily involved wireline subscribers, but the Office has noticed cramming on wireless telephone bills as well in recent years.”⁶⁹ The State of Illinois also has filed 30 cramming-related lawsuits since 1996⁷⁰ “alleging that the defendants had billed Illinois consumers for products and services that the consumers did not request or agree to purchase.”⁷¹ For example, in September 2010, the Illinois Attorney General sued a company alleging that the company had crammed unauthorized charges onto thousands of Illinois residents’ telephone bills for “identity protection assistance.”⁷² The Attorney General also has described in detail the “deceptive” solicitations cramming entities direct at telephone consumers.⁷³

32. *Minnesota*. In its Comments, the Minnesota Office of the Attorney General stated that “cramming is a substantial problem for consumers in Minnesota,” largely on wireline bills but also on wireless bills.⁷⁴ In December 2010, for example, the Federal Bureau of Investigation

⁶⁹ Letter from Lisa Madigan, Illinois Attorney General, Elizabeth Blackston, Chief, Consumer Fraud Bureau, Southern Region, and Philip Heimlich, Assistant Attorney General, Consumer Fraud Bureau, to Stephen Klitzman, Deputy Chief, Office of Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC (May 20, 2011) (“Madigan Letter”). According to the Consumer Fraud Bureau of the Illinois Attorney General’s Office, Illinois has “vigorously pursued enforcement actions against entities we allege have engaged in phone bill cramming. While we have had success prosecuting individual entities, a comprehensive regulatory solution would be helpful in ending this practice once and for all.” *Id.*

⁷⁰ See 25 State Attorneys General Joint NOI Comments at 9.

⁷¹ Madigan Letter.

⁷² See “Attorney General Madigan Sues Company for Fake Charges on Illinois Phone Bills,” Press Release, September 2, 2010, http://www.illinoisattorneygeneral.gov/pressroom/2010_09/20100902.html. On January 5, 2011, the court entered a Final Consent Decree under which the court enjoined the defendant from doing business in Illinois for five years, ordered the defendant to cancel all current contracts with Illinois consumers and grant refunds to all consumers requesting them, and make a payment to the state of Illinois. See *People of the State of Illinois v. ID Lifeguards, Inc*, Final Consent Decree entered in the State of Illinois Circuit Court of the Seventh Judicial Circuit, Sangamon County, Ill. (January 5, 2011).

⁷³ “In our experience gained throughout the course of dozens of law enforcement investigations, the solicitations directed at consumers are deceptive. Material facts, such as the fact that the consumer is being asked to make a purchasing decision, and that he will be billed on his telephone bill, often are not disclosed clearly and conspicuously if at all. In some cases, telemarketing scripts lead consumers to believe they are agreeing to receive written information or a free trial and decide later whether to accept the offer. In reality, their silence will be construed as acceptance of the offer, and they will be billed on their telephone bills unless they take affirmative action to cancel the order. In other cases, consumers are duped into providing their information to claim a prize they allegedly won, or to obtain free recipes or coupons. This process, called co-registration, also is construed as authority to bill them on their telephone bills for products and services, but complaining consumers have no knowledge of such authorization.” Madigan Letter.

⁷⁴ See Minn. AG Comments at 1. In its Comments on the NOI, the Minnesota Attorney General’s Office presented a detailed description of the nature and practices of both wireline and wireless crammers. With regard to wireline cramming, the Office noted that complaints identified the billing agent as the sole culprit or a co-culprit responsible for the unauthorized charge in almost two-thirds of the complaints. “When nearly two-thirds of cramming victims are unsure of the company responsible for third-party charges appearing in their telephone bill, this overwhelmingly (continued . . .)

conducted a raid on an alleged cramming entity's operations in Forest Lake, Minnesota.⁷⁵ The Minnesota Attorney General's Office concluded its Comments by noting that "the current protections against cramming, while a good first step, are failing to stem the problem. Accordingly, it encouraged the Commission to enact additional measures to combat cramming."⁷⁶

33. *Vermont*. In 2010, the Vermont Attorney General's Office commenced an investigation of a billing aggregator and cramming complaints involving wireline phone bills. As a result of this investigation, the Vermont AG concluded that these "complaints appeared to be the very tip of the iceberg" and "that large numbers of consumers who have been charged on their phone bills are not aware of the charges, and that many third-party sellers who bill this way may be engaging in deceptive soliciting."⁷⁷ This investigation prompted the Vermont State Legislature in May 2011 to enact legislation banning most third-party charges on wireline telephone bills with three very limited exceptions.⁷⁸

34. *Virginia*. In its Comments, the Virginia State Corporation Commission noted that it continues to receive cramming complaints and they are increasing in frequency.⁷⁹ In 2010, the

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indicates that more concrete standards are needed governing the formatting of telephone bills including a rule remedying the current practice of prominently listing the billing agent at the top of a bill instead of the actual service provider." "Moreover, consumer confusion in identifying the actual third-party service provider responsible for the unauthorized charge frequently results in the consumer naming the wrong company in any complaint filed with the relevant governmental enforcement agency. This misidentification, in turn, allows the actual crammer to escape detection for a longer period of time, and makes it more difficult for regulatory agencies to track the source of cramming complaints and focus their enforcement efforts accordingly." *Id.* at 2.

⁷⁵ See Minneapolis Star-Tribune, Dec. 16, 2010:

http://www.startribune.com/local/112011079.html?elr=KArksLckD8EQDUoaEyqyP4O:DWUiD3aPc:_Yyc:aUvckD8EQDUZ and the FBI's homepage, Dec. 16, 2010, http://www.fbi.gov/news/pressrel/press-releases/billing_121610.

⁷⁶ See Minn. AG Comments at 2. In 2011 the Minnesota Attorney General's Office also filed a cramming lawsuit entitled State of Minnesota, by its Attorney General, Lori Swanson vs. Cheap2Dial Telephone, LLC, 27-cv-11-457 (4th Jud. Dist.). The suit alleges that Cheap2Dial placed unauthorized charges for "dial around" long distance service on Minnesota consumers' landline telephone bills.

⁷⁷ See Letter from Sandra W. Everitt, Assistant Attorney General and Director, Consumer Assistance Program, Office of the Attorney General, Public Protection Division, State of Vermont, to Stephen Klitzman, FCC (May 24, 2011).

⁷⁸ Vermont's new anti-cramming legislation was signed into law as "Act 52" on May 27, 2011 as part of the 2011 Vermont jobs bill and became effective immediately. The statutory citation is 9 V.S.A. § 2466 (as amended). The text of the law can be found at <http://www.leg.state.vt.us/docs/2012/bills/Passed/H-287.pdf>, starting on page 105. The three very limited exceptions to Vermont's outright prohibition of third-party billing are: "(A) billing for goods or services marketed or sold by persons[e.g., telecommunications carriers or companies] subject to the jurisdiction of the Vermont Public Service Board, (B) billing for direct-dial or dial-around services initiated from the consumer's telephone, or (C) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates." See 9 V.S.A. §2466(f)(1)-(A)-(C).

⁷⁹ See Virginia State Corporation Commission Comments at 4.

Virginia General Assembly enacted legislation regarding unauthorized charges on wireline telephone bills that became effective on July 1, 2010. The legislation provided “that a billing agent or service provider may not charge for any products, goods or services without the customer’s authorization. Further, a telephone company may not enter into a billing agreement with a billing agent or service provider unless the billing agent or service provider receives customer authorization prior to placing charges on the telephone bill.”⁸⁰

B. Congressional Investigations and Inquiries

35. In December 2010, the Senate Commerce Committee launched an investigation into cramming after preliminarily finding that a significant percentage of companies placing third-party charges on telephone bills had been the subject of cramming complaints.⁸¹ Prior to launching the investigation, in June 2010, the Committee sent letters to three carriers, AT&T, Verizon, and Qwest, requesting information about their awareness of cramming and the steps they had taken to address it.⁸² The Committee, having learned that many of the services for which third-party vendors charge are not legitimate, expanded its probe by sending letters on December 17, 2010 to three companies, daData, Inc., My Service and Support, and MORE International, that appeared to have relationships with multiple companies that were the subject of cramming complaints.⁸³ It also sent letters to five additional telephone carriers on March 31, 2011,⁸⁴ and stated that over 250 third-party billers that were the subject of cramming complaints had received a grade of “D” or “F” from the Better Business Bureau.⁸⁵ According to Senator Jay Rockefeller, the Chairman of the Committee, “Cramming is a widespread problem. It is likely harming millions of consumers. . . Telephone companies have allowed these unauthorized third-party charges to be placed on their customers’ telephone bills for far too long.”⁸⁶

⁸⁰ See Letter from Paulette Edmonds, Senior Telecommunications Specialist, Division of Communications, Virginia State Corporation Commission, to Stephen Klitzman, FCC (May 27, 2011).

⁸¹ See http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=32ce91be-1841-4cd4-8fc4-1f8388df7942&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=4b968841-f3e8-49da-a529-7b18e32fd69d&MonthDisplay=12&YearDisplay=2010.

⁸² See *id.*

⁸³ See *id.*

⁸⁴ See http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=165806cd-d931-4605-aa86-7fafc5fd3536 (the additional letters were sent to CenturyLink, Windstream, Frontier Communications, FairPoint Communications, and Cincinnati Bell).

⁸⁵ See http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=505cc3fa-a767-40f4-8ac2-4b8326b44e94&MonthDisplay=3&YearDisplay=2011.

⁸⁶ See http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=165806cd-d931-4605-aa86-7fafc5fd3536 (quoting Senator Jay Rockefeller).

36. The Commission has also received correspondence from various Members of Congress, whose constituents either sought assistance or otherwise made their representatives aware of certain business practices of telecommunications providers. The cramming complaints forwarded to the Commission describe instances of unauthorized charges being placed on both wireline and CMRS carrier bills. The issues raised in the complaints include the difficulty of getting charges removed or credited; the failure of the telephone company to assist subscribers in resolving disputes;⁸⁷ and the difficulty consumers face in uncovering unauthorized charges from third-party vendors when reviewing dense and voluminous phone bills.⁸⁸

IV. DISCUSSION

37. Despite the Commission's efforts and the voluntary industry practices described above, the number of complaints received by the Commission involving cramming has remained high in recent years.⁸⁹ As noted, the FTC and various state agencies also receive numerous complaints in this area.⁹⁰ As also discussed above, there is also strong evidence that suggests that the number of complaints received by government agencies is not indicative of the full extent of this problem because many unauthorized charges are overlooked by consumers.⁹¹

38. The complaints received by the Commission and the record developed in response to the *Consumer Information NOI* suggest that cramming appears to be an ongoing and persistent problem that results in significant expenditures of money for American consumers each year. Investigations by the Commission and the FTC confirm that even small unauthorized charges can result in tens of millions dollars in total costs to consumers.⁹² Although those who file complaints with their carriers or a state or federal regulator may eventually be refunded or credited for the unauthorized charges, many others who failed to notice these difficult-to-detect charges will not be reimbursed and will continue to be billed and pay the crammed charges. In

⁸⁷ See, e.g., Rep. Dent on behalf of constituent; Sen. Roberts on behalf of constituent (carrier referred her to the third-party vendor who referred her back to the carrier).

⁸⁸ See, e.g., Rep. Israel on behalf of constituent (difficult to understand his bill; subscriber had been charged for one year before he realized it); Sen. Leahy on behalf of constituent ("bills are confusing and dense"); Rep. Bishop on behalf of constituent (her bill is 11 pages); Sen. Nelson on behalf of constituent (discovered charge buried in last pages of bill after 18 months).

⁸⁹ See *supra* note 41. The Commission continues to receive numerous complaints regarding the appearance of unauthorized charges on both wireless and wireline telephone bills.

⁹⁰ See, e.g., FTC Reply Comments at 9; Minn. AG NOI Comments at 1; Virginia SCC Comments at 4; 25 State AGs Joint Comments at 9. See also *supra* paras. 22-34.

⁹¹ See 25 State AGs Joint Comments at 9; NASUCA Reply Comments at 20-21. In the FTC's judicial proceeding against Inc21.com, a survey of consumers who were billed for the defendant crammers charges relied upon by the court revealed that only five percent were aware that they had been billed the charges. See *FTC v. Inc21.com*, 745 F. Supp. 2d at 996.

⁹² See, e.g., FTC Halts Massive Cramming Operation That Illegally Billed Thousands <http://www.ftc.gov/opa/2010/03/inc21.shtm> (rel. March 1, 2010); see also FCC Verizon Data Usage Charges Consent Decree (a single \$1.99 per MB charge over a period of years resulted in over \$50 million in cumulative charges imposed on consumers).

some cases, this process can continue for an extended period of time. Even those consumers who are eventually refunded or credited for the amount of unauthorized charges may be subject to substantial expenditures of time and effort before resolving such charges on their bills.

39. For these reasons, we seek comment below on each of the rules that we propose to safeguard wireline consumers and that we propose to protect both wireline and CMRS consumers. We further seek comment below on whether certain additional protections should be put in place for the benefit of wireline or CMRS consumers. We also seek comment on whether current industry practices or voluntary industry guidelines can address any cramming issues successfully, and, if not, what additions or modifications could make them an effective alternative to expanded Commission regulation.

A. Measures to Assist Consumers in Preventing Cramming

1. Disclosure of Blocking of Third-Party Charges

40. We propose that wireline carriers that offer subscribers the option to block third-party charges from their telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each bill, and on their websites. While many carriers claim to offer this option, the record indicates that they may inform consumers of this protection only after consumers dispute unauthorized charges on their bills.⁹³ Further, despite carriers' representations that they offer a third-party charge block, many consumer complaints reflect carrier refusals to initiate such a block.⁹⁴ We believe that requiring carriers that offer blocking to inform consumers of it at the point of sale, on each bill, and on their websites would allow consumers to proactively prevent cramming *before* it occurs and remove any confusion that may exist regarding the availability of this option.

41. The record reflects that many consumers are unaware that third-party charges can even be placed on their telephone bills. As a result, educating consumers of the protections offered by blocking of third-party charges is vital to ensure that consumers exercise their option to request such safeguards. Therefore, we seek comment on whether wireline carriers should be required to clearly and conspicuously explain to consumers that their bills may include charges from third-party providers when they provide consumers with information on the blocking option at the point of sale, on each bill, and on the carrier's website.

42. In the context of our Truth-in-Billing rules, "clear and conspicuous" is defined as "notice that would be apparent to the reasonable consumer."⁹⁵ We seek comment on the wording,

⁹³ See, e.g., Letter from Toni R. Acton, AT&T, to Marlene Dortch, FCC, (Feb. 28, 2011) (indicating that AT&T provides third-party blocking to any customer that reports a cramming complaint or requests a block); Verizon Comments at 48 (offer consumers the option to block third-party charges after a complaint is made); Qwest Reply Comments at 11 (does not offer a consumer opt-out from third-party billed services).

⁹⁴ See, e.g., FCC Complaints 10-C00186917-1 (AT&T customer service representative told a subscriber it had to allow third-party charges); 10-C0188713-1 (Verizon customer service representative told subscriber there was nothing Verizon could do); Rep. DeGette on behalf of constituent (Qwest told subscriber they must honor third-party billing).

⁹⁵ See 47 C.F.R. § 64.2401(e).

placement, font size, and other relevant factors, at the point of sale, on bills, and on websites, that would be necessary for such notification to satisfy this requirement. We seek comment on whether the disclosure should include identification of the specific kinds or categories of charges that would be blocked, and how those kinds or categories of charges should be described, as well as whether and how the disclosure should advise consumers of the charge, if any, for the blocking service. We also seek comment on the need to modify such notifications to ensure that they are clear and conspicuous, and otherwise informative, to specific population groups, such as people with disabilities, people with limited English proficiency, and those living in Native Nations on Tribal lands, and in Native communities, such as Hawaiian Home Lands.⁹⁶ What is the most effective manner to ensure that the availability of this option is made apparent to consumers in a cost effective manner for carriers?

43. To the extent that third-party blocking is currently available to consumers upon request, we seek comment on how current carrier practices could be improved other than by requiring the disclosure discussed above. Are there additional reasons that consumers are not fully taking advantage of such protections? For example, are customer service representatives adequately trained to ensure that consumers understand the possibility that they may be billed for third-party charges and are made aware of the blocking option? We note, for example, that some complaints indicate that customer service representatives have erroneously informed consumers that they are prohibited from blocking third-party charges on their telephone bills.⁹⁷ Should we impose an obligation on carriers to properly train their customer service representatives to prevent the dissemination of such misinformation? We seek comment on possible other effective improvements.

44. We also seek comment on whether wireline carriers that offer blocking should be prohibited from charging an additional fee for doing so. The fact that many wireline carriers already offer blocking options at no additional charge suggests that the cost of offering blocking options is not sufficiently high to warrant additional charges beyond the monthly recurring charge for telephone service.

B. Measures to Assist Consumers in Detecting Cramming

45. The Commission's Truth-in-Billing rules already require that, where charges for two or more *carriers* appear on the same telephone bill, the charges must be listed by service provider.⁹⁸ The Commission adopted this requirement to "enhance consumers' ability to review individual charges contained in their telephone bills and detect unwarranted charges or unauthorized

⁹⁶ The term "Native Nations" refers to federally recognized American Indian Tribes and Alaska Native Villages. This means any American Indian Tribe or Alaska Native Village, Nation, Band, Pueblo, or Community which is acknowledged by the federal government to have a government-to-government relationship with the United States and is eligible for the programs and services established by the United States for Indians. We recognize the importance of also including Native Hawaiian Home Lands in our Notice of Proposed Rulemaking.

⁹⁷ See FCC Complaints 10-C00186917-1; 10-C00263078-1; 10-C00188349-1 (AT&T customer service representative told subscribers that FCC regulations require it to allow third-party billing); 10-C00187285-1 (Qwest told subscriber that it was required to accept third-party billing by the FCC). In fact, no such requirement exists.

⁹⁸ See 47 C.F.R. § 64.2401(a)(2) (emphasis added).

changes in their service arrangements.”⁹⁹ For similar reasons, we also propose that charges from third-party vendors that are not carriers be placed in a section separate from charges assessed by carriers and their affiliates on wireline telephone bills.

46. We also note that several commenters have supported requiring separate billing sections for charges from third-party vendors.¹⁰⁰ These commenters maintain that the lack of separation on telephone bills between charges from the carrier generating the bill and from third-party vendors makes it even more difficult for consumers to recognize that charges from third party-vendors are contained in the bill.¹⁰¹ These commenters ask that the Commission make clear that simply listing charges from a third-party vendor as one of many line items is not sufficient separation.¹⁰² As already discussed, many crammed charges appear to be for a communications-related service. We believe that requiring charges from third-parties to be placed in a separate section will reduce the likelihood that consumers will be misled into thinking that a charge from a third-party is a charge from their carrier for a service provided by their carrier.

47. The Truth-in-Billing rules permit a carrier offering a bundle to treat the bundle as a single service offering of the carrier, even though the bundle may contain services provided by others.¹⁰³ We do not propose or intend to change the manner in which charges for bundles may be billed under our rules. We seek comment on whether our proposed rules change the manner in which charges for bundles may be billed under our rules, and whether any change is necessary to protect consumers from cramming.

48. We seek comment on this proposed requirement and whether more specific requirements are needed. For example, would it be useful to consumers to have charges from third-party vendors separately listed or highlighted on the first page of the telephone bill or to have these charges highlighted in some other fashion? We note that some consumers have complained to the Commission that third-party charges appear at the end of a bill, and may even be listed after what appears to be the bill’s final page, making it easy for consumers to miss them.¹⁰⁴ At the same time, the court in *FTC v. Inc21.com* stated that having third-party charges included in the total amount due on a telephone bill without any differentiation between carrier charges and third-party charges in that total was one reason why consumers had difficulty detecting unauthorized charges assessed by the defendant group of affiliated companies.¹⁰⁵ Is there any

⁹⁹ See *First Truth-in-Billing Order*, 14 FCC Rcd at 7510, para. 28.

¹⁰⁰ See, e.g., Billing Concepts Comments at 4; CPUC Comments at 2; Minn. AG Comments at 2-3.

¹⁰¹ See Minn. AG Comments at 2-3.

¹⁰² See *id.*; see also CPUC Comments at 2 (under California law, a billing telephone company must clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge).

¹⁰³ See *Order on Reconsideration*, 15 FCC Rcd at 6027, para. 9.

¹⁰⁴ See, e.g., Sen. Nelson on behalf of constituent (discovered charge buried in last pages of bill after 18 months); Rep. Bishop on behalf of constituent (subscriber did not notice crammed charges because they were on an 11-page bill); FCC complaint 10-C00189285-1 (third-party charge details on two pages attached to end of local telephone company’s bill).

¹⁰⁵ *FTC v. Inc21.com*, 745 F.Supp.2d at 994-995, 1000-1001.

(continued . . .)

need to require identification of the third-party vendor associated each charge in a manner different from or in addition to the requirement in the Truth-in-Billing rules for clear-and-conspicuous identification of the biller associated with each charge?¹⁰⁶

49. We recognize that changes to existing billing formats may necessitate some cost and an implementation period on behalf of carriers. Therefore, we seek comment on ways to minimize such burdens, particularly on smaller carriers, and on the timeframe that carriers would require to modify their existing billing systems to comply with this requirement.

C. Disclosure of Commission Complaint Contact Information to Enhance the Ability of Consumers to Resolve Cramming Disputes

50. In the *Consumer Information NOI*, we noted a recent GAO survey suggesting that many consumers do not know that they can submit complaints to the Commission or understand how they can do so.¹⁰⁷ In particular, we sought comment on whether there are measures we might take to improve consumer awareness of the complaint process, such as requiring service providers to include on their bills information about how to contact the Commission to file a complaint.¹⁰⁸ State and consumer groups submitted responses suggesting that telephone bills should include contact information for filing informal complaints with the Commission.¹⁰⁹ A number of these commenters indicated that consumers are often unaware that they may file a complaint or do not know how to file such complaints.¹¹⁰ Mandating the inclusion of Commission contact information on telephone bills and carrier websites would provide consumers with greater knowledge of and access to dispute resolution mechanisms while imposing minimal costs on service providers. It also would enable the Commission to more effectively monitor and track emerging problems affecting consumers as well as improve public awareness of the Commission's complaint process.

51. We therefore propose and seek comment on a requirement that each wireline telephone bill, as well as the customer service section of each wireline carrier's website, also include a clear and conspicuous statement indicating that consumer inquiries and complaints may be submitted to the Commission.¹¹¹ This statement should include the Commission's telephone number for complaints, website address for filing complaints, and, if located on the provider's website, a direct link to the Commission's webpage for filing complaints. To the extent that this

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¹⁰⁶ See 47 C.F.R. 64.2401(a)(1).

¹⁰⁷ *Consumer Information NOI*, 24 FCC Rcd at 11397, para. 51.

¹⁰⁸ See *id.*

¹⁰⁹ See, e.g., DC PSC Comments at 7; NASUCA Comments at 9; UCAN Comments at 13.

¹¹⁰ See, e.g., Minn. AG Comments at 6; NASUCA Comments at 8-9.

¹¹¹ Some states also require the inclusion on customer bills of the contact information of their state utilities commissions. See Letter and Informal Survey from James Bradford Ramsay, NARUC, to Marlene H. Dortch, FCC (April 8, 2011). In these states, carriers would be required to list both the state and FCC contact information.

requires modification to existing telephone bills and websites, we seek comment on the costs involved and the timeframe that carriers would need to make such modifications to comply with this requirement. The record suggests that the inclusion of such contact information will assist consumers in addressing cramming, while enhancing their ability to address other telecommunications-related issues by ensuring they have access to the information necessary to submit complaints to the Commission.

D. Wireless Service

52. Because of record evidence that CMRS consumers also have been the target of cramming,¹¹² we propose that CMRS carriers should be subject to the requirement, discussed above, that telephone bills and carriers' websites include a clear and conspicuous statement indicating that consumer inquiries and complaints may be submitted to the Commission and provide the Commission's contact information for the submission of complaints.¹¹³ We note that a recent survey by the GAO found that 34 percent of adult wireless users do not know where they can complain about issues with wireless service,¹¹⁴ and that GAO recommends that the Commission clearly inform consumers that they may complain to the Commission about problems with wireless phone service.¹¹⁵ We seek comment on this proposal.

53. In addition, we seek comment on whether any of the other proposed rules for wireline carriers or other requirements discussed in this NPRM¹¹⁶ should also be applied to CMRS carriers, whether they are inapplicable or unnecessary in the CMRS context, and why. If the record supports applying the wireline cramming rules to CMRS, how should the language of the rules in Appendix A be amended to apply them to CMRS carriers? As noted above, the majority of the cramming complaints filed with the Commission and the FTC relate to wireline, rather than wireless, service—82 percent of Commission cramming complaints from 2008 to 2010,¹¹⁷ and 90 percent of FTC cramming complaints in 2010.¹¹⁸ We seek comment on the nature and

¹¹² See, e.g., *supra* para. 19.

¹¹³ See *supra* Sec. IV.C (this disclosure includes the telephone number, website address, and, if located on the provider's website, a direct link to the Commission's webpage for filing complaints).

¹¹⁴ See FCC Needs to Improve Oversight of Wireless Phone Service, GAO Report 10-34 to Congressional Requesters at 18 (Nov. 2009) ("many consumers that experience problems with their wireless phone service may not know to contact FCC for assistance or may not know at all whom they could contact for help") (GAO Report): <http://www.gao.gov/new.items/d1034.pdf>.

¹¹⁵ *Id.* at 40.

¹¹⁶ See *infra* Section IV.E.

¹¹⁷ See FCC Quarterly Reports on Informal Consumer Inquiries and Complaints.

¹¹⁸ See Consumer Sentinel Network Data Book for January-December 2010, Appendix B3: Consumer Sentinel Network Complaint Category Details, at 80: <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>. Concerns about unauthorized charges on wireless bills, however, may well increase as more and more American consumers use their "smartphones" to pay their phone as well as many other bills. See, e.g., <http://www.mastercard.us/google-wallet.html?cmp=psc.wallet.ggle>; http://www.ucan.org/telecommunications/wireless/phone_bill_cramming_phony_charges_rampant; <http://www.heatherclancy.com/2011/02/would-you-pay-bills-with-your-mobile-phone.html>.
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magnitude of cramming issues for CMRS consumers. For example, to what extent do CMRS consumers encounter unauthorized charges by third-party vendors as compared to unauthorized charges by their carriers? Do such unauthorized charges occur more frequently with particular types of wireless service plans or features? Does cramming affect CMRS consumers in different ways than it affects wireline consumers? If so, how? Are there differences between wireless and wireline billing platforms and industry practices that are relevant in assessing the propriety and effectiveness of potential regulatory solutions? If so, what are those differences and what is their impact? For example, to what extent are unauthorized charges from third-party vendors triggered by or from within apps, games, or other software or features downloaded to a mobile phone, and must such unauthorized charges be addressed differently? Further, we note that several states identified instances of wireless cramming in response to the *Consumer Information NOI*,¹¹⁹ and that less than half of the states regulate wireless service.¹²⁰ We seek to update the record on states' experiences with this issue and comments on how differences in state authority impact the necessity for federal oversight of CMRS cramming.

54. We also seek comment on whether current industry practices or voluntary industry guidelines can address any cramming issues successfully, and, if not, what additions or modifications could make them an effective alternative to expanded Commission regulation.¹²¹

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¹¹⁹ See, e.g., Minn. AG Comments at 2; see also *infra* Sec. III.A.3.

¹²⁰ See GAO Report at 28-29. A significant reason why reports of wireline cramming complaints greatly exceed wireless cramming complaints, especially on the state level, is the fact that fewer than 20 states have asserted any jurisdiction over the "terms and conditions" of wireless telephone service and fewer than 10 states are active with regard to receiving and acting upon wireless telephone complaints. See National Association of Regulatory Utility Commissioners, Resolution on "Communications Policy Statement" adopted by the NARUC Board of Directors, July 23, 2008, <http://www.naruc.org/Resolutions/CA%20Communications%20Policy.pdf> (citing "State Regulatory Authority Over Terms & Conditions for Wireless Services," a 2008 survey of all 50 state public service or utility commissions plus those of the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands conducted by the California Public Utilities Commission and the Public Service Commission of the District of Columbia.) The cited survey found that 9 states with wireless regulatory authority do regulate through their state PSC/PUC: California, Guam, Hawaii, Iowa, Kentucky, Louisiana, Mississippi, New Mexico and South Dakota; 9 state PSCs/PUCs have regulatory authority but do not regulate: Alaska, Arizona, Connecticut, Illinois, Massachusetts, New Jersey, Rhode Island, Utah and Vermont; and the remaining 35 state PSCs/PUCs have no regulatory authority over the terms and conditions of wireless service. These states include Florida, Minnesota, and Virginia, which as noted above, nonetheless receive, tabulate, and litigate both wireline and wireless cramming complaints usually under other consumer protection and anti-fraud legislative authority through their Attorney General Offices. These states also work to resolve cramming complaints through informal processes or through the "eligible telecommunications carrier" ("ETC") designation process. See "FCC Needs to Improve Oversight of Wireless Phone Service," GAO Report to Congressional Requesters, 10-34, at 29, 34 (November 2009) ("While fewer than half of the [state PSC/PUC] commissions have wireless rules, most designate wireless carriers as eligible telecommunications carriers (ETC) to receive universal service funds for serving high-cost areas;" they also "impose consumer protection requirements on wireless carriers as a condition for ETC designation," including the processing of wireless consumer billing complaints such as unauthorized charges).

¹²¹ For a discussion of current wireless industry practices, see for example, Transcript of Federal Trade Commission Forum, Examining Phone Bill Cramming, May 11, 2011, available at <http://www.ftc.gov/bcp/workshops/cramming/10511phoneworkshop.pdf>, at 126 - 136 (providing testimony of (continued . . .))

To what extent and how are industry guidelines and practices evolving to address new issues, such as in-application marketing?¹²² We note that CTIA’s “Consumer Code for Wireless Service” and its recently announced “Checklist for Choosing Your Service and Device” and “General Wireless FAQ” address a variety of issues related to informed consumer choice and use of wireless services. With the exception of three questions in the FAQ that consumers can ask on how they can block third-party charges from their bills, however, these guidelines do not appear to address the specific practices that are the subject of the rules proposed above (*i.e.*, notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their websites, of the option to block third-party charges from their telephone bills, if the carrier offers that option, separating charges from carriers and from third-party vendors on bills, and listing contact information for the Commission on telephone bills and carriers’ websites).¹²³ In addition, the Mobile Marketing Association’s “U.S. Consumer Best Practices” establish procedures for acquiring consumer consent to be charged for additional services— including through “opt-in” or “double opt-in” mechanisms – in the context of short codes for text messaging.¹²⁴ We also note that several CMRS carriers have practices that are consistent with some of the rules proposed above – for example, offering consumers, without additional charge, blocking of third-party charges¹²⁵ – though such practices do not appear uniform throughout the industry. We also seek comment on whether such blocking options are clearly and conspicuously disclosed to CMRS consumers.

E. Additional Questions for Comment

1. Disclosure of Third-Party Vendor Contact Information

55. In the interest of ensuring that consumers are able to contest, in an expeditious manner, unauthorized charges from third-party vendors, we seek comment on requiring the carrier generating the telephone bill to clearly and conspicuously provide the contact information for each third-party vendor in association with that entity’s charges. We also seek comment on the

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Michael Altschul, Senior Vice President and General Counsel, CTIA The Wireless Association) (“FTC Forum Transcript”).

¹²² See, *e.g.*, FTC Forum Transcript at 152-153 (description by Michael Altschul of CTIA’s initiative for wireless application developers).

¹²³ See CTIA, Consumer Code for Wireless Service, <http://files.ctia.org/pdf/ConsumerCode.pdf>; CTIA, Checklist for Choosing Your Service and Device, <http://files.ctia.org/pdf/Checklist.pdf>; CTIA, General Wireless FAQ, <http://files.ctia.org/pdf/WirelessFAQ.pdf>.

¹²⁴ See Mobile Marketing Association, U.S. Consumer Best Practices, Version 6.1, http://mmaglobal.com/Consumer_Best%20Practices_6.1%20Update-02May2011FINAL_MMA.pdf.

¹²⁵ See, *e.g.*, Letter from Scott R. Freiermuth, Counsel, Government Affairs, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC (April 29, 2011) at 4; Letter from Ann D. Berkowitz, Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC (April 18, 2011) at 2; Letter from Grant B. Spellmeyer, Senior Director, Legislative and Regulatory Affairs, U.S. Cellular Corporation, to Marlene H. Dortch, Secretary, FCC (April 15, 2011) at 1.

specific contact information, such as the name of the third-party vendor and its toll-free customer service telephone number, that should be provided.

56. The record to date suggests that the current rule with respect to the disclosure of inquiry contacts on telephone bills has not been sufficiently helpful with respect to charges from third-party vendors.¹²⁶ Specifically, the Commission's Truth-in-Billing rules require that bills must contain "any information that the subscriber may need to make inquiries about, or contest charges on the bill."¹²⁷ To accomplish this, carriers may, but are not required to, include a toll-free number for a "billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf."¹²⁸ In imposing this requirement, the Commission observed that providing such information "will enable customers to avoid feeling that they are 'getting the run around'"¹²⁹ and is "an essential lynchpin to consumers' exercise of the rights we seek to protect...."¹³⁰

57. The record indicates, however, that many consumers remain confused about whom to contact in order to resolve issues with charges from third-party vendors or have difficulty in resolving such charges through the general contact number for their carrier listed on their telephone bill. As a result, several commenters have advocated requiring the contact information for each third-party vendor to be included in the bill.¹³¹ The Minnesota AG stated that, according to its complaint data, nearly two-thirds of cramming victims are unsure of the company responsible for charges from third-parties appearing in their telephone bills, and that the billing agent or carrier listed on the bill as the contact point is often unable to sufficiently answer consumer questions or resolve issues regarding charges from third-party vendors.¹³² The CPUC and Billing Concepts suggested that the Commission require that all third-party billings include the name, toll-free number, and address of the actual third-party vendor, as opposed to just the billing aggregator.¹³³ Billing Concepts averred that this would alleviate many escalations in the dispute resolution process. At the same time, we recognize that carriers may have a financial disincentive to provide contact information for third parties if the carrier is compensated by third

¹²⁶ See 47 C.F.R. § 64.2401(d).

¹²⁷ See *id.*

¹²⁸ *Id.*

¹²⁹ *First Truth-in-Billing Order* at 7534, para. 65.

¹³⁰ *Id.* at 7534, para. 66.

¹³¹ See Billing Concepts Comments at 4; CPUC Comments at 4-5; Billing Concepts Reply Comments at 3.

¹³² See Minn. AG Comments at 3-4.

¹³³ See CPUC Comments at 4-5; Billing Concepts Reply at 3.

parties to handle consumer inquiries and complaints about their charges.¹³⁴ We seek comment on the nature of the financial arrangements among carriers, billing aggregators, and third-party vendors. We also seek comment on whether these proposals will aid consumers by directing them to the appropriate party that can address any issues relating to charges from third-party vendors on their telephone bills.

58. In addition, we seek comment on requiring the carrier generating the telephone bill initially and periodically thereafter to verify that the contact information for third-party vendors on its telephone bills is correct. If so, what should the nature and scope of the verification be? As noted above, the Truth-in-Billing rules allow a carrier to list contact information for a third-party vendor or billing aggregator only if the party at the number provided can answer consumer questions and is authorized to resolve consumer complaints. Implicit in this proviso is the obligation of the carrier to verify that contact information, such as telephone numbers and electronic mail addresses, actually provide a means to connect to a customer service representative with the authority to resolve disputes regarding charges from the third-party vendor. To what extent do carriers already verify the accuracy of such contact information and verify that the persons who answer consumer calls have the authority to resolve disputes? What would be the incremental burden on carriers to do so? How and to what extent would imposing such a requirement benefit consumers, carriers, or both? Should any particular form of verification, such as test calls, be used or required? At what intervals should carriers be required to engage in such verification?

2. Requiring Wireline Carriers to Disclose That They Do Not Offer Blocking of Third-Party Charges

59. We seek comment on whether wireline carriers that do not offer consumers the option to block third-party charges from their telephone bills should be required to disclose the fact that they do not offer it. We also seek comment on how, where, and when the disclosures should be made. Should the disclosure be clear and conspicuous? Should it, like the disclosures by carriers that do offer blocking, be made at the point of sale, on each bill, and on carrier websites? Should disclosures include information about the extent to which third-party charges may appear on telephone bills? Should anything else be included in the disclosure, such as the potential cost of cramming to subscribers?

3. Requiring Wireline Carriers to Block Third-Party Charges Upon Request

60. We seek comment on whether wireline carriers should be required to block third-party charges from subscribers' telephone bills upon request and, if so, whether carriers should be prohibited from charging an additional fee for doing so. As noted above, the fact that many wireline carriers already offer blocking options at no additional charge suggests that there is no technical or cost barrier to making such options available, or that the cost of offering blocking options is not sufficiently high to warrant additional charges beyond the monthly recurring charge for wireline telephone service. We seek comment on any technical, cost, or other barriers that exist, as well as on which carriers offer blocking, what specific types or categories of

¹³⁴ Cf. *FTC v. Inc21.com*, 745 F. Supp. 2d at 994-995 (telephone company was compensated for services provided to billing aggregators and third-party vendors).

charges are blocked (*e.g.* charges from non-carriers, from presubscribed carriers, from carriers other than presubscribed carriers, for vertical services), whether an additional charge applies for blocking, the amount of the charge, if any, and how the amount of the charge was determined.

61. We also seek comment on what kind or types of charges should be subject to blocking if wireline carriers were required to block them. For example, should the block prevent inclusion on a telephone bill of all charges other than those from the carrier generating the bill? Should charges from presubscribed carriers be permitted, but not charges from carriers to which the billed consumer does not presubscribe? Should only charges from non-carriers be blocked? Should charges from non-carrier affiliates, such as Internet Service Providers, be blocked? Should bundles be treated differently and, if so, how?

4. Prohibiting All Third-Party Charges on Wireline Telephone Bills

62. One commenter has recommended that the Commission go further than the proposed rules described above, and absolutely prohibit wireline carriers from including charges from third-party vendors on their bills. The Virginia SCC averred that the only way to stop the practice of cramming is to require companies to cease billing for others.¹³⁵ As noted above, the Vermont state legislature recently passed a bill generally banning third-party charges on wireline telephone bills with three very limited exceptions.¹³⁶ We seek comment on the impact, both positive and negative, that prohibiting third-party charges on wireline telephone bills, unless the consumer opts in, may have on wireline carriers, consumers, and third parties. To what extent would adoption of the proposed rules set forth above impact this analysis by providing consumers with additional safeguards from cramming? We also seek comment on the scope of the Commission's authority to impose such a ban, and whether and how our proposed definition of "third-party charge" should be modified if we were to adopt such a ban. We also seek comment on the kinds or types of charges that should be prohibited if third-party charges were prohibited from telephone bills.¹³⁷

5. Due Diligence

63. In their comments, some communication service providers have noted the efforts that they undertake to ensure that third parties and the charges that they submit are legitimate.¹³⁸ Notwithstanding the foregoing, the record, as well as complaints the Commission has received regarding cramming,¹³⁹ raise questions concerning the effectiveness of those efforts, as well as

¹³⁵ See Virginia SCC Comments at 4.

¹³⁶ See *supra* para. 33 and note 78.

¹³⁷ See *supra* para. 61.

¹³⁸ See Billing Concepts Comments at 2; Verizon Comments at 42; AT&T Reply Comments at 22.

¹³⁹ See FCC Complaints 10-C00185009-1 (party purportedly authorizing the charge does not work for the company); 10-CO0185280-1 (person who had not lived at the home for three years purportedly ordered the service in question); 10-C00185536-1 (wrong name and date of birth given to establish authorization); 10-C00185758-1 (recording of call altered to establish authorization).

the current voluntary industry guidelines¹⁴⁰ to ensure that the third-party billers, the products and services offered, and the related charges included on telephone bills are authorized by customers.¹⁴¹

64. We seek comment on whether we should require carriers, before contracting or agreeing with a third-party vendor to place its charges on customer telephone bills, to screen each such vendor to ensure that it has operated and will continue to operate in compliance with all relevant state and federal laws.¹⁴² We seek comment on the nature and adequacy of current practices in this regard. We also seek comment on how carriers are currently monitoring and tracking customer complaints with respect to cramming. We further seek comment on how such vendors could change or improve their efforts to effectively monitor and track customer complaints with respect to cramming. In addition, we seek comment on what, if any, thresholds exist with respect to customer complaints of this nature, as a trigger to adverse action against a third party. Should such thresholds be required? If so, what should the threshold limit be? For example, should it be associated with the number of complaints received or otherwise related to the aggregate dollar value of the claims in the complaints received? Do carriers monitor the percentage of refunds, unbillable charges,¹⁴³ or uncollectible charges associated with third-party vendors as a means of identifying vendors that may be engaged in cramming or for which the carrier otherwise may seek to cease billing? What percentage of charges from third-party vendors are refunded annually? What percentage is uncollectible? What percentage is unbillable? What are the reasons a charge from a third party might be unbillable?

65. In some cases, fraudulent third-party vendors incorporate a number of affiliated or otherwise intertwined companies that engage in the same or similar fraudulent practices among each other, such as a person or family operating multiple companies.¹⁴⁴ This may allow what effectively is a single third-party vendor to continue to submit fraudulent charges for billing by a carrier even after the carrier has ceased billing for one or more of these companies for bad behavior, such as by continuing the same practice using a different company. To what extent do carriers attempt to identify these kinds of arrangements? How successful have carriers been at identifying them and ceasing to bill for them? Can carriers effectively discover whether an entity is part of such an arrangement, especially given that the owners or operators likely will attempt to conceal such arrangements from carriers?¹⁴⁵ Are there similarities among these companies or other characteristics that may make such arrangements easily or readily

¹⁴⁰ See Best Practices Guidelines at 3-5, 8-10.

¹⁴¹ See NASUCA Comments at 53-57.

¹⁴² Many complaints received call into question the due diligence efforts taken by carriers. See, e.g., FCC Complaints 10-C00184992-1 (internet research regarding third-party vendor shows “hundreds of complaints”); 10-C002560-1 (online research shows many complaints of fraud).

¹⁴³ “Unbillable charges” include any charge submitted to a carrier for billing that the carrier is unable to bill to the customer, such as because the telephone number provided is not being used by any customer, or is assigned to or has been ported to a different carrier.

¹⁴⁴ See, e.g., *FTC v. Inc21.com*, 745 F. Supp. 2d at 983-986.

¹⁴⁵ See, e.g., *id.* at 997-999.

discoverable by billing aggregators or carriers? We seek comment regarding penalties or other measures that carriers and billing aggregators employ to deter third-party vendors from engaging in cramming or generating consumer complaints. How could these be improved? Are there more effective measures, and what are they? We also seek comment regarding the number of third-party vendors and billing aggregators that submit charges to carriers for billing on telephone bills? We further seek comment on the kinds of business (such as by line of business or type of product) in which third-party vendors actually or purportedly engage and the number of third-party vendors engaged in each kind of business. How many real parties in interest are there owning or operating these third-party vendors? How could this information be obtained and updated?

6. Federal-State Coordination

66. We recognize that a coordinated effort among the various regulatory entities that monitor and enforce federal and state laws on cramming is a critical component in protecting consumers from unauthorized charges. As the FTC has noted, there may be consumer confusion about which federal or state agency to contact to complain about the various entities that engage in cramming.¹⁴⁶ Therefore, we seek comment on how to better coordinate the sharing of cramming complaints and information with our federal and state regulatory partners. For example, the FTC has observed that it maintains a secure database in which complaints can be shared among law enforcement entities regardless of which agency received the consumer complaint in the first instance. Are there ways to use that system to improve regulatory efforts? Are there additional ways to encourage voluntary industry cooperation to assist in this process? For example, should wireline and CMRS carriers report trends or spikes in complaints they receive relating to specific third-party vendors to the appropriate federal or state regulatory agency? We seek comment on these and any other specific proposals that will better assist us in identifying and taking enforcement action against parties who engage in the practice of cramming.

67. Building on the substantial record of state and local government cramming complaint data, state enforcement actions and legislation already in the record and discussed herein, we also seek updated information from the state and local regulatory entities that already have provided information as well as current information from other state and local regulatory entities in each state that processes cramming complaints. Specifically, we seek comment on the nature and extent of the cramming problem in the various states, the number of wireline and wireless cramming complaints or trends in the last few years with regard to unauthorized charges on bills, what enforcement and/or legislative actions states have taken with regard to cramming, and what regulatory or other actions they recommend the Commission implement to assist in addressing the cramming problem.

7. Accessibility

68. We also seek comment on how our proposed rules will affect, or could be improved to better assist, people with disabilities, people living in Native Nations on Tribal lands and in Native communities, and people with limited English proficiency. In addition, we seek input on

¹⁴⁶ See FTC Reply Comments at 12.

what measures common carriers should take to ensure that the following information they provide to their customers is made accessible to such individuals.

8. Interconnected VoIP Service

69. We seek comment on whether any of our proposed rules or other requirements discussed herein, or similar requirements, should apply to providers of interconnected VoIP service.¹⁴⁷ We seek comment on whether bills for interconnected VoIP service raise the same risks of cramming as wireline service or CMRS and whether there are differences in interconnected VoIP service that necessitate a different regulatory approach. We also seek identification of and comment on any other factors affecting whether, to what extent, and what kind of safeguards are needed to protect and would be effective in protecting consumers of interconnected VoIP service from cramming on their bills for such service.

9. Definition of Service Provider or Service

70. We seek comment on the need to define “service provider” or “service” in Subpart Y of Part 64 to better address charges that arguably may not be for a service. Making clear that all charges that appear on a telephone bill, regardless of what the charge description says, are subject to the *Truth-in-Billing* rules likely would help to ensure that consumers enjoy the full protection of our rules despite how a crammer describes a charge. We do not believe that anyone intent on defrauding consumers would feel constrained to identify a charge as being for a service if it were possible to avoid the consumer protections provided by our rules simply by altering the charge description. We seek comment on specific definitions of “service provider” and “service” that may be effective in preventing cramming. These definitions would apply only in the context of the *Truth-in-Billing* rules and would not apply in any other context.

71. We also seek comment on alternatives, such as changing the Truth-in-Billing rules, including as modified by our proposed rules, to refer to more than services and service providers. We seek comment on which rules would need to be changed and the specific changes that would be needed.

F. Effective Consumer Information Disclosure

72. In proposing rules to improve transparency on cramming or any other consumer issue, the Commission intends to look at the many factors involved in effective consumer information disclosure. This will ensure that the rules serve their intended purpose without posing an undue burden on industry. There are two key criteria for the success of such an approach.

73. First, acknowledging the potential difficulty of quantifying benefits and burdens, we need to determine whether the proposed disclosure rules will significantly benefit consumers and, in fact, clarify important issues for them – for example, by helping them detect hidden charges, making contractual terms more transparent, or clarifying rates and fees. Research on consumer disclosure in many areas, including credit card disclosures, mortgage disclosures, and mileage

¹⁴⁷ We note that we also seek comment on whether these rules and other requirements should apply to CMRS carriers. See *supra* Section IV.D.

labels on automobiles, has shown that the form and presentation of disclosure can have a significant impact on its usefulness to consumers.¹⁴⁸

74. Second, we seek to maximize the benefits to consumers from our proposed rules while taking into consideration the burden of compliance to carriers. These costs and benefits can have many dimensions, including cost and revenue implications for industry, financial benefits to consumers, and other, less tangible benefits, such as the value of increasing consumer choice or preventing fraud.

75. To address the first criterion in the case of cramming, we seek comment on the best ways to ensure that the forms of disclosure required by our proposed rules will actually benefit consumers. We seek comment on the extent to which consumers may be expected to utilize the additional information called for by these proposed rules. Further, we seek comment on any considerations regarding the manner by which the proposed rules are implemented that would increase the number of consumers who will benefit and the nature of the benefits. In particular, we seek comment on the best ways to ensure that disclosure of third-party charges on bills is clear and conspicuous; that third-party blocking options are clearly disclosed; and that FCC contact information is provided in ways that consumers will see it and know how to use it. We also seek comment on best-practices models of consumer disclosure in other areas, best-practices means of assessing the effectiveness of disclosures (such as online tests or focus groups), or other examples, research, and recommendations that would be applicable here.

76. To address the second criterion in the case of cramming, we seek comment on the nature and magnitude of the costs and benefits of our proposed rules to consumers and carriers. We recognize that these may vary by carrier and seek comment on possible differential impacts on carriers and their customers by type (*e.g.* wireline, CMRS) and size of carrier, as well as any specific concerns for those carriers serving rural areas, Native Nations on Tribal lands and Native communities and their customers. We seek specific information about whether, how, and by how much such carriers and their customers may be impacted differently in terms of the costs and benefits of our proposed rules. We also seek comment on the most cost-effective approach for modifying existing policies and practices to achieve the goals of our proposed rules in light of existing policies and practices.

77. To the extent possible, we request comment on a wide range of questions that will enable us to weigh the costs and benefits associated with these proposed disclosure rules. We request that commenters provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained and any supporting documentation or other evidentiary support. All

¹⁴⁸ See, *e.g.*, Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24 (2009); Mortgage Disclosure Improvement Act of 2008 (contained in Sections 2501 and 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110-29, enacted on July 30, 2008, and amended by the Emergency Economic Stabilization Act of 2008, Public Law 110-343, enacted on October 3, 2008); Thaler, Richard H. and Sunstein Cass. R., *Nudge: Improving Decisions About Health, Wealth, and Happiness* 193-195 (2008) (discussing automobile emissions stickers); Environmental Protection Agency, Fact Sheet: New Fuel Economy and Environmental Labels for a New Generation of Vehicles, EPA-420-F-11-017 (May 2011), <http://www.epa.gov/otaq/carlabel/420f11017.htm>.

comments will be considered and given appropriate weight. Vague or unsupported assertions regarding costs or benefits generally can be expected to receive less weight and be less persuasive than more specific and supported statements.

78. We seek comment on the extent of cramming,¹⁴⁹ the total of all charges and all unauthorized charges from third-party vendors, and the total amount of unauthorized charges wireline and CMRS consumers are billed or pay annually, as well as amounts credited annually to consumers for allegedly unauthorized charges and amounts of uncollectible charges. Because unauthorized charges can and often do go undetected for long periods of time, we seek comment on methodologies to extrapolate or otherwise quantify the total amount of unauthorized charges accurately. We seek comment on how and by how much our proposed rules may reduce these charges and credits. We seek comment on other costs of cramming to consumers, too, such as costs of monitoring bills to guard against cramming, costs of obtaining services to block third-party charges, and costs associated with resolving disputes over unauthorized charges. These costs may include out-of-pocket costs and less tangible costs, such as time. We seek comment on the amount of such costs, as well as how and by how much our proposed rules may reduce them. We invite comments regarding consumers' experiences with unauthorized charges, including how long it took to discover unauthorized charges, how long it took to resolve them, and details of how the issue was resolved, such as by contacting the carrier or third party or by requesting a block to prevent third-party charges from appearing on the bills.

79. We also seek comment on the estimated loss of consumer confidence, if any, that has resulted from cramming, and how much our proposed rules may increase consumer confidence. We further seek comment on whether and to what extent consumers have avoided purchasing particular kinds of goods or services in order to avoid or to reduce the risk of cramming, and how much our proposed rules may lead to increased consumer purchasing. We seek comment on the potential costs of cramming to third-party vendors that do not engage in cramming, such as costs associated with reduced demand for their products due to a loss of consumer confidence in the marketplace, and reduced innovation and investment due to lower demand for their products. We also seek comment on the potential cost that our proposed rules and other requirements discussed herein may impose on third-party vendors, such as lost revenue from legitimate transactions. We

¹⁴⁹ We note that the survey of consumer awareness of cramming cited in note 44 and the California data discussed in paragraph 28 support a rough estimate that 15 to 20 million American households a year may experience cramming on their telephone bills. This is derived as follows: The survey showed that, in the instance studied, only 1 in 20 cramming victims was aware of the unauthorized charge on their bills. California data show that 120,000 consumers a year complain to their carriers about cramming; that equals 1 percent of the 12 million wireline households in the state. *See*

[ftp://ftp.cpuc.ca.gov/OGA/reports/Universal%20Lifeline%20Telephone%20Program%20Workload%20Report,%202007%20Budget%20Act-Item%208660-001-0471%20\(090227\).pdf](ftp://ftp.cpuc.ca.gov/OGA/reports/Universal%20Lifeline%20Telephone%20Program%20Workload%20Report,%202007%20Budget%20Act-Item%208660-001-0471%20(090227).pdf). If these numbers accurately reflect other cases of cramming and other states, they would suggest that at least 20 percent of wireline households in the U.S. experience cramming. That equates to 15 to 20 million out of a total of 86 million wireline households. *See* Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at Table 7.4 (Sept. 2010) ("Trends in Telephone Service"). We invite comment on the accuracy and usefulness of this estimate, and whether there are better or other supporting data to use in estimating the extent of cramming.

also seek comment on any other potential costs and/or benefits to third-party vendors that may result from our proposed rules.

80. Additionally, we seek comment on the specific kinds and amounts of costs that carriers are likely to incur to comply with our proposed rules. Some possible costs include development and implementation of policies and procedures, training call center staff, and billing system modifications. To the extent that billing or other system modifications may be required, we seek comment on the exact nature of those modifications, the time required to implement them, and their cost. We also seek comment on the amount of annual revenue carriers receive from providing billing-and-collection services to third parties, especially for third parties that are not carriers, and the anticipated reduction, if any, in revenue from such services, if we adopt the proposed rules or other requirements. We seek comment on how these revenue figures may be different depending upon which third-party charges are blocked, such as whether charges for common carrier services provided by a non-presubscribed carrier or charges from non-carrier third parties are blocked. We also seek comment on carriers' costs to offer consumers the ability to block all third-party charges, authorized or unauthorized.

81. We also seek comment on the nature and magnitude of costs that carriers *might avoid or reduce* by complying with the proposed rules. Some possible forms of cost savings might be reductions in the number of calls to carrier call centers related to disputed third-party charges, reduced data processing or other costs to process refunds, reduced costs to investigate disputed charges, reduced uncollectible charges, or other reduced transaction costs. Similarly, carriers currently may incur costs to monitor billing activities by third parties, even to the extent of auditing third parties or developing, imposing, and monitoring compliance with performance improvement plans.¹⁵⁰ We seek comment on the specific nature and magnitude of such costs as well as potential reductions in these costs that may occur if we were to adopt the proposed rules or other requirements discussed herein. Finally, we seek comment on and quantification of any other costs and benefits that we should consider.

G. Legal Issues

82. As discussed in more detail below, we seek comment on our legal authority to adopt the rules we propose, as well as comments on our legal authority regarding other proposals and issues raised herein. We note that our proposed rules apply the basic Truth-in-Billing concepts of clear, conspicuous, and unambiguous billing in a somewhat different manner. While the existing Truth-in-Billing rules are intended, in part, to provide consumers with the information that they require to detect unauthorized charges on their telephone bills, it has become evident from consumer complaints that additional safeguards may be necessary. Rather than restricting the ability of carriers to put third-party charges on telephone bills, our proposed rules take the more moderate approach of addressing the confusion and frustration that consumers experience from the *manner* in which carriers currently include both carrier charges and third-party charges

¹⁵⁰ See, e.g., Letter from Anne D. Berkowitz, Verizon, to Marlene H. Dortch, Secretary, FCC (Mar. 8, 2011); Letter from Toni R. Action, AT&T, to Marlene H. Dortch, Secretary, FCC (Feb. 28, 2011); Letter from Scott R. Friermuth, Sprint, to Marlene H. Dortch, Secretary, FCC (Apr. 29, 2011).

on telephone bills, and by ensuring that consumers are aware of blocking options that carriers offer. At the same time, we also seek comment on the stronger approaches of requiring carriers to offer blocking options and of prohibiting carriers from placing third-party charges on telephone bills. To be clear, we do not propose generally to regulate the billing-and-collection services that carriers provide to third parties. Instead, we seek only to ensure that bills for common carrier services are presented to consumers in a way that best satisfies the requirements of the Act.

1. Communications Act

83. We seek comment on the nature and scope of our authority to adopt the proposed rules, as well as to adopt other requirements discussed herein. We note in this regard that the bill format and labeling requirements in the Truth-in-Billing rules are based, in whole or part, on the Commission's authority under Section 201(b) of the Act¹⁵¹ to enact rules to implement the requirement that all charges, practices, classifications, and regulations for and in connection with interstate communications service be just and reasonable.¹⁵² We believe that we have authority under Section 201(b) to adopt these rules. As discussed earlier, Section 201(b) requires that all "practices . . . in connection with" common carrier services be "just and reasonable." As the Commission has explained before, "the telephone bill is an integral part of the relationship between a carrier and its customer."¹⁵³ Third-party charges appear on a telephone bill only because the carrier generating the bill has permitted them to be placed there by the third-party or its agent. Furthermore, if it is not clear on the bill specifically what the charge is for and who the service provider is, a consumer may believe that the charge is related to the common carrier service.¹⁵⁴ As explained above, the problem of crammed third-party charges depends on and arises from the relationship between the common carrier and the consumer. We seek comment on our assertion that we have authority under Section 201(b) to adopt these rules. We also seek comment on whether our authority extends to the other requirements discussed herein, such as prohibiting carriers from including third-party charges on their telephone bills, and to require carriers to provide and periodically verify contact information for third-party vendors.¹⁵⁵

84. CMRS carriers are subject to our Section 201(b) authority for their common carrier services,¹⁵⁶ and they largely are subject to the Truth-in-Billing rules promulgated thereunder to

¹⁵¹ *First Truth-in-Billing Order*, 14 FCC Rcd at 7503-04, para. 21; 47 CFR 64.2400 -64.2401. The Commission did not rely on its Section 258 authority over cramming to adopt the labeling requirements contained in the Truth-in-Billing rules.

¹⁵² 47 U.S.C. § 201(b).

¹⁵³ *First Truth-in-Billing Order*, 14 FCC Rcd at 7503, para. 20.

¹⁵⁴ *See supra* note 44 (noting that some crammed charges appear to be for communications-related services provided by a telephone company even when they are not).

¹⁵⁵ *See supra* Section IV.E.

¹⁵⁶ 47 U.S.C. 332(c)(1)(A) (stating that CMRS providers are treated as common carriers under Title II, and specifically Section 201, insofar as they are engaged in providing common carrier services).

the same extent as wireline carriers.¹⁵⁷ Thus, we believe our authority to extend our proposed rules and other requirements to CMRS carriers is co-extensive with our authority to promulgate them for wireline carriers. We seek comment on this analysis.

85. Finally, we seek comment on whether the Commission needs to invoke its Title I authority to adopt requirements to address cramming.¹⁵⁸ The Commission “may exercise ancillary jurisdiction only when two conditions are satisfied: (1) the Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”¹⁵⁹ An exercise of such authority under Title I may be necessary here because entities that are not classified as common carriers nonetheless may, like common carriers, provide billing-and-collection services for third parties or submit charges for inclusion on a telephone bill. In light of the legal standards noted above, can and should we exercise our Title I authority to apply our proposed cramming rules to any non-carriers? Are there particular entities, including but not limited to interconnected VoIP providers, that we should designate as subject to our proposed cramming rules?¹⁶⁰ The Commission has previously asserted that its Title I authority extends to a carrier’s provision of billing-and-collection services to third parties that are not carriers.¹⁶¹ We seek comment on whether that authority would extend to the proposals we make above.

2. First Amendment Considerations

86. A regulation of commercial speech will be found compatible with the First Amendment if: (1) there is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest.¹⁶² Moreover, “regulations that compel ‘purely factual and uncontroversial’ commercial speech are subject to more lenient review than regulations that restrict accurate commercial speech.”¹⁶³

¹⁵⁷ *Second Truth-in-Billing Order*, 20 FCC Rcd at 6455-58, paras. 15-20.

¹⁵⁸ *See* 47 U.S.C. §§ 151-154.

¹⁵⁹ *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *American Library Ass’n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

¹⁶⁰ We note that the Commission has previously asserted ancillary jurisdiction over VoIP providers in other contexts. *See, e.g., IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, 10261-66, paras. 26-35 (2005) (rules requiring VoIP providers to supply enhanced 911 capabilities to their customers), *aff’d sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2007).

¹⁶¹ *See Detariffing of Billing and Collection Services*, Report and Order, 102 F.C.C.2d 1150, paras. 35-38 (1986).

¹⁶² *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 566 (1980).

¹⁶³ *See, e.g., New York State Restaurant Association v. New York City Board of Health*, 556 F.3d 114, 132 (2nd Cir. 2009) (upholding New York City health code requiring restaurants to post calorie content information on their menus and menu boards) (citing *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985)); *National Elec. Mfrs. Ass’n v. Sorrell*, 272 F.3d 104, 113 (2nd Cir. 2001) (upholding Vermont statute prescribing labeling requirements on mercury-containing lamps).

(continued . . .)

87. As noted above, the Commission's statutory obligations include protecting consumers from unjust or unreasonable charges and practices.¹⁶⁴ Despite voluntary industry efforts, the record in this proceeding suggests that consumers continue to incur substantial costs each year from the inclusion of unauthorized charges on their telephone bills. Our proposed regulations are designed to advance the government's interest by providing consumers with basic tools necessary to protect themselves from these unauthorized charges. We seek comment on whether our proposed rules and the other requirements upon which we seek comment are consistent with these and any other First Amendment considerations.

V. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

88. The proceeding that this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁶⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing of Comments and Reply Comments

89. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁶⁶ interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice. Comments may be filed using: (1) the Commission's Electronic Comment Filing

(continued from previous page)

¹⁶⁴ See 47 U.S.C. § 201(b).

¹⁶⁵ See 47 C.F.R. §§ 1.1200 *et seq.*

¹⁶⁶ *Id.* §§ 1.415, 1.419.

System (“ECFS”); or (2) by filing paper copies. All filings should reference CG Docket No. 11-116.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 11-116.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to Commission Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

90. The comments and reply comments filed in response to this Notice will be available via ECFS at: <http://fjallfoss.fcc.gov/ecfs2/>. You may search by docket number (Docket No. CG-11-116). Comments are also available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. Copies may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (301) 816-0169, e-mail FCC@BCPIWEB.com.

91. Accessibility Information. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This *Notice of Proposed Rulemaking* also can be downloaded in Word and Portable Document Formats (“PDF”) at <http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill>. Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail at: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

C. Initial Regulatory Flexibility Analysis

92. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible significant economic impact

on small entities of the policies and rules addressed in this document.¹⁶⁷ The IRFA is set forth in Appendix C. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice.

D. Paperwork Reduction Act

93. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (“OMB”) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.¹⁶⁸ In addition, pursuant to the Small Business Paperwork Relief Act of 2002,¹⁶⁹ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”¹⁷⁰

VI. ORDERING CLAUSES

94. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1-2, 4, 201, 301, 303, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-152, 154, 201, 301, 303, 332, and 403, this Notice of Proposed Rulemaking IS ADOPTED.

95. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶⁷ See 5 U.S.C. §§ 601 *et seq.*

¹⁶⁸ Pub. L. No. 104-13.

¹⁶⁹ Pub. L. No. 107-198.

¹⁷⁰ 44 U.S.C. § 3506(c)(4).

Appendix A**Proposed Rules**

The Federal Communications Commission proposes to amend Part 64 of Title 47 of the Code of Federal Regulations as follows:

1. The heading for Subpart Y is revised to read as follows:

Subpart Y –Truth-in-Billing Requirements for Common Carriers; Billing for Unauthorized Charges

2. Section 64.2400 is amended by revising paragraph (b) to read as follows:

(b) These rules shall apply to all telecommunications common carriers, except that §§ 64.2401(a)(2), 64.2401(c), and 64.2401(f) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a future rulemaking.

3. Section 64.2401 is amended by adding new paragraph (f), and revising paragraphs (a)(2) and (d) to read as follows:

§ 64.2401 Truth-in-Billing Requirements.

- (a) *Bill Organization.* Telephone bills shall be clearly organized, and must comply with the following requirements:

* * * * *

- (2) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. Where charges for one or more service providers that are not carriers appear on a telephone bill, the charges must be placed in a distinct section separate from all carrier charges.

* * * * *

- (d) *Clear and conspicuous disclosure of inquiry and complaint contacts.*

- (1) Telephone bills must contain clear and conspicuous disclosure of any information that the subscriber may need to make inquiries about or contest charges on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions

concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf.

- (2) Where the subscriber does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or the Internet, the common carrier may comply with these billing disclosure requirements by providing on the bill an e-mail or website address. Each carrier must make a business address available upon request from a consumer.
- (3) Telephone bills and carrier websites must clearly and conspicuously state that the subscriber may submit inquiries and complaints to the Federal Communications Commission, and provide the telephone number, website address, and, on the carrier's website, a direct link to the webpage for filing such complaints. That information must be updated as necessary to ensure that it remains current and accurate.

* * * * *

(f) *Blocking of third-party charges.*

- (1) Common carriers that offer subscribers the option to block third-party charges from appearing on telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each telephone bill, and on each carrier's website.

Appendix B

Consumer Information and Disclosure Notice of Inquiry
List of Commenters

I. List of Parties

The following parties have filed comments and/or reply comments in response to the August 28, 2009 Notice of Inquiry (we note that not all of the parties filing in this proceeding addressed cramming):

<u>Commenter</u>	<u>Abbreviation</u>
American Association of People with Disabilities	AAPD*
American Council of the Blind	American Council
AT&T Inc.	AT&T*
David Austin	David Austin
Billing Concepts, Inc.	Billing Concepts*
BillShrink.com	BillShrink
California Public Utilities Commission	CPUC
Citizens Utility Board	CUB
City of Chicago – Dept. of Business Affairs	Chicago
Comcast Corporation	Comcast*
Consumer Federation of America, Free Press et al.	Consumer Federation*
CTIA – The Wireless Association	CTIA
DirectTV, Inc.	DirectTV
Dish Network L.L.C.	Dish Network*
District of Columbia Public Service Commission	D.C. PSC
Federal Trade Commission	FTC
Senator Al Franken	Senator Franken
Independent Telephone & Telecommunications Alliance	ITTA
Individual Consumer	Consumer (name)
Iowa City	Iowa City
Massachusetts Department of Telecommunications and Cable	Mass. DTC
MetroPCS Communications, Inc.	MetroPCS
Minnesota – Office of the Attorney General	Minn. AG
Mobile Marketing Association	MMA
Montgomery County – Office of Consumer Protection	Montgomery County
National Association of State Utility Consumer Advocates	NASUCA*
National Cable & Telecommunications Association	NCTA*
National Telecommunications Cooperative Association	NTCA
Open Technology Initiative/New America Foundation	Open Technology
Oregon Public Utilities Commission	Oregon PUC
Organization for Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Qwest Communications International, Inc.	Qwest*
Rural Cellular Association	RCA

Speech Communications Assistance by Telephone

Southern Communications Services, Inc.
Sprint Nextel Corporation
State Attorneys General
STi Prepaid
T-Mobile USA, Inc.
Telecommunications for the Deaf and Hard of Hearing et al.
Telogical Systems
Texas Office of Public Utility Counsel
Time Warner Cable, Inc.
United States Telecom Association
Utility Consumers' Action Network
Validas
Verizon and Verizon Wireless
Virginia State Corporation Commission
Voice on the Net Coalition
Wireless Communications Association International

Speech Com

SouthernLINC Wireless
Sprint
25 State AGs
STi*
T-Mobile
Telecom for Deaf
Telogical
Texas PUC
Time Warner*
USTA
UCAN
Validas
Verizon*
Virginia SCC
VON
WCAI

* Party filed both comments and reply comments; **bold** – party filed only reply comments.

Appendix C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended, (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rule Making (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The record compiled in this proceeding, including the Commission’s own complaint data, confirms that cramming is a significant and ongoing problem that has affected wireline consumers for over a decade, and drawn the notice of Congress, states, and other federal agencies. The substantial volume of wireline cramming complaints that the Commission, FTC, and states continue to receive underscores the ineffectiveness of voluntary industry practices and highlights the need for additional safeguards. Recent evidence, such as the volume of wireless cramming complaints and wireless carriers’ settlement of litigation regarding unauthorized charges, raises a similar concern with unauthorized charges on Commercial Mobile Radio Service (“CMRS”) bills, such as those of providers of wireless voice service.
3. Although the Commission has addressed cramming as an unreasonable practice under Section 201(b) of the Act,⁴ there are currently no rules that specifically address unauthorized charges on wireline telephone bills. We believe that adopting such requirements will provide consumers with the safeguards they need to protect themselves from this risk.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to this NPRM is contained in Sections 1-2, 4, 201, 301, 303, 332, and 403 of the Communications Act of 1934, as amended 47 U.S.C. §§ 151-152, 154, 201, 301, 303, 332, and 403.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See, e.g., *Long Distance Direct, Inc.*, File No. ENF-99-01, Memorandum Opinion and Order, 15 FCC Red 3297 (2000) (assessing a forfeiture for slamming and cramming violations pursuant to sections 201(b) and 258. “Slamming” is the unlawful practice of changing a subscriber’s selection of a provider of telephone service without that subscriber’s knowledge or permission.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration (“SBA”).⁸ Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.⁹ The NPRM seeks comment generally on telecommunications common carriers. However, as noted in Section IV of the NPRM, we are seeking comment on the scope of entities that should be covered by the proposals contained therein.¹⁰

6. *Incumbent Local Exchange Carriers (“Incumbent LECs”).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹¹ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.¹² Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹³ Consequently, the Commission estimates

⁵ 5 U.S.C. § 603(b)(3).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

¹⁰ See *supra* Sec. IV.

¹¹ 13 C.F.R. § 121.201, NAICS code 517110.

¹² See Trends in Telephone Service at Table 5.3.

¹³ See *id.*

(continued . . .)

that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.¹⁴

7. *Competitive Local Exchange Carriers (“Competitive LECs”), Competitive Access Providers (“CAPs”), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.¹⁶ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.¹⁷ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.¹⁸ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.¹⁹ In addition, 72 carriers have reported that they are Other Local Service Providers.²⁰ Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.²¹ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

(continued from previous page)

¹⁴ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

¹⁵ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

¹⁷ See Trends in Telephone Service at Table 5.3.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.*

²¹ See *id.*

8. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²² Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.²³ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.²⁴ Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.²⁵ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

9. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.²⁶ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”²⁷ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.²⁸ For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 1,383 firms that operated that year.²⁹ Of those, 1,368 firms had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (“PCS”), and

²² 13 C.F.R. § 121.201, NAICS code 517110.

²³ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

²⁴ See Trends in Telephone Service at Table 5.3.

²⁵ See *id.*

²⁶ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

²⁷ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

²⁸ 13 C.F.R. § 121.201, NAICS code 517210 (“2007 NAICS”). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

²⁹ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), <http://factfinder.census.gov/servlet/IBQTable?—bm=y&-geo—id=&-fds—name=EC0700A1&—skip=700&-ds—name=EC0751SSSZ5&—lang=en>.

Specialized Mobile Radio (“SMR”) telephony services.³⁰ An estimated 261 of these firms have 1,500 or fewer employees and 152 firms have more than 1,500 employees.³¹ Consequently, we estimate that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms are small.

10. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).³² Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.³³ According to Commission data, 434 carriers report that they are engaged in wireless telephony.³⁴ Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees.³⁵ Therefore, we estimate that 222 of these entities can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. We propose rules herein that: (1) require wireline carriers to notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their websites, of the option to block third-party charges from their telephone bills, if the carrier offers that option; (2) require wireline carriers to place charges from non-carrier third-parties in a bill section separate from carrier charges; and (3) require wireline and CMRS carriers to include on all telephone bills and on their websites the Commission’s contact information for the submission of complaints. The record reflects that cramming primarily has been an issue for wireline telephone customers. However, there is evidence of a concern with unauthorized charges on wireless bills. Therefore, we also seek comment on whether we should extend any similar protections to wireless consumers.

12. These proposed rules may necessitate that some common carriers make changes to their existing billing formats and/or disclosure materials. For example, to provide the required contact information on their bills may necessitate changes to billing formats. However, some carriers may be in compliance with many of these requirements and require no additional compliance efforts.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

³⁰ See Trends in Telephone Service at Table 5.3.

³¹ See *id.*

³² 13 C.F.R. § 121.201, NAICS code 517210.

³³ *Id.*

³⁴ Trends in Telephone Service at Table 5.3.

³⁵ *Id.*

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁶

14. In this NPRM, we seek comment on ways to minimize the economic impact on carriers to comply with our proposed rules. For example, we seek comment on establishing timeframes that will allow carriers sufficient opportunity to make any necessary changes to comply with any rules that we adopt in a cost efficient manner. We also seek comment on how to alleviate burdens on small carriers. And we seek guidance on whether our proposed rules should be limited to wireline service or whether there are justifications to extend those safeguards to wireless service. Finally, we seek comment on an extensive cost and benefit analysis to determine the overall impact on consumers and industry of our proposed rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

15. None.

³⁶ 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”), Consumer Information and Disclosure, Truth-in-Billing and Billing Format*; CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170

We tackle today the problem of unauthorized charges on phone bills, or “cramming.”

Cramming is fraudulent and illegal. It happens when a company places charges on a telephone bill for products or services that the consumer never requested. These charges can be for anything from long-distance service to horoscopes to diet plans.

It is unfortunately a continuing problem for wireline telephone customers and an emerging one for wireless customers as well.

The complaints that we receive here at the FCC, and similar complaints to the FTC, state authorities, and the carriers themselves, all show that cramming is a widespread problem, especially for wireline service. And we believe the complaints greatly understate the extent of the problem. One expert survey found that only five percent – one in twenty – of consumers who had received charges from a particular cramming company were even aware that the charges were on their bills. Now that more and more consumers use electronic billing and automatic payment, it is a serious risk that these unauthorized charges will go undetected for months or even years.

In all, we estimate that cramming may affect 15-20 million Americans a year. And anyone can be a victim of cramming:

- One consumer complained to the North Carolina Attorney General’s office about a company that claimed he had ordered its long-distance service over the Internet. As he told the AG’s office, that was impossible because he doesn’t own a computer.
- A consumer in Washington, D.C. victimized by cramming was told by the cramming company that he had authorized the charge. When the consumer asked for proof, the company gave him an “authorization” record with someone else’s name, a non-working email address, and a street address in Berkeley Springs, West Virginia that turned out to be the address of the Berkeley Springs Chamber of Commerce.

These are just a couple of the numerous cramming complaints that consumers have filed with us.

The Commission has been aggressively pursuing reports of cramming. Several months ago, we approved a settlement with Verizon Wireless over unauthorized “mystery fees” charged to approximately 15 million customers. That included a refund of about \$53 million to customers and a \$25 million voluntary payment to the U.S. Treasury. And just last month, also thanks to the hard work of our Enforcement Bureau, we issued four Notices of Apparent

Liability for Forfeiture proposing \$11.7 million in forfeitures against four telecommunications carriers that appear to have engaged in widespread cramming.

The FCC is turning up the heat on companies that rip off customers with unauthorized fees. We are sending a clear message: if you charge consumers unauthorized fees, you will be discovered and you will be punished. The rules we propose today are common-sense measures to empower consumers to identify fraudulent charges and take corrective action to protect themselves, while minimizing the compliance burden on carriers.

I am pleased that other parties are looking into cramming, including the Senate Commerce Committee, the FTC, and a number of states. In particular, I welcome Senator Rockefeller's call for a hearing on this issue, which is scheduled for tomorrow. I look forward to working with our partners in government and all stakeholders to crack down on this illegal practice.

I thank the staff from the many Bureaus involved in this item for their diligent efforts, particularly our Wireline Bureau, our Wireless Bureau, our Consumer Bureau, and our Enforcement Bureau – and for their great work in general to empower and protect consumers.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *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*, CC Docket No. 98-170

It’s always a good day at the Commission when our agenda includes a consumer friendly item like today’s Notice of Proposed Rulemaking on cramming. It’s a good meeting when we can breathe life into our mandate as a consumer protection agency. This is a particularly timely item that brings the promise of much-needed relief for the thousands of consumers who complain to the FCC every year about unauthorized charges on their wireline—and their wireless—phone bills. It becomes clearer each day that wireless consumers are indeed encountering these kinds of problems, too, and we will need effective solutions in the wireless world as well as the wireline.

Because cramming can be difficult to identify and detect from a bill—a problem this notice seeks to correct—the true number of Americans who fall victim to cramming is likely well above those who have complained directly to the Commission. The NPRM identifies common-sense solutions, so that consumers will know what they are being billed for and how to take action against any fraudulent charges. An item like this would be welcome at any time but is especially important in these difficult economic times when so many families are struggling to balance their household budgets.

I look forward to the record responses to our notice, to moving forward on this critical consumer issue, and to working with the Chairman and all my colleagues on this and other proceedings on our Consumer Empowerment Agenda. And many thanks to everyone in the Consumer and Governmental Affairs Bureau whose hard work brought us this item.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”), Consumer Information and Disclosure, Truth-in-Billing and Billing Format*; CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170

I vote to approve today’s notice of proposed rulemaking (“NPRM”) designed to alert consumers to the practice of what has become known as “cramming” unauthorized charges on their telephone bills.

As the record develops, I will be interested in learning more about the scope of the practice of “cramming” and ways to empower consumers through potential amendments to the FCC’s truth-in-billing rules. This NPRM explores whether these potential new requirements should be extended to both wireline and commercial mobile radio service (“CMRS”) carriers, and I look forward to learning more on this particular topic. I also appreciate that the NPRM seeks comment on the Commission’s legal authority and asks whether the proposed rules would be compatible with the First Amendment.

Finally, we must always remember that there are economic effects of new rules. As such, I will look for any innovative programs that may already exist in the marketplace that have the purpose of alerting consumers to “cramming” charges and notifying them of opportunities to request that charges be blocked from their carrier bills. If the record contains compelling evidence that marketplace solutions are not adequate, I will encourage my colleagues to craft potential rules in a manner that is narrowly-targeted to our stated goals.

I thank the Chairman for his leadership and appreciate the hard work of the Consumer and Governmental Affairs Bureau. As we move forward, I look forward to reviewing the record and working with interested parties and my colleagues on this topic.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”) Consumer Information and Disclosure; Truth-in-Billing and Billing Format, CG Docket No. 11-116, CG Docket No. 09-158, and CC Docket No. 98-170.*

This Notice proposes rules that will give consumers better tools to detect and prevent unauthorized charges or “mystery fees,” which may appear on their telephone bills. Evidence to date indicates that this action is necessary, because the Commission continues to receive between two and three thousand complaints a year from consumers about unwanted and unrequested charges from their telephone companies. It is our responsibility at the FCC to protect telephone consumers when the marketplace is not functioning appropriately. Consumers should be informed of the choices they can make with respect to blocking third-party charges on their phone bills, and they need clear and conspicuous notice of third-party charges, and where they can call to request further information about those charges. As such, I support our inquiry into the appropriate rules that will better inform and notify consumers, and am particularly interested in whether these rules should apply across the board to both wireline and wireless companies. While the complaints about unauthorized charges on cell phone bills are not as prevalent as on wireline bills, I am interested in hearing about whether cell phone consumers should receive the same protections as wireline customers. In particular, do consumers expect that the Commission’s rules will help inform and protect them no matter the technology they use to complete their calls? And does the evidence warrant the implementation of rules for wireless at this time? I look forward to hearing from consumers and industry about these issues.

I wish to thank the Consumer and Governmental Affairs Bureau, along with the Enforcement Bureau for their work on this item.