

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 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

To: The Commission

**T-MOBILE USA, INC. COMMENTS**

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## SUMMARY

T-Mobile supports the Commission's efforts to empower consumers and ensure that they are not subject to unauthorized charges on their telephone bills. Consumer expectations and needs differ, however, with regard to wireline and wireless billing. While many wireline consumers may be unaware that third parties can place charges on their bills and may not expect to see such charges on their bills, wireless consumers often use third party-provided services and like the convenience and benefits of direct carrier billing for games, ring-tones and other applications and services purchased for smartphones and other wireless devices.

The *NPRM* was prompted by concerns that cramming is a significant problem faced by wireline consumers, but the *NPRM* itself recognizes that a very small percentage of the cramming complaints it receives are related to commercial mobile radio services ("CMRS"). Simply put, there is no evidence that cramming is a significant problem for the CMRS industry. The dearth of cramming complaints against the CMRS industry is a testament to the competitive nature of the industry.

Individual carriers and industry associations have taken and continue to take significant steps designed to prevent cramming on wireless bills, making regulation unnecessary. Furthermore, the burdens associated with implementing any cramming regulations would far outweigh any perceived benefits. Adoption of such regulations also would be inconsistent with various Executive Orders requiring agencies to "propose or adopt regulations only upon a reasoned determination that the benefits of the intended regulation justify its costs."

Accordingly, the Commission should refrain from adopting any new wireless cramming regulations.

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**COMMENTS**

T-Mobile USA, Inc. (“T-Mobile”) supports the Commission’s efforts to empower consumers and ensure that they do not fall prey to cramming. There is no evidence, however, that cramming is a significant issue for the CMRS industry or that market forces and voluntary industry efforts are insufficient to prevent widespread cramming problems.

**DISCUSSION**

**I. THERE IS NO EVIDENCE THAT CRAMMING IS A SIGNIFICANT PROBLEM FOR THE CMRS INDUSTRY**

The *NPRM* proposes rules to detect and prevent cramming because the Commission’s complaint data allegedly demonstrates that “cramming is a significant and ongoing problem that has affected consumers for over a decade.”<sup>1</sup> This statement does not apply to wireless consumers. The Commission’s Consumer and Governmental Affairs Bureau (“CGB”) tracks the number of informal consumer inquiries and complaints received and processed each year and issues reports identifying the top issues for consumer inquiries and complaints. Cramming was not identified as a major source of consumer inquiry or complaint for the wireless industry

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<sup>1</sup> *NPRM* at ¶ 1.

during any quarter in 2010.<sup>2</sup> In contrast, cramming was identified as one of the major sources of consumer inquiry and complaint regarding *wireline* services, although available data indicates that it is a diminishing problem.<sup>3</sup>

Consistent with the Commission’s experience, the California Public Utilities Commission (“CPUC”) reported that it receives thousands of complaints regarding cramming but only a very small percentage involved wireless.<sup>4</sup> Similarly, *over the past five years*, Florida received a *total* of only 174 complaints involving the four major CMRS providers.<sup>5</sup> That equates to approximately 35 complaints per year filed against the four major CMRS carriers – an average of less than nine complaints per year per carrier. For T-Mobile, the number of complaints was less than the average – only slightly more than three per year, for a total of 16 complaints over five

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<sup>2</sup> See “Quarterly Report of Informal Consumer Inquiries and Complaints for Fourth Quarter of Calendar Year 2010 Released,” News Release (Aug. 15, 2011) (“4<sup>th</sup> Quarter Report”), available at <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints>; “Quarterly Report of Informal Consumer Inquiries and Complaints for Third Quarter of Calendar Year 2010 Released,” News Release (Aug. 15, 2011) (“3<sup>rd</sup> Quarter Report”), available at <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints>; “Quarterly Report of Informal Consumer Inquiries and Complaints for Second Quarter of Calendar Year 2010 Released,” News Release (Aug. 15, 2011) (“2<sup>nd</sup> Quarter Report”), available at <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints>; “Quarterly Report of Informal Consumer Inquiries and Complaints for First Quarter of Calendar Year 2010 Released,” News Release (Aug. 13, 2010) (“1<sup>st</sup> Quarter Report”), available at <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints>. The Commission released its most recent report of complaints in August 2011 regarding complaints filed during the fourth quarter of 2010. See 4th Quarter Report.

<sup>3</sup> See *4th Quarter Report*. The number of cramming inquiries relating to wireline billing has been steadily decreasing: 2142 inquiries in the 1<sup>st</sup> Quarter 2010; 1733 in the 2<sup>nd</sup> Quarter 2010; 789 in the 3<sup>rd</sup> Quarter 2010; 701 in the 4<sup>th</sup> Quarter 2010. See 1<sup>st</sup> Quarter Report; 2<sup>nd</sup> Quarter Report; 3<sup>rd</sup> Quarter Report; 4<sup>th</sup> Quarter Report.

<sup>4</sup> *NPRM* at ¶ 29.

<sup>5</sup> Florida Cramming Solutions, Presentation of Keith Vanden Dooren, Special Counsel, Florida Office of the Attorney General, Slide 2 (May 11, 2011), available at <http://www.ftc.gov/bcp/workshops/cramming/FloridaCrammingSolutionsToFTC.ppsx>.

years.<sup>6</sup> This is a miniscule number of complaints when compared to the millions of CMRS phone bills issued each year to Florida consumers. Federal Trade Commission (“FTC”) data also demonstrates that cramming is not a significant problem for the CMRS industry. The FTC received more than 8,000 complaints regarding unauthorized charges or debits on wireline telephone bills in 2009 and more than 6,000 such complaints in 2008.<sup>7</sup> In contrast, it received a total of only four complaints regarding unauthorized charges on wireless telephone bills during that two year period.<sup>8</sup> This evidence confirms that cramming is not a significant problem for the CMRS industry and consumers, and that CMRS regulations are unnecessary.

## **II. THE WIRELESS INDUSTRY ALREADY TAKES SIGNIFICANT STEPS TO PROTECT CONSUMERS FROM CRAMMING**

In this highly competitive market where customers can easily switch providers, wireless carriers have every incentive to ensure customer satisfaction and prevent cramming. T-Mobile and other wireless carriers have invested considerable time and resources in creating policies and practices to protect their customers from unauthorized third-party charges and will continue to do so.

For example, the Mobile Marketing Association (“MMA”) has adopted Best Practices designed to standardize wireless carrier rules for mobile value-added services that exist outside of the carrier network (*i.e.*, provided by third-parties), to protect consumers from unwanted or

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<sup>6</sup> *Id.*

<sup>7</sup> Federal Trade Commission, Consumer Sentinel Network Data Book for January – December 2010, at 80 (Mar. 2011), Appendix B3: Consumer Sentinel Network Complaint Category Details, available at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>.

<sup>8</sup> *Id.*

fraudulent charges, and to generally improve the consumer experience.<sup>9</sup> The MMA Best Practices, which were written by a committee comprised of major wireless carriers (including T-Mobile), leading aggregators, and content providers, provides guidelines for implementing short code programs and sets forth accepted industry practices and wireless carrier policies.<sup>10</sup> The guidelines were first launched in September 2005 and are reviewed annually; they were most recently amended in March 2011.<sup>11</sup>

A significant component of the MMA Best Practices is the use of a “double opt-in” process before a third-party charge will be placed on a wireless consumer’s bill.<sup>12</sup> Under this process, a subscriber wishing to purchase a third-party service or application must be authenticated through the use of a personal identification number or zip code (first opt-in). Once a subscriber has been authenticated, the carrier then must separately confirm with the subscriber (via a second opt-in) that he or she purchased the service or application and has agreed to be billed the specified amount for the purchase. T-Mobile requires affirmative responses to secured messages: (1) requesting confirmation of the content to be purchased; (2) confirming the purchase price of the content; and (3) setting forth the terms and conditions of the purchase. If the subscriber does not confirm the order, T-Mobile does not allow the charge to be added to the wireless bill.

The MMA Best Practices also ensure that it is simple for subscribers to terminate all future charges associated with applications and services purchased from third-party vendors.

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<sup>9</sup> U.S. Consumer Best Practices, V.6.0 at 6-7 (MMA 2011) (“MMA Best Practices”), *available at* <http://www.mmaglobal.com/bestpractices.pdf>.

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> *See id.* at 1.

<sup>12</sup> *Id.* at 31-34, 51.

Specifically, vendors are required to ensure that subscribers are able to stop participating in and receiving messages from any program by texting any of the following words to the short code used for the service: “stop,” “end,” “cancel,” “unsubscribe,” or “quit.”<sup>13</sup> In addition, information regarding the availability of this simple cancellation function must be included in the terms and conditions associated with the service or application.<sup>14</sup>

CTIA-The Wireless Association<sup>®</sup> also has implemented a monitoring program designed to identify vendors that deviate from the MMA Best Practices.<sup>15</sup> The first step in this monitoring program is vendor registration.<sup>16</sup> CTIA then uses mobile-to-mobile technology to monitor messages from registered vendors to verify compliance with the MMA Best Practices. It monitors compliance on a weekly basis. CTIA rates violations based on their severity and requires vendors to cure the most serious violations immediately and all other violations no later than five days after receipt of a violation notice from CTIA. CTIA shares information regarding these violations and remedial efforts with CMRS carriers. Vendors that fail to cure violations may lose their ability to obtain new short codes necessary for new campaigns or to modify existing campaigns associated with their current short codes.

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<sup>13</sup> *Id.* at 15.

<sup>14</sup> *Id.* at 17-18.

<sup>15</sup> See *The CTIA Compliance Monitoring and Enforcement Playbook*, rev. 1.61 (Oct. 3, 2011), available at [http://www.wmcglobal.com/images/CTIA\\_playbook.pdf](http://www.wmcglobal.com/images/CTIA_playbook.pdf).

<sup>16</sup> CTIA is the registry that assigns short codes used for various third-party services and applications. As part of the registration process, vendors must submit a dedicated email address operated by the content provider to receive communications from the CTIA Compliance Team regarding, for example, login credentials. This email address must be live 24/7, and any changes to that email address must be provided to CTIA at least 30 days before taking effect. Further, the email address must originate from a domain name registered to the content provider (free email services such as Gmail or Yahoo are unacceptable). *Id.*

In addition to these industry initiatives, T-Mobile has implemented other procedures to prevent cramming. For example, before a third-party content provider can place charges on a T-Mobile bill, it generally must enter into a binding agreement with T-Mobile and then integrate with T-Mobile's third-party billing system.<sup>17</sup> This integration process requires, among other things, a rigorous testing and certification process before any charges can be processed on a T-Mobile bill. This process is designed to make sure that the third-party content provider's product offerings, as well as the customer's experience in obtaining those products, are technically sound and consistent with industry best practices. An independent third-party is used to conduct this certification and testing.

T-Mobile also makes it easy for customers to block third-party billing: customers can simply call customer care or visit a T-Mobile store and ask to have this capability blocked on their accounts. In addition, T-Mobile has established spending limits on a per transaction and on a monthly basis in order to mitigate financial risks to subscribers, and T-Mobile's customer care representatives may issue refunds or credits as appropriate. Furthermore, T-Mobile monitors billing aggregators and third-party content providers to identify general customer satisfaction and trends indicative of bad actors and may suspend the billing privileges of a billing aggregator/third-party content provider about whom it receives complaints.

These industry-wide and carrier-specific efforts have successfully prevented cramming problems in the CMRS industry. Because these efforts are continually under review and modified to address new issues and trends, they are preferable to inflexible Commission rules

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<sup>17</sup> If a third-party content provider does not contract directly with T-Mobile, it must contract with a content or billing aggregator who has an agreement and authorized connection to T-Mobile's third-party billing system. These aggregators, who themselves are subject to the MMA Best Practices, are required to ensure that the third-party vendor complies with T-Mobile's billing requirements.

and regulation. Accordingly, Commission intervention is not only unnecessary but ill advised at this time.

### **III. THE PROPOSED WIRELESS CRAMMING REGULATION WOULD IMPOSE SIGNIFICANT COSTS WITH LITTLE BENEFIT**

The proposal to require wireless carriers to provide information regarding the Commission's complaint process to consumers would be of little benefit to consumers for several reasons. First, providing the Commission's contact and complaint information is likely to confuse consumers about whom to call first to get their problems resolved. Rather than contacting their wireless carriers with questions and complaints about cramming issues, consumers may instead go ahead and file a complaint with the FCC before their carriers have had an opportunity to address their concerns. This is likely to anger and annoy consumers who will not receive the same quick action on their inquiries they would have had if they contacted their carriers' customer service representatives first.

Second, requiring carriers to provide Commission contact information may be unnecessary because there is no evidence that consumers are unaware of the ability to file complaints with the Commission or that wireless carriers have been unresponsive to consumer complaints. To the contrary, more than 72,000 wireless-related complaints were filed with the Commission in 2010<sup>18</sup> which indicates that consumers are aware of the FCC's complaint procedures. Thus, the low number of wireless cramming complaints demonstrates the success of industry practices – rather than a lack of consumer knowledge regarding the Commission's complaint process. Accordingly, there would be little benefit associated with requiring carriers to modify their billing systems to provide information regarding how to file a complaint with the Commission.

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<sup>18</sup> See 1<sup>st</sup> Quarter Report; 2<sup>nd</sup> Quarter Report; 3<sup>rd</sup> Quarter Report; 4<sup>th</sup> Quarter Report.

Third, CMRS billing and network systems are extremely complex software systems that are integrated into all aspects of a company's operations.<sup>19</sup> It is costly to modify these systems.

Moreover, in considering potential wireless cramming regulations, the Commission must comply with long-standing mandates set forth in various Executive Orders requiring an assessment of the costs of potential regulations *before* rules are proposed, and certainly before any regulations are adopted. Pursuant to Executive Order 12866, agencies must "assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating" before adopting new regulations.<sup>20</sup> In particular, agencies must "propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."<sup>21</sup>

In January of this year, President Obama reaffirmed these requirements through adoption of Executive Order 13563.<sup>22</sup> Section 1 of this Executive Order states that agencies must evaluate potential regulations "based on the best available science" and "identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends."<sup>23</sup> In July, the President issued another Executive Order specifically extending Executive Order 13563 to Independent

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<sup>19</sup> See, e.g., Comments of the Rural Cellular Association, CG Docket No. 09-158, at 5-6 (July 6, 2010); Reply Comments of Verizon Wireless, CG Docket No. 09-158, at 3-4 (July 19, 2010).

<sup>20</sup> Exec. Order 12866, §1(a) (Sept. 30, 1993).

<sup>21</sup> *Id.* at § 1(b)(6).

<sup>22</sup> Exec. Order No. 13563 (Jan. 18, 2011); see also "Executive Order 13563, 'Improving Regulation and Regulatory Review,'" OMB Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies (Feb. 2, 2011).

<sup>23</sup> Exec. Order No. 13563, § 1.

Agencies and stating that regulatory decisions “should be made only after consideration of their costs and benefits.”<sup>24</sup>

Under the circumstances, given the limited benefits of imposing the proposed wireless cramming regulations, the potential for customer confusion and annoyance, and the significant costs associated with modifying carrier billing systems, the Commission cannot make “a reasoned determination that the benefits of the intended regulation justify its costs.”<sup>25</sup> Extending the proposed wireline cramming regulations to the wireless industry would be even more burdensome with little benefit. Thus, adoption of new cramming regulations for the wireless industry – whether in the form of notice requirements or the more burdensome requirements proposed for the wireline industry – would be inconsistent with various Executive Orders.

### **CONCLUSION**

For the foregoing reasons, the Commission should refrain from adopting any cramming regulations that would apply to the CMRS industry.

Respectfully submitted,

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<sup>24</sup> Exec. Order No. 13579, § 1 (July 11, 2011).

<sup>25</sup> Exec. Order 12866 at § 1(b)(6).