

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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

To: The Federal Communications Commission, *en banc*

COMMENTS OF THE CRITICAL MESSAGING ASSOCIATION

THE CRITICAL MESSAGING ASSOCIATION (CMA) (formerly the American Association of Paging Carriers), by its attorney, respectfully submits its comments to the Federal Communications Commission (FCC) in response to its Notice of Proposed Rulemaking (NPRM) in the captioned proceedings, FCC 11-106, released July 12, 2011, and published at 76 Fed. Reg. 52625 (August 23, 2011). In summary, CMA respectfully submits that the alleged problems identified in the NPRM do not relate to the critical messaging industry and, accordingly, submits that no new rules designed to prevent "cramming" should be applied to the critical messaging industry.

In support thereof, CMA respectfully states:

In these proceedings, the Commission has proposed new rules applicable to telecommunications carriers, including CMRS providers, intended to protect consumers in the United States from "cramming," an unlawful and fraudulent practice generally defined as the illegal placement

of an unauthorized fee on a customer's monthly phone bill. According to the NPRM, "crammed" charges often are imposed by third party vendors that are authorized to insert their charges on wireline telephone bills, but also can be imposed by the customer's carrier itself. The NPRM asserts that "crammed" charges often are not detected by customers because they are relatively small amounts, or because they are associated with vague or misleading descriptions that appear to be legitimate carrier services.

Despite previous Commission efforts to curb "cramming" by declaring it an unlawful practice in violation of Section 201(b) of the Communications Act, and by adopting more stringent Truth-in-Billing rules, the NPRM asserts that the continuing volume and type of consumer complaints evidence a need to adopt additional safeguards to prevent the practice. Based upon recent survey data, the NPRM asserts that only a small minority of customers who experienced "cramming" are aware of the charges; and it believes that an estimated 15 to 20 million households per year in the United States are victimized by such charges.

Accordingly, the NPRM proposes rules that (1) would require landline telephone companies to notify subscribers "clearly and conspicuously," at the point of sale, on each bill, and on the companies' websites, of the option to block third party charges from the subscribers' bills; and (2) would strengthen the existing requirement that third party charges be separated on bills from the carrier's own charges. Additionally, the NPRM proposes that both landline telephone companies and CMRS providers be required to include, on all bills and on their websites, a notice that customers may file complaints with the FCC and the FCC's contact information for the submission of complaints. Comments also are solicited on various other measures that the NPRM claims could help customers detect, rectify, and prevent cramming, and on whether the rules applicable to landline telephone companies also should be applied to CMRS providers.

CMA is the national trade association representing the interests of the critical messaging industry (historically known as the paging industry) throughout the United States. As wireless services have evolved over approximately the last decade, the critical messaging industry has increasingly concentrated on serving the specialized, emergency alerting needs of health care providers, first and second responders, and other customers employing critical, time-sensitive messages using a point-to-point protocol that cannot be duplicated by broadband networks. CMA members include a representative cross-section of carriers operating messaging networks licensed by the Commission under Parts 22, 24 and 90 of its rules, as well as equipment suppliers and other vendors to the carrier industry.

CMA's carrier members are classified as "Commercial Mobile Radio Service" providers under the Commission's rules,¹ the same official regulatory classification as "wireless telephony" providers, *i.e.*, cellular, broadband personal communications services (PCS) and specialized mobile radio (SMR) telephony carriers. Accordingly, unless appropriately limited, rules adopted in this proceeding for CMRS providers would apply to CMA's carrier members as well as to carriers providing wireless telephony.

As in the case of the "bill shock" rules previously proposed by the Commission,² whatever the Commission decides to do about imposing rules to prevent "cramming" on the mobile telephony segment of wireless service providers does not in any event justify imposing such rules on critical messaging service providers. First, as the Commission is well aware, the consumer market has abandoned the historical paging industry in favor of mobile telephony during the past decade. As a result, customers of the critical messaging industry today are large, sophisticated commercial entities that negotiate complex service contracts with network operators, and they do

¹ See 47 C.F.R. §20.9(1), (6), (11).

² *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure (Notice of Proposed Rule-making)*, FCC 10-180, adopted and released October 14, 2010, 75 Fed. Reg. 72773 (November 26, 2010).

not need “consumer” protection. The entire rationale for the proposed regulations as set forth in the NPRM thus is wholly inapplicable to the critical messaging industry.

Additionally, customer charges for critical messaging typically are flat rated monthly charges, rather than menu of various services such as voice calling, text messaging and Internet access common to mobile telephony that may be susceptible of being “crammed” on mobile telephony customers. Thus, critical messaging industry charging practices in general do not and have not led to claims of “cramming” by customers, as they may have in the case of landline or mobile telephony carriers. CMA also notes in this regard that critical messaging services providers do not allow third parties to bill for their services on the carriers’ invoices, a practice that the NPRM acknowledges has historically facilitated the “cramming” abuse.

Finally, underscoring the foregoing facts, there is no suggestion anywhere in the NPRM that critical messaging customers are experiencing “cramming”. For this reason alone, imposition of regulations to prevent “cramming” by critical messaging service providers would not be justified.

To avoid an unwarranted result, CMA suggests that the Commission employ the term “covered CMRS” to describe which, if any, CMRS providers are subject to any regulations ultimately adopted in this proceeding. The term is defined at Section 52.21(d) of the rules, 47 C.F.R. §52.21(d), and it operates to exclude critical messaging service providers from local number portability requirements. *See* 47 C.F.R. §52.31 (applying long-term database method for number portability to “covered CMRS providers”). It would be equally serviceable to exclude critical messaging service providers from any “cramming” regulations adopted in this proceeding.

In short, the asserted justifications in the NPRM for adopting new regulations to avoid “cramming” do not apply to critical messaging service providers in any respect, and there is no justification for imposing any such regulations on the critical messaging industry. Accordingly, should the Commission decide to adopt new rules to avoid “cramming” in this proceeding, critical messaging service providers should be explicitly excluded from the scope of such rules.

Respectfully submitted,

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