

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

<b>In the Matter of:</b>	)	
	)	
	)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)	)	CG Docket No. 11-116
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
Notice of Proposed Rule Making	)	FCC Docket No. 11-106

**Comments of the Iowa Utilities Board**

On July 12, 2011, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking (NPRM) in the above dockets aimed at assisting consumers in detecting and preventing the placement of unauthorized charges on their telephone bills. The NPRM refers to this unlawful and fraudulent practice as “cramming.”<sup>1</sup> The NPRM was published in the Federal Register on August 23, 2011, and comments are due on October 24, 2011. The Iowa Utilities Board (IUB or Board) commends the Commission for its efforts to strengthen its rules in an effort to afford consumers better protection against cramming.

As an initial matter, the IUB notes that it has jurisdiction only to resolve cramming complaints involving customers of wireline carriers. The Iowa Attorney General’s office has jurisdiction to resolve cramming complaints involving customers of commercial

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<sup>1</sup> NPRM, para. 1.

mobile radio service (CMRS) carriers.<sup>2</sup> Thus, the IUB's comments pertain to wireline cramming and not to CMRS cramming.

As explained below, the IUB believes that the proposed changes to the Commission's Truth-in-Billing rules may not go far enough to afford consumers adequate protections against cramming. The Commission previously determined that cramming is an unreasonable practice in violation of Section 201(b) of the Act, and it adopted Truth-in-Billing rules to address cramming. However, those rules adopted as §§ 64.2400 and 64.2401 appear to provide only marginal consumer protection against cramming because they apply to telecommunications common carriers and not to the service providers that submit fraudulent charges for billing by the telecommunications common carriers.<sup>3</sup> It appears the purpose of §§ 64.2400 and 64.2401 is to facilitate consumers in identifying crammed charges once they appear on the billing statements of telecommunications common carriers as opposed to preventing cramming from occurring in the first place. The Commission has also undertaken an initiative in conjunction with local exchange carriers (LECs) and billing-and-collection services to address cramming, but the resulting "best practices" remain voluntary.<sup>4</sup>

When the Commission takes action against crammers, two things are especially noteworthy. First, is the huge number of violations associated with individual crammers. For example, in its June 16, 2011, action against VoiceNet Telephone, the Commission addressed cramming violations affecting more than 17,000 consumers.<sup>5</sup> A second

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<sup>2</sup> The NPRM (at FN 120) notes a 2008 survey of all 50 state utility commissions, plus the Public Service Commission of the District of Columbia. That survey incorrectly reported that the IUB has regulatory authority to resolve wireless cramming complaints.

<sup>3</sup> See 47 C.F.R. § 64.2400(b).

<sup>4</sup> NPRM, para. 1 and 10.

<sup>5</sup> In the Matter of VoiceNet Telephone, LLC Notice of Apparent Liability for Forfeiture, FCC-11-91, Released June 16, 2011 (VoiceNet Telephone).

order issued the same day against Cheap2Dial Telephone addressed cramming violations affecting more than 18,000 consumers.<sup>6</sup>

Second, when the Commission takes action, it apparently can cite no violations of its §§ 64.2400 or 64.2401 rules. As noted above, this appears to be the case because those rules apply only to the telecommunications common carriers that ultimately bill consumers for the crammed charges submitted by other service providers.<sup>7</sup> The Commission appears to consider the service providers that fraudulently submit crammed charges to telecommunications common carriers, for consumer billing, to be “common carriers.”<sup>8</sup> (In contrast, the Federal Trade Commission (FTC) addresses consumer cramming complaints against service providers that are not “common carriers.”<sup>9</sup>) When assessing forfeiture penalties against these “common carriers,” the Commission must cite a general statutory violation of Section 201(b) - that the crammed charges are “unjust and unreasonable.”<sup>10</sup> Clearly, the rules pursuant to §§ 64.2400 and 64.2401 only marginally address the cramming problem since they don’t target the “common carriers” that cram. Whether the Truth-in-Billing rules can be amended to effectively address the cramming problem should be given serious consideration.

Cramming complaints filed with the IUB in no way approach the huge volume of complaints the Commission addressed in the VoiceNet Telephone, Cheap2Dial Telephone, and other cramming proceedings. Below is a table showing numbers of

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<sup>6</sup> In the Matter of Cheap2Dial Telephone, LLC, Notice of Apparent Liability for Forfeiture, FCC-11-90, Released June 16, 2011 (Cheap2Dial Telephone). See also FN 8 of the NPRM for other examples of recent Commission action against crammers.

<sup>7</sup> Telecommunications common carriers appear to be “telecommunications carriers” that provide “telecommunications services.” See 47 C.F.R. §§ 153(44) and 153(46).

<sup>8</sup> “Common Carriers,” in contrast to Telecommunications Common Carriers, are not providers of “Telecommunications Services.” See 47 C.F.R. §§ 153(10), 153(44) and 153(46). Nevertheless, Section 503(b)(1) of the Act grants the Commission authority to assess forfeiture penalties against “common carriers” who willfully or repeatedly fail to comply with any provision of the Act or any rule, regulation, or order issued by the Commission.

<sup>9</sup> NPRM, para. 24.

<sup>10</sup> See, for example, VoiceNet Telephone, Notice of Apparent Liability for Forfeiture, FCC-11-91, Released June 16, 2011, para. 10.

cramming complaints processed by the IUB from January 2007 through September 2011:

Year	Number of Written Cramming Complaints Filed	Cramming Determined to be Valid	Additional Enforcement Action Taken
2007	99	79	72
2008	20	11	5
2009	61	24	12
2010	13	8	6
2011	4	3	1

The second column of the table shows the gross number of cramming complaints filed with the IUB. The third column shows the number of those complaints determined to be a valid cram after investigation by the IUB staff. In all cramming complaints determined to be valid, the IUB staff issues a letter of proposed resolution directing both the company guilty of the cram, and the LEC, to credit any unauthorized charges. The fourth column of the table shows the number of complaints where additional enforcement action, in the form of civil penalties, has been initiated against the crammer by the Iowa's Office of Consumer Advocate.

Compared to the federal statutes and rules, Iowa's statutes and rules appear to be providing better consumer protection by preventing cramming. However, the IUB cannot make this statement with complete certainty, because it does not know how many of the thousands of cramming complaints handled by the FCC and FTC involved Iowa consumers. Assuming that Iowans are not filing cramming complaints with the FCC and FTC in epidemic numbers, the principal reason that Iowa statutes and rules may provide better consumer protection is that Iowa regulations primarily target the service providers that attempt to fraudulently submit crammed charges to LECs for

ultimate billing to end-users. To a lesser extent, Iowa regulations focus on the LECs that bill end-users for crammed charges submitted by other service providers.

In the following sections, the IUB provides background on jurisdiction, statutes, and rules in Iowa pertinent to cramming; resolution of cramming complaints in Iowa; and the IUB's specific comments regarding the Commission's proposed rules.

### **Jurisdiction, Statutes, and Rules in Iowa**

Iowa Code § 476.103(3) directs the Board to adopt rules prohibiting unauthorized changes to a consumer's telephone account (applicable to either slamming or cramming):

The Board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

a.(1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third-party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

Iowa Code § 476.103(4)(a) provides that the Board may assess civil penalties against service providers that violate the statute, a Board rule, or a Board order relating to slamming and cramming:

In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

The Board adopted rules to implement the above statutes. Specifically, 199 IAC 22.23(2), "Prohibition of unauthorized changes in telecommunications service," provides in relevant part as follows: "Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited." IUB rule 22.23(2)"a" requires that any service provider proposing to change a customer's telephone service must obtain the customer's authorization for the change, and that authorization must be verified using one of the specified formats (written, electronic, independent third-party verification by recording, or in some cases, by maintenance of

adequate internal business records).

In summary, Iowa statutes and rules address slamming and cramming consistently by requiring the same procedures for verifying a customer's authorization of a change in service. Moreover, Iowa's procedures for verifying a customer's authorization of a change in service are explicitly modeled after the Commission's own regulations for addressing slamming.

Unlike Iowa, the Commission's anti-slamming requirements, which require a customer's authorization of a change in service to be verified, are not applicable to cramming. The IUB contends that if the FCC's cramming rules were to require verifications of a customer's authorization of a change in service, cramming complaints would decrease dramatically from current levels.

### **Commission's Proposed Cramming Rules**

The Commission notes that additional safeguards are necessary to enable consumers to protect themselves from cramming, and it has proposed the following changes to the Truth-in-Billing rules:<sup>11</sup>

- Wireline carriers would be required 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.
- Wireline carriers would be required to place charges from non-carrier third-parties in a bill section separate from carrier charges.

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<sup>11</sup> NPRM, para. 3.

- Wireline and CMRS carriers would be required to include on all telephone bills and on their websites the Commission's contact information for the submission of complaints.

### **Comments on Proposed Rules**

The IUB believes that the proposed changes to the Truth-in-Billing rules should benefit consumers by allowing them to block third-party charges from appearing on their telephone bills (if a blocking option is offered) and by assisting consumers in identifying third-party charges once they appear on their telephone bills. The proposed rules would also assist consumers in filing complaints about unauthorized third-party charges. As noted above, however, the proposed rules only indirectly address the cramming problem because they apply to telecommunication common carriers, instead of the service providers that submit the unauthorized charges.

The IUB believes that a two-pronged approach is necessary to address cramming. The first prong needs to address the service providers responsible for submitting the unauthorized charges to LECs for end-user billing. The Commission should consider Iowa's approach, which considers a third-party billing to be a change in telecommunications service requiring a customer verification. Over the past 12 years since Iowa's rules were adopted, it has been the IUB's experience that service providers, submitting charges to LECs for end-user billing, do have the means to provide valid verifications of customer authorizations of the specific charges. Therefore, it would not appear to be overly burdensome if the Commission were to require submitting service providers to comply with established customer verification

procedures (used to prevent slamming) before third-party charges may be submitted to LECs for end-user billing.

The second prong should address the LECs that bill third-party charges as proposed in the NPRM. The IUB comments that the second prong could be strengthened by requiring LECs to offer blocking of third-party charges from appearing on end-user telephone bills. It is the IUB's understanding that at least three of the larger LECs serving Iowa offer full or partial blocking of third-party charges if requested by a customer. However, the IUB suspects that consumers are generally unaware about the potential for third-party billings by their LECs.<sup>12</sup> Thus, the IUB believes that a customer would not normally ask for a block on third-party charges unless the customer had some specific experience with an unauthorized third-party billing. If LECs were required to offer the blocking of third-party billings, and actively promoted that blocking capability, it is likely that cramming complaints would be reduced substantially. The IUB has no information on the costs LECs would incur to provide blocks on third-party billings. If such costs are prohibitive, then the Commission could establish a reasonable future date in which LECs would be required to actively promote to their customers a service for blocking third-party billings.

Another option for strengthening the second prong could be modeled after the anti-cramming practices employed by smaller rural LECs in Iowa. It is the IUB's understanding that many of Iowa's rural LECs require their end-users to sign special agreements before the rural LEC would permit the billing of third-party charges. Thus, the blocking of third-party charges is directly controlled by their end-users because the

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<sup>12</sup> According to an "Infographic" on the Commission's website, an estimated 15 to 20 million American households receive crammed charges on their wireline bills each year. <http://transition.fcc.gov/cgb/cramminggraphic.jpg>

rural LECs presume that end-users would not permit third-party charges on their telephone bills unless they told the LEC otherwise. This practice appears to be the reverse of the blocks offered by Iowa's larger LECs. In essence, the blocks offered by the larger LECs presume that end-users would permit third-party charges unless they told the LEC otherwise. Whether the end-user controlled blocks offered by the small rural LECs is a viable option for larger LECs, may be an area for additional consideration by the Commission.

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