

complaints. Specifically, we seek comment on the nature and extent of the cramming problem in the various states, the number of wireline and wireless cramming complaints or trends in the last few years with regard to unauthorized charges on bills, what enforcement and/or legislative actions states have taken with regard to cramming, and what regulatory or other actions they recommend the Commission implement to assist in addressing the cramming problem.

7. Accessibility

68. We also seek comment on how our proposed rules will affect, or could be improved to better assist, people with disabilities, people living in Native Nations on Tribal lands and in Native communities, and people with limited English proficiency. In addition, we seek input on what measures common carriers should take to ensure that the following information they provide to their customers is made accessible to such individuals.

8. Interconnected VoIP Service

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

9. Definition of Service Provider or Service

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

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

F. Effective Consumer Information Disclosure

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

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

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

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

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

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

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

77. To the extent possible, we request comment on a wide range of questions that will enable us to weigh the costs and benefits associated with these proposed disclosure rules. We request that commenters provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained and any supporting documentation or other evidentiary support. All comments will be considered and given appropriate weight. Vague or unsupported assertions regarding costs or benefits generally can be expected to receive less weight and be less persuasive than more specific and supported statements.

78. We seek comment on the extent of cramming,¹⁴⁹ the total of all charges and all unauthorized

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

¹⁴⁹ We note that the survey of consumer awareness of cramming cited in note 44 and the California data discussed in (continued . . .)

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

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

80. Additionally, we seek comment on the specific kinds and amounts of costs that carriers are likely to incur to comply with our proposed rules. Some possible costs include development and implementation of policies and procedures, training call center staff, and billing system modifications. To the extent that billing or other system modifications may be required, we seek comment on the exact nature of those modifications, the time required to implement them, and their cost. We also seek comment on the amount of annual revenue carriers receive from providing billing-and-collection services to third parties, especially for third parties that are not carriers, and the anticipated reduction, if any, in revenue from such services, if we adopt the proposed rules or other requirements. We seek comment on how

(continued from previous page)

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

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

these revenue figures may be different depending upon which third-party charges are blocked, such as whether charges for common carrier services provided by a non-presubscribed carrier or charges from non-carrier third parties are blocked. We also seek comment on carriers' costs to offer consumers the ability to block all third-party charges, authorized or unauthorized.

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

G. Legal Issues

82. As discussed in more detail below, we seek comment on our legal authority to adopt the rules we propose, as well as comments on our legal authority regarding other proposals and issues raised herein. We note that our proposed rules apply the basic Truth-in-Billing concepts of clear, conspicuous, and unambiguous billing in a somewhat different manner. While the existing Truth-in-Billing rules are intended, in part, to provide consumers with the information that they require to detect unauthorized charges on their telephone bills, it has become evident from consumer complaints that additional safeguards may be necessary. Rather than restricting the ability of carriers to put third-party charges on telephone bills, our proposed rules take the more moderate approach of addressing the confusion and frustration that consumers experience from the *manner* in which carriers currently include both carrier charges and third-party charges on telephone bills, and by ensuring that consumers are aware of blocking options that carriers offer. At the same time, we also seek comment on the stronger approaches of requiring carriers to offer blocking options and of prohibiting carriers from placing third-party charges on telephone bills. To be clear, we do not propose generally to regulate the billing-and-collection services that carriers provide to third parties. Instead, we seek only to ensure that bills for common carrier services are presented to consumers in a way that best satisfies the requirements of the Act.

1. Communications Act

83. We seek comment on the nature and scope of our authority to adopt the proposed rules, as well as to adopt other requirements discussed herein. We note in this regard that the bill format and labeling requirements in the Truth-in-Billing rules are based, in whole or part, on the Commission's authority under Section 201(b) of the Act¹⁵¹ to enact rules to implement the requirement that all charges, practices, classifications, and regulations for and in connection with interstate communications service be just and reasonable.¹⁵² We believe that we have authority under Section 201(b) to adopt these rules. As discussed

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

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

¹⁵² 47 U.S.C. § 201(b).

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

84. CMRS carriers are subject to our Section 201(b) authority for their common carrier services,¹⁵⁶ and they largely are subject to the Truth-in-Billing rules promulgated thereunder to the same extent as wireline carriers.¹⁵⁷ Thus, we believe our authority to extend our proposed rules and other requirements to CMRS carriers is co-extensive with our authority to promulgate them for wireline carriers. We seek comment on this analysis.

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

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

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

¹⁵⁵ See *supra* Section IV.E.

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

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

¹⁵⁸ See 47 U.S.C. §§ 151-154.

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

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

authority extends to a carrier's provision of billing-and-collection services to third parties that are not carriers.¹⁶¹ We seek comment on whether that authority would extend to the proposals we make above.

2. First Amendment Considerations

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

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

V. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

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

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

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

¹⁶³ See, e.g., *New York State Restaurant Association v. New York City Board of Health*, 556 F.3d 114, 132 (2nd Cir. 2009) (upholding New York City health code requiring restaurants to post calorie content information on their menus and menu boards) (*Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 637 (1985)); *National Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 113 (2nd Cir. 2001) (upholding Vermont statute prescribing labeling requirements on mercury-containing lamps).

¹⁶⁴ See 47 U.S.C. § 201(b).

¹⁶⁵ See 47 C.F.R. §§ 1.1200 *et seq.*

be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing of Comments and Reply Comments

89. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁶⁶ interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"); or (2) by filing paper copies. All filings should reference CG Docket No. 11- 116.

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

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

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

¹⁶⁶ *Id.* §§ 1.415, 1.419.

C. Initial Regulatory Flexibility Analysis

92. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible significant economic impact on small entities of the policies and rules addressed in this document.¹⁶⁷ The IRFA is set forth in Appendix C. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice.

D. Paperwork Reduction Act

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

VI. ORDERING CLAUSES

94. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1-2, 4, 201, 258, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-152, 154, 201, 258, and 403, this Notice of Proposed Rulemaking IS ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

¹⁶⁷ See 5 U.S.C. §§ 601 *et seq.*

¹⁶⁸ Pub. L. No. 104-13.

¹⁶⁹ Pub. L. No. 107-198.

¹⁷⁰ 44 U.S.C. § 3506(c)(4).

Appendix A

Proposed Rules

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

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

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

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

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

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

§ 64.2401 Truth-in-Billing Requirements.

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

* * * * *

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

* * * * *

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

- (1) Telephone bills must contain clear and conspicuous disclosure of any information that the subscriber may need to make inquiries about or contest charges on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf.
- (2) Where the subscriber does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or the Internet, the common carrier may comply with these billing disclosure requirements by providing on the bill an e-mail or website address. Each carrier must make a business address available upon request from a consumer.

-
- (3) Telephone bills and carrier websites must clearly and conspicuously state that the subscriber may submit inquiries and complaints to the Federal Communications Commission, and provide the telephone number, website address, and, on the carrier's website, a direct link to the webpage for filing such complaints. That information must be updated as necessary to ensure that it remains current and accurate.

* * * * *

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

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

Appendix B

Consumer Information and Disclosure Notice of Inquiry
List of Commenters

I. List of Parties

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

<u>Commenter</u>	<u>Abbreviation</u>
American Association of People with Disabilities	AAPD*
American Council of the Blind	American Council
AT&T Inc.	AT&T*
David Austin	David Austin
Billing Concepts, Inc.	Billing Concepts*
BillShrink.com	BillShrink
California Public Utilities Commission	CPUC
Citizens Utility Board	CUB
City of Chicago – Dept. of Business Affairs	Chicago
Comcast Corporation	Comcast*
Consumer Federation of America, Free Press et al.	Consumer Federation*
CTIA – The Wireless Association	CTIA
DirectTV, Inc.	DirectTV
Dish Network L.L.C.	Dish Network*
District of Columbia Public Service Commission	D.C. PSC
Federal Trade Commission	FTC
Senator Al Franken	Senator Franken
Independent Telephone & Telecommunications Alliance	ITTA
Individual Consumer	Consumer (name)
Iowa City	Iowa City
Massachusetts Department of Telecommunications and Cable	Mass. DTC
MetroPCS Communications, Inc.	MetroPCS
Minnesota – Office of the Attorney General	Minn. AG
Mobile Marketing Association	MMA
Montgomery County – Office of Consumer Protection	Montgomery County
National Association of State Utility Consumer Advocates	NASUCA*
National Cable & Telecommunications Association	NCTA*
National Telecommunications Cooperative Association	NTCA
Open Technology Initiative/New America Foundation	Open Technology
Oregon Public Utilities Commission	Oregon PUC
Organization for Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Qwest Communications International, Inc.	Qwest*
Rural Cellular Association	RCA
Speech Communications Assistance by Telephone	Speech Com
Southern Communications Services, Inc.	SouthernLINC Wireless
Sprint Nextel Corporation	Sprint
State Attorneys General	25 State AGs
STi Prepaid	STi*
T-Mobile USA, Inc.	T-Mobile

Telecommunications for the Deaf and Hard of Hearing et al.	Telecom for Deaf
Telological Systems	Telological
Texas Office of Public Utility Counsel	Texas PUC
Time Warner Cable, Inc.	Time Warner*
United States Telecom Association	USTA
Utility Consumers' Action Network	UCAN
Validas	Validas
Verizon and Verizon Wireless	Verizon*
Virginia State Corporation Commission	Virginia SCC
Voice on the Net Coalition	VON
Wireless Communications Association International	WCAI

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

Appendix C

Initial Regulatory Flexibility Analysis

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

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

2. The record compiled in this proceeding, including the Commission’s own complaint data, confirms that cramming is a significant and ongoing problem that has affected wireline consumers for over a decade, and drawn the notice of Congress, states, and other federal agencies. The substantial volume of wireline cramming complaints that the Commission, FTC, and states continue to receive underscores the ineffectiveness of voluntary industry practices and highlights the need for additional safeguards. Recent evidence, such as the volume of wireless cramming complaints and wireless carriers’ settlement of litigation regarding unauthorized charges, raises a similar concern with unauthorized charges on Commercial Mobile Radio Service (“CMRS”) bills, such as those of providers of wireless voice service.

3. Although the Commission has addressed cramming as an unreasonable practice under Section 201(b) of the Act,⁴ there are currently no rules that specifically address unauthorized charges on wireline telephone bills. We believe that adopting such requirements will provide consumers with the safeguards they need to protect themselves from this risk.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to this NPRM is contained in Sections 1-2, 4, 201, 258, and 403 of the Communications Act of 1934, as amended 47 U.S.C. §§ 151-152, 154, 201, 258, and 403.

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

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term

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

² See 5 U.S.C. § 603(a).

³ See *id.*

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

⁵ 5 U.S.C. § 603(b)(3).

“small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration (“SBA”).⁸ Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.⁹ The NPRM seeks comment generally on mobile providers of voice, text and data services. However, as noted in Section IV of the NPRM, we are seeking comment on the scope of entities that should be covered by the proposals contained therein.¹⁰

6. *Incumbent Local Exchange Carriers (“Incumbent LECs”)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹¹ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.¹² Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹³ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.¹⁴

7. *Competitive Local Exchange Carriers (“Competitive LECs”), Competitive Access Providers (“CAPs”), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications

⁶ 5 U.S.C. § 601(6).

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

⁸ 15 U.S.C. § 632.

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

¹⁰ See *supra* Sec. IV.

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

¹² See Trends in Telephone Service at Table 5.3.

¹³ See *id.*

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

Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.¹⁶ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.¹⁷ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.¹⁸ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.¹⁹ In addition, 72 carriers have reported that they are Other Local Service Providers.²⁰ Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.²¹ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

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

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

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

¹⁷ See Trends in Telephone Service at Table 5.3.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.*

²¹ See *id.*

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

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

²⁴ See Trends in Telephone Service at Table 5.3.

²⁵ See *id.*

service providers are small entities that may be affected by rules adopted pursuant to the Notice.

9. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.²⁶ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”²⁷ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.²⁸ For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 1,383 firms that operated that year.²⁹ Of those, 1,368 firms had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (“PCS”), and Specialized Mobile Radio (“SMR”) telephony services.³⁰ An estimated 261 of these firms have 1,500 or fewer employees and 152 firms have more than 1,500 employees.³¹ Consequently, we estimate that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms are small.

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

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

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

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

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

³⁰ See Trends in Telephone Service at Table 5.3.

³¹ See *id.*

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

³³ *Id.*

³⁴ Trends in Telephone Service at Table 5.3.

³⁵ *Id.*

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

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

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

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

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

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

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

15. None.

³⁶ 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

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

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

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

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

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

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

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

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

The Commission has been aggressively pursuing reports of cramming. Several months ago, we approved a settlement with Verizon Wireless over unauthorized “mystery fees” charged to approximately 15 million customers. That included a refund of about \$53 million to customers and a \$25 million voluntary payment to the U.S. Treasury. And just last month, also thanks to the hard work of our Enforcement Bureau, we issued four Notices of Apparent Liability for Forfeiture proposing \$11.7 million in forfeitures against four telecommunications carriers that appear to have engaged in widespread cramming.

The FCC is turning up the heat on companies that rip off customers with unauthorized fees. We are sending a clear message: if you charge consumers unauthorized fees, you will be discovered and you will be punished. The rules we propose today are common-sense measures to empower consumers to

identify fraudulent charges and take corrective action to protect themselves, while minimizing the compliance burden on carriers.

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

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

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

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

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

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

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

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

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

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

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

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

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

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

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

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

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