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Before the
Federal Communications Commission
Washington, D.C. 20554

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FCC Mail Room

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

NOTICE OF PROPOSED RULEMAKING

Adopted: July 12, 2011

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Comment Date: (60 days after date of publication in the Federal Register)

Reply Comment Date: (90 days after date of publication in the Federal Register)

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 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-

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.

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 (continued . . .)

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. 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

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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).

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 (continued . . .)

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 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

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(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.

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.

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

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.

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").

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 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-

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").

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.

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 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

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 NOI*”).

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.

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 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

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 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"); (continued . . .)

III. EVIDENCE OF A CRAMMING PROBLEM

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

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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”).

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-C00185133-1 (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).

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 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. 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

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

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.

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 (continued . . .)

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

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

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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.

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, (continued . . .))

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 crammering 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 conducted a raid on an alleged

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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 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.

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 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

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.

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

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

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

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).

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).

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 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

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).

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, 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

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).

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.

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 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.

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).

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.

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 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.

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.

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.

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 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

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.

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-> (continued . . .)

comment on the nature and 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 To what extent and how are industry

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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>.

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 (continued . . .)

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 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

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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 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.

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 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

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.

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).

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 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

¹³⁵ See Virginia SCC Comments at 4.

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 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

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-C00185280-1 (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).

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.

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 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

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

¹⁴⁵ See, e.g., *id.* at 997-999.

¹⁴⁶ See FTC Reply Comments at 12.