Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.
AND CRICKET COMMUNICATIONS, INC.

Leap Wireless International, Inc. and Cricket Communications, Inc. (collectively, "Leap") submit these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") regarding rules designed to assist consumers in detecting and preventing cramming.[1] The NPRM, among other things, proposes a rule that would require wireless carriers to add the Commission's contact information to its telephone bills and website.[2] The NPRM also invites comment on whether several of the Commission's proposed rules for wireline carriers should be extended to wireless carriers.[3]

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1 *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, CC Docket No. 98-170, Notice of Proposed Rulemaking (July 12, 2011).

2 *Id*. at 3.

3 *Id*. ¶ 53.

I. INTRODUCTION

Leap supports the Commission's efforts to "assist consumers in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as 'cramming.'"[4] However, cramming is not a meaningful problem for Leap's customers. Leap offers prepaid services – principally unlimited "all-you-can-eat" plans, as well as a traditional "pay-as-you-go" plans – in which customers pay in advance for upcoming services. Leap's service model by its nature is inconsistent with cramming practices because Leap's customers pay predictable, flat rates before receiving their services and thus do not face any surprise, unauthorized charges. Leap's unlimited prepaid service model thus inherently protects customers against cramming practices.

Because prepaid services do not present any significant risk of cramming, any new cramming rules that might be applied to prepaid wireless providers such as Leap would impose regulatory burdens with no countervailing benefits. They also would increase the cost of prepaid service, which would undermine the benefits of such services to low-income and other disadvantaged consumers. Thus, even if the Commission ultimately decides that some cramming rules should apply to certain wireless services, prepaid and pay-in-advance services should be exempt from such rules.

II. LEAP'S SERVICES PRESENT VIRTUALLY NO RISK OF CRAMMING

Leap offers consumer-focused service plans that target value-oriented consumers, many of whom cannot afford or qualify for services from other wireless providers. Leap does not require credit checks or long-term contracts, which prevent many economically disadvantaged consumers from obtaining wireless services. An essential component of Leap's business model

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4 *Id.* ¶ 1.

is providing affordable and predictable monthly rates for consumers who have limited or fixed income levels. Accordingly, Leap offers unlimited-use voice and data services with no overage charges. Its service plans include "all-in" pricing at affordable, flat rates, with no activation or termination fees. Leap's customers thus pay a predictable rate with no surprise charges or hidden fees.

Leap's most popular service is its pay-in-advance service in which subscribers receive a monthly bill in advance of each month's service, or a monthly notification via SMS informing them of upcoming charges. Customers have the opportunity to see what their charges will be for the coming period, and can elect to continue service by paying or can choose to end their service by simply not paying the amount due. Because Leap's pay-in-advance plans include unlimited voice, text, and data usage, customers cannot incur unexpected usage charges.[5]

If a Leap subscriber wishes to purchase any additional services that are not included in her pay-in-advance plan, including a third party service, the subscriber must purchase and pay for those services in advance via Cricket's Flex Bucket. Leap customers have complete control over whether to purchase Flex Bucket services and they also have complete control over how to utilize their Flex Bucket. If a subscriber uses all of her Flex Bucket, the subscriber cannot utilize additional services without purchasing additional Flex Bucket services.

In addition, Leap voluntarily follows the Mobile Marketing Association ("MMA") best practices guidelines, and thus a Leap customer must not only pre-purchase additional services for her Flex Bucket, but also must go through a "double opt-in" authorization procedure as part of

[5] Leap also offers a pre-paid PAYGo plan in which customers pre-fund an account and pay only for the periods in which they choose to use their phones. PAYGo, like the pay-in-advance plans, has no contracts or hidden fees and subscribers pay in advance, prior to using the service.

the purchase process.[6] Not only must the customer initially select the "purchase" option, but she must also confirm her request to purchase by answering a second question in order to finalize the transaction. The "double opt-in" authorization process helps ensure that customers understand what they are purchasing and further reduces the already minimal potential for unauthorized charges appearing on customers' bills.

As a result, the nature of Leap's service plans is fundamentally incompatible with the cramming practices with which the Commission is concerned. The central problematic feature of cramming that the Commission identified is that third party charges are "unauthorized" by the subscriber, who discovers the charges after they are incurred.[7] Leap's services do not present the potential for unauthorized charges because customers pay their bill before receiving services. Indeed, one of the principal features and benefits of Leap's service plans is that bills are predictable and consistent—customers choose Leap because there are no surprises. Cramming thus is simply not an issue with Leap's services.[8]

III. APPLYING CRAMMING REGULATIONS TO PAY-IN-ADVANCE OR PREPAID SERVICES IS NOT IN THE PUBLIC INTEREST

Because prepaid customers do not face any meaningful risk of cramming, applying the Commission's proposed cramming rules to prepaid wireless services would create costs and

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[6] Leap also contractually requires third parties whose content services are available to Leap subscribers to comply with the MMA Guidelines.

[7] *Id*. ¶¶ 6-9.

[8] For similar reasons, "bill shock" concerns likewise do not apply to Leap's services. *See* Comments of Cricket Communications, Inc., *Empowering Consumers to Avoid Bill Shock*; *Consumer Information and Disclosure*, CG Docket Nos. 10-207, 09-158 (filed Jan. 10, 2010). Notably, the recent voluntary bill shock guidelines endorsed by the Commission, industry, and public interest groups do not apply to prepaid services. *See* CTIA, "Consumer Code for Wireless Service," available at: http://www.ctia.org/media/industry_info/index.cfm/AID/10352 (specifying that notification guidelines are for "postpaid consumers").

burdens that are entirely unjustified. Requiring prepaid providers to redesign their billing and other back-office systems in order to provide notifications and to separate third party charges would impose costs on those providers to resolve a non-existent problem. Indeed, because of the flat rate "all-in" nature of Leap's monthly plans, the vast majority of Leap's customers do not receive a monthly bill at all. Most customers elect not to receive a bill and instead simply receive an SMS message reminder about upcoming charges. Requiring Leap to create bills for customers (who today do not want them) would impose significant costs. And because prepaid providers frequently serve low-income and other disadvantaged consumers, such unjustified cost increases therefore would penalize those who can least afford them.

In addition, applying the Commission's proposed rules to prepaid services would increase the risk of consumer confusion. Customers value Leap's flat-rate, unlimited plans in part because of the simplicity and predictability of billing. Requiring Leap to provide bills and add additional sections to bills will add complexity to a billing system that is prized for its simplicity. Warnings about potential unauthorized charges also will make little sense to customers who are using unlimited prepaid plans because such charges are not consistent with their service plans. And the limited percentage of Leap customers who purchase additional services via their Flex Bucket are purchasing those services in advance, through a Flex Bucket over which they have complete control, and thus they require no additional clarifications or notifications on bills. The Commission's proposals are both unnecessary and counter-productive for prepaid services.

There are no consumer benefits that would offset these increased costs and burdens. Because prepaid customers do not face cramming problems, these costs would not generate any benefits. The result would be the worst form of regulatory overreaching – imposing costs and regulatory hurdles to create no consumer benefits whatsoever.

IV. CONCLUSION

There is no justification for applying cramming regulations to prepaid wireless services. Doing so would create costs and burdens with no offsetting benefits, and thus would not be in the public interest. If the Commission decides to apply any anti-cramming rules to wireless providers, it should exempt prepaid services.

Respectfully submitted,

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