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	)	CG Docket No. 98-170

COMMENTS OF VERIZON AND VERIZON WIRELESS

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TABLE OF CONTENTS

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	)	
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COMMENTS OF VERIZON AND VERIZON WIRELESS

Verizon and Verizon Wireless[1] place charges for services other than the voice and data services they provide on customers' phone bills because customers prefer to review and pay a single bill for these services. Since unauthorized charges on customers' bills could significantly harm customer relationships in a highly competitive environment, Verizon and Verizon Wireless have significant incentives to prevent such charges. Accordingly, Verizon and Verizon Wireless have long employed safeguards to minimize instances of cramming. But they do not intend to rely solely on their established practices as new threats may emerge. Both Verizon and Verizon Wireless have recently adopted further measures to protect customers from unauthorized third-party charges and are actively considering additional steps.

Because various sectors of the Federal Government and certain states have been examining cramming and have a broader jurisdictional reach than the Commission, the most effective role for the Commission is to continue its aggressive enforcement efforts

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[1] In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

to identify and stop fraudulent third parties.[2] At the same time, the Commission should recognize the numerous differences between billing for third-party services and content in the wireless and wireline segments. Because wireless charges are typically related to the handset, industry-developed standards are effective, and cramming complaint rates are significantly lower, the Commission should avoid adopting any rules that would hinder the rapid innovation in the wireless segment.

Finally, to the extent the Commission decides to pursue mandated disclosures by wireline carriers, such as those proposed in the *Notice*,[3] the Commission should adopt one minor change. Specifically, the Commission should modify the proposed rule pertaining to "Bill Organization" to avoid customer confusion that may arise when the same billing aggregator's name appears in multiple sections of a bill.

DISCUSSION

I. VERIZON AND VERIZON WIRELESS EMPLOY NUMEROUS SAFEGUARDS TO PROTECT CUSTOMERS FROM UNAUTHORIZED CHARGES FOR THIRD-PARTY SERVICES AND CONTENT.

Verizon and Verizon Wireless place charges for services other than the voice and data services they provide on customers' phone bills because customers prefer one-stop shopping for these services and it is an easy, efficient way to make certain types of purchases. Instead of having to keep track of and pay multiple bills on time each month, consumers are able to receive a single bill that includes not only Verizon's charges, but

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[2] *See, e.g.*, *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (2011); *VoiceNet Telephone LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (2011); *Cheap2Dial Telephone, LLC*, 26 FCC Rcd 8863 (2011).

[3] *See Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*; *Consumer Information and Disclosure*; *Truth-in-Billing and Billing Format*, Notice of Proposed Rulemaking, 26 FCC Rcd 10021 (2011) ("*Notice*").

also charges for long distance service from carriers other than Verizon; charges for Verizon affiliates, such as Verizon Online; and charges for unaffiliated parties, such as DirecTV, with which Verizon jointly markets bundles of services. For the same reasons, Verizon allows certain unrelated third-party service charges to appear on its bills. Similarly, customers of Verizon Wireless are able to take advantage of the ease and convenience of using their wireless bills to make donations to charities, to purchase ringtones, wallpapers, games, apps, and other digital content for their wireless devices, and to participate in interactive promotions on television and radio.

Carriers historically were required to provide billing for many of these types of services, and continued to do so once the requirements were removed to provide third parties a cost effective way to serve their customers and to provide customers an efficient way to obtain these services. Verizon and Verizon Wireless explain below the processes through which charges for third-party services and content appear on customers' bills and the various measures they employ to help prevent unauthorized charges.

A. Verizon Has Processes To Help Protect its Wireline Customers.

Verizon has agreements with billing aggregators to place charges from third-party service providers on the bills of wireline customers. Billing aggregators collect or aggregate the monthly charges for all the third-party service providers with which they work, submit those totals to Verizon for inclusion on the pertinent Verizon customers' bills, and distribute the funds to the providers. Verizon is revising its template agreement with billing aggregators to enhance the anti-cramming protections by tightening authentication requirements for Internet sales, inserting audit rights, and further restricting service providers from which Verizon will accept billing records.

Verizon screens third-party service providers via an application process. Verizon will research the identified principals to determine if the provider is affiliated with any entity with which Verizon has previously experienced cramming-related issues, which will nearly always result in the application's rejection. In addition, third-party service providers must submit their proposed marketing materials to Verizon for approval. Verizon reviews these materials to help ensure that they are not misleading and that they clearly disclose the price of the products and/or services offered. Verizon will demand changes to ensure the materials are accurate and refuse to bill if the changes are not made.

Because a significant number of customers call Verizon about third-party charges that appear on a bill, Verizon has implemented processes to monitor the number of cramming complaints by provider. If cramming complaints exceed either a certain absolute number or a specific low percentage of total bills in a month, Verizon will notify the billing aggregator and require the provider to submit an "Action Plan" to reduce the number of complaints within ten days. Verizon will continue to monitor cramming complaints and will terminate billings on behalf of the third-party service provider if its complaint levels do not fall below Verizon's cramming thresholds. Verizon strictly applies these thresholds and has terminated billing for more than 50 providers for cramming-related reasons since 2009.

Moreover, Verizon seeks to quickly resolve individual customer complaints. For example, Verizon will immediately remove a charge from a customer's bill if the customer calls Verizon to complain that she did not authorize it without requiring anything further from the customer. Verizon does not require the customer to contact the third-party service provider that initiated the charge. In addition, Verizon proactively offers customers that complain about unauthorized third-party charges the ability to block charges from their bills with a free service called Bill Block. While information regarding Bill Block is available on its website, Verizon has begun publicizing it in welcome letters for new voice customers, as well as service/feature change letters to existing customers.

Verizon continues to seek ways to minimize incidences of cramming and has made certain changes in 2011, including efforts to further inform customers of its Bill Block service. Verizon is currently reviewing its anti-cramming mechanisms and is actively considering adopting additional measures.

B. Verizon Wireless' Policies Are Also Designed To Protect Its Subscribers.

Verizon Wireless similarly has many policies designed to protect its subscribers from unauthorized charges.[4] As an initial matter, the types of services for which charges may be placed on a wireless customer's bill are fundamentally different than those placed on a wireline customer's bill. The charges placed on wireless customers' bills typically are for products or services that were purchased on, or are related to, customers' wireless handsets. Currently, the majority of charges that originate from third parties are for premium short message services, which are text messages used to deliver digital content to customers' handsets. Verizon Wireless also allows customers to place other handset-related purchases, such as digital goods (e.g., music downloads, applications), on their wireless bills. In each of these contexts, Verizon Wireless has established detailed

[4] *See Notice*, ¶ 54 (seeking comment on whether current industry practices address cramming issues in the wireless space).

authentication processes and other protections that help ensure that the charges are authorized.

Premium Short Message Services. Verizon Wireless offers customers the ability to purchase certain types of content, such as text-based content (e.g., alerts, jokes, weather), downloadable content (e.g., ringtones, wallpaper), and charitable donations (e.g., Haitian earthquake relief) from third-party service providers using premium short message services. Customers can make one-time purchases or sign up for monthly subscriptions through premium short message services. The third-party service providers typically utilize messaging aggregators, which enter into agreements with Verizon Wireless.

In those agreements, Verizon Wireless requires that the aggregators, and the third-party service providers they support, comply with the then-current version of the Mobile Marketing Association's Consumer Best Practices Guidelines For Cross-Carrier Mobile Content Services ("Best Practices Guidelines"), in addition to certain supplemental, Verizon Wireless-specific requirements.[5] These include, among other things, a double opt-in authorization process. Specifically, customers initiate the double opt-in process either directly from their devices by sending text messages to 4 to 6 digit short codes, by inputting their mobile telephone numbers at websites, or by calling certain abbreviated dialing codes. Customers then receive a text message from the third-party service providers that details the charges for that premium short message service and instructions on how to complete an additional opt-in to consent to the premium

[5] *See* Mobile Marketing Association, U.S. Consumer Best Practices Version 6.1 (effective April 1, 2011), http://mmaglobal.com/Consumer_Best%20Practices_6.1%20Update-02May2011FINAL_MMA.pdf.

charges. Only then can the messaging aggregators transmit the associated charges to Verizon Wireless for inclusion in the wireless bills of the pertinent customers.

Other Verizon Wireless policies further protect consumers from unauthorized premium short message service charges. Specifically, Verizon Wireless, through Aegis Mobile, a third-party compliance monitoring service provider, reviews and approves each premium short message service program prior to launch to ensure that the program comports with the Best Practices Guidelines and additional Verizon Wireless-specific requirements, and that the service provider and aggregator have no history of legal violations relating to consumer protection. In addition, Aegis Mobile monitors all existing premium short message service programs at least once a month to ensure compliance. Violations of state or federal laws, or industry or Verizon Wireless-specific guidelines, may result in termination of the affected program or service provider and/or litigation against the service provider, depending on the severity of the violations.[6]

Furthermore, Verizon Wireless attempts to resolve customer complaints on the initial call, either by resolving concerns related to the purchase or providing a credit when appropriate. Finally, Verizon Wireless limits the amount that third party service providers can charge for a premium short message service program to $9.99, imposes an aggregate monthly cap for purchases of premium short message service programs, sends a notification e-mail to account holders every time a purchase is made using premium short message service by one of the devices on their accounts, offers a free mechanism

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[6] Earlier this year, Verizon Wireless terminated all the premium short message service programs of a group of affiliated third-party service providers – the parent company is Eye Level Holdings, LLC a/k/a Jawa – that were using premium short message services to defraud customers, and then filed a lawsuit against the entire group in federal court in Arizona. *See, e.g.*, *Cellco Partnership v. Jason Hope*, Order and Preliminary Injunction, Case No. CV11-0432-PHX-DGC (D. Az. May 11, 2011).

for customers to block charges from premium short message service programs, requires that premium short message service programs comply with the CTIA content guidelines,[7] and ensures that content ratings are assigned to all premium short message service programs and uses those ratings to integrate all such programs with its parental controls.

Digital Goods. Verizon Wireless also allows customers in limited situations to charge digital goods, such as song downloads and mobile applications, to their wireless phone bills. As an initial matter, Verizon Wireless limits the charges for third-party goods that can be placed on customers' bills to specific, pre-approved vendors and goods and services. These vendors undergo a thorough due diligence review, during which Verizon Wireless investigates whether the vendor has any history of legal violations relating to consumer protection before permitting the vendor to place charges on Verizon Wireless' bills.

Moreover, as with premium short message services, Verizon Wireless requires a two-step process equivalent to a double opt-in. Unless the device sends the phone number to the web application, customers will be prompted to input their phone number and zip code into the relevant website. Then, the website or an associated application attempts to confirm that the phone number entered is the phone number assigned to the device used by the customer to purchase the digital goods. If the website or application authenticates the user, the customer is then sent a passcode in a text message

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[7] *See* CTIA, "Consumer Code for Wireless Service," http://files.ctia.org/pdf/CTIA_Consumer_Code_for_Wireless_Service_Rev__Oct_2011.pdf ("CTIA Consumer Code for Wireless Service").

to the number entered. The customer must then enter this passcode into the website to confirm the purchase.

In addition to this authentication regime, Verizon Wireless has adopted other protections to ensure customers are not charged for unauthorized digital goods purchases. Verizon Wireless' complaint resolution process, free blocking option, and monthly cap for purchases are nearly identical to those described above for premium short message services. Moreover, Verizon Wireless sends a notice to account holders the first time a digital goods purchase will be placed on their account and provides a description of each purchased product/service on the customer's wireless bill. Finally, Verizon Wireless only allows charges for digital goods, and not physical goods, to be placed on its customers' bills.

II. THE COMMISSION SHOULD NOT IMPOSE ANTI-CRAMMING RULES ON WIRELESS PROVIDERS.

While various protective mechanisms may be similar, there are significant differences between wireline and wireless third-party billing. As a result, the Commission should not extend the proposed rules in the *Notice* – or mandate any other anti-cramming measures – to wireless carriers.

First, the types of charges that are currently placed on wireless customers' bills are fundamentally different than those placed on wireline customers' bills. As a general matter, charges on wireless bills are related to the customer's handset. The majority of charges on Verizon Wireless' bills currently are for premium short message services, but some customers now also desire to place charges for mobile content, such as music and video downloads, mobile applications, and games, on their wireless bills. These purchases are often made on the customer's handset, and wireless carriers generally use the customer's handset to confirm that the purchase is authorized prior to placing the charge on a bill.

Second, the wireless industry has already established robust standards that are designed to protect consumers from unauthorized charges. For example, the Mobile Marketing Association has published a Code of Conduct that provides specific guidelines to companies within the mobile ecosystem, including advertisers, aggregators, application providers, wireless providers, content providers, and publishers, regarding how to build their mobile marketing programs.[8] The Mobile Marketing Association, as detailed above, also has established "Consumer Best Practices" that provide detailed requirements for providing premium short message services over wireless providers' networks.[9] In addition, CTIA and the wireless industry have developed a set of content guidelines for content delivered over mobile devices.[10]

These industry standards are working. As the Commission notes, the vast majority of cramming complaints are related to wireline services, not wireless services.[11] If evidence arises that wireless carriers' current practices are inadequate to protect consumers from cramming, the wireless industry will come together to address the problem as it has done in prior instances. For example, CTIA and the wireless industry

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[8] Mobile Marketing Association, Global Code of Conduct (July 15, 2008), http://mmaglobal.com/codeofconduct.pdf.

[9] *See supra* at 6.

[10] *See supra* at 8.

[11] *Notice* ¶ 53 ("the majority of the cramming complaints filed with the Commission and the FTC relate to wireline, rather than wireless, service—82 percent of Commission cramming complaints from 2008 to 2010, and 90 percent of FTC cramming complaints in 2010").

recently updated the Consumer Code for Wireless Service, *see supra* n.7, to include usage alerts in response to Chairman Genachowski's raising awareness about the value of such alerts.[12]

Third, the application of the proposed rules to wireless services could inhibit innovation. In light of the evolving wireless ecosystem, particularly the growing prevalence of mobile content, consumers are increasingly demanding the ability to purchase goods and services over their handset or using their handset and to charge these goods and services to their wireless bills. Wireless providers are currently meeting these demands in ways that protect consumers from unauthorized charges. These services, however, are still new in the wireless space. Premature regulation could not only inhibit their development, but also the development of innovative ways to protect consumers from unauthorized charges.

III. TO AVOID CUSTOMER CONFUSION, THE COMMISSION SHOULD MODIFY ITS PROPOSED BILL ORGANIZATION RULE.

In the *Notice*, the Commission proposes rules related to customer disclosures that are aimed at providing further protection to wireline customers from unauthorized third-party charges.[13] While the rule pertaining to Bill Organization is intended to aid

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[12] *See* "CTIA-The Wireless Association®, Federal Communications Commission and Consumers Union Announce Free Alerts to Help Consumers Avoid Unexpected Overage Charges," Press Release (Oct. 17, 2011), http://www.ctia.org/media/press/.

[13] As a threshold matter, the Commission can only exercise authority delegated to it by statute. It has long been established that carrier billing or collection for third parties falls outside Title II of the Communications Act. *See, e.g.*, *Detariffing of Billing and Collection Services*, Report and Order, 102 F.C.C.2d 1150, ¶ 31 (1986); *see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Order on Reconsideration, 12 FCC Rcd 1632, ¶ 32 (1997). And any claim of ancillary authority under Title I by the Commission would fail, in part, because there is no substantive statutory provision in Title II to which the proposed action would be ancillary.

customers of wireline carriers in their detection of unauthorized third-party charges, it may instead result in significant customer confusion.[14] Accordingly, the Commission should make a minor modification that is consistent with the intent of the proposed rule.

Specifically, the Commission proposes adding the following sentence to § 64.2401(a)(2):

> 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.

Billing aggregators provide their services to both third-parties that are classified as carriers (e.g., dial-around long distance providers) and those that are not (e.g., webpage hosting providers). As a result, the proposed rule could require telephone bills to have two distinct sections for each billing aggregator – i.e., one for charges from the carrier providers and one for charges from non-carrier providers – that may appear on non-consecutive pages in the bill. Because some customers may not fully understand the difference between a billing aggregator and a third-party service provider, customers may read a billing aggregator's name in two sections of a bill and mistakenly believe that they have been double-billed. Customers may not notice that the charges are for different third-party service providers.

To eliminate this confusion, the proposed rule should be amended as follows:

> Where charges for one or more <u>billing aggregators or</u> 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<u> from the carrier that issued the bill</u>.

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14 *See Notice*, Appendix A at 3.

This change would allow each billing aggregator to appear in just one section of a customer's bill, but enable customers to easily distinguish third-party charges from the charges of their wireline telephone carrier.

CONCLUSION

Both Verizon and Verizon Wireless are fully committed to protecting consumers from unauthorized charges. While the Commission should make a minor modification to one of its proposed rules that applies to wireline carriers, the Commission should refrain from imposing new regulation on the wireless industry at this time as it is both unnecessary and could hinder today's rapid innovation.

Respectfully submitted,

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