

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

COMMENTS OF THE NATIONAL CONSUMERS LEAGUE

The National Consumers League (NCL) hereby respectfully submits the following comments in response to the *Notice of Proposed Rulemaking* ("NPRM") adopted by the Commission in the above-captioned dockets.¹

NCL, founded in 1899, is the nation's pioneering consumer organization. Our non-profit mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. Since 1992, NCL's Fraud Center has sought to protect consumers from online and telemarketing scams through consumer education, partnerships with law enforcement and anti-fraud advocacy.

The Cramming NPRM seeks comment on proposed rules² amending the Commission's Truth-in-Billing rules and "other possible requirements"³ that were not

¹ *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 Format, CC Docket No. 98-170 (Rel. July 12, 2011)* (hereafter "Cramming NPRM").

² See 76 Fed. Reg. 52,625 - 52,626 (Aug. 23, 2011).

included in the proposed rules. Given the documented scope of the cramming problem and the ineffectiveness of current self-regulatory mechanisms, NCL believes that the Commission's proposed rules are insufficient to protect consumers. Instead, NCL believes that only by prohibiting third-party charges on wireline telephone bills, with exceptions for certain legitimate services, can the Commission hope to adequately reduce cramming fraud.

I. EXISTING CONSUMER PROTECTIONS HAVE FAILED TO CONTROL CRAMMING

Consumer protections from cramming fraud are largely reliant on industry self-regulatory mechanisms and consumers' own initiative to spot and dispute suspicious charges. In response to significant concerns from regulators and consumer advocates in the 1990s, the telecommunications industry, in consultation with the Commission, adopted a set of voluntary guidelines designed to address cramming fraud.⁴ To control cramming, these guidelines rely primarily on three mechanisms:

1. Local exchange carrier ("LEC") administrative action triggered when customer complaints about a particular third-party service provider exceed a certain threshold;
2. Requirements for end-user authorization of third-party charges; and
3. A dispute resolution process that automatically honors consumer cramming fraud complaints with bill credits.

Federal anti-cramming protections are based on the Commission's Truth-in-Billing regulations, which require telephone bills to contain "full and non-misleading descriptions" of third-party product and services and the company responsible for each

³ See *id.* at 52,626 - 52,628.

⁴ Federal Communications Commission, Anti-Cramming Best Practices Guidelines (available at www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html) (accessed October 24, 2011).

charge.⁵ Many LECs also offer customer-initiated bill blocking services that prohibit third-party service providers from adding charges for products and services to a subscriber's bill.⁶

As the U.S. Senate Commerce Committee's July 2011 investigation⁷ of cramming fraud illustrates, crammers have become adept at circumventing LEC countermeasures through a combination of deceptive and falsified customers authorizations, misleading descriptions of charges on bills, and the use of shell companies. When consumers do spot and dispute suspected cramming fraud, they are frequently unable to obtain redress. Despite the protections in the industry's voluntary anti-cramming guidelines, consumers frequently report that their complaints are shuffled between LECs, billing aggregators and third-party service providers.⁸ This compounds the harm, as it not only costs victims money from the original crammed charges, but also requires a substantial time investment as they seek to rectify the bill.⁹ Even when consumers attempt to take advantage of LEC-provided third-party bill blocking services, they frequently find that these measures prove ineffective at preventing cramming.¹⁰

A sampling of the consumer harm identified in the record includes:

⁵ Federal Communications Commission, Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order, 14 FCC Rcd. 7492 (May 11, 1999).

⁶ See, e.g., Verizon, "Stopping Unauthorized Charges." (available at <http://www22.verizon.com/residentialhelp/phone/billing/privacy+and+security/unauthorized+charges+on+your+telephone+bill+cramming/95446.htm>) (accessed October 24, 2011).

⁷ See Majority Staff of Senate Committee on Commerce, Science, and Transportation, 112th Cong., Report on Unauthorized Charges on Telephone Bills, (July 12, 2011) (hereinafter "Senate Commerce Committee Cramming Report") (available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=d2ba4f0b-6e03-4b23-8046-7dc9ea0d25d2) (accessed October 24, 2011).

⁸ See Senate Commerce Committee Cramming Report at iv, 41- 42.

⁹ See, e.g., "Testimony of Susan Eppley Before the United States Senate Committee on Commerce, Science and Transportation Hearing on Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose," (July 13, 2011) at 2 (available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=1a13548b-e349-49e0-9d4a-fe2fdfa6badb) (accessed October 24, 2011).

¹⁰ See Senate Commerce Committee Cramming Report at 33-34.

- A large portion of the \$2 billion in third-party charges placed on consumers' telephone bills annually are unauthorized.¹¹
- Of the 500 consumers contacted in the course of the Senate Commerce Committee's investigation, not a single respondent reported that they ever authorized third-party charges on their accounts. Similar results have been reported by law enforcement investigations of suspected crammers.¹²
- By the Commission's own estimates, 15 to 20 million American households receive crammed charges on their wireline telephone bills annually, ranging in cost from \$1.99 to \$19.99 per month.¹³
- Dozens of serious state and federal anti-cramming law enforcement actions have been launched over the past decade.¹⁴

The evidence of substantial and widespread consumer harm from cramming is conclusive and strongly suggests that existing anti-cramming measures have failed to control the problem. Indeed, we agree with the Commission's conclusion in the Cramming NPRM that "[t]he substantial volume of wireline cramming complaints that the Commission, the Federal Trade Commission ('FTC'), and states continue to receive suggests the ineffectiveness of voluntary industry practices and highlights the need for consumer safeguards."¹⁵

II. THE COMMISSION'S PROPOSED RULES FAIL TO RECOGNIZE THE INHERENTLY DECEPTIVE NATURE OF CRAMMING

As stated previously, we believe that the Commission has correctly identified cramming as a significant and widespread threat to the public interest. In the Cramming NPRM, the Commission proposes rules requiring wireline carriers to:

¹¹ See Senate Commerce Committee Cramming Report at ii.

¹² *Id.* at ii.

¹³ See Federal Communications Commission, Cramming Infographic (June 22, 2011). (available at: <http://transition.fcc.gov/cgb/cramminggraphic.pdf>) (accessed October 24, 2011).

¹⁴ See *e.g.*, Senate Commerce Committee Cramming Report at 4-5.

¹⁵ See Cramming NPRM at 3.

1. “[N]otify 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; and
2. [P]lace charges from non-carrier third-parties in a bill section separate from carrier charges; and
3. [R]equire both wireline and Commercial Mobile Radio Service (‘CMRS’) carriers to include on all telephone bills and on their websites the Commission’s contact information for the submission of complaints.’¹⁶

Unfortunately, the Commission’s proposed rules continue to rely on a paradigm that is inherently reactive and reliant on consumers spotting and disputing instances of cramming. The proposed rules fail to adequately control for the deceptive nature of cramming.

The deception inherent in cramming fraud relies on several consumer tendencies. First, consumers are generally unaware that their telephone bills can be used to charge them for products and services unrelated to their telephone service. For example, in one survey conducted by the Office of the Attorney General of the State of Vermont in connection with the investigation of a billing aggregator:

“Of the 562 responses to 1700 surveys mailed in connection with the first of the aggregators to be investigated, only 8 (1.4%) recalled having received any separate written notice of their charges (although the merchants claimed to have provided notice, either online or through the mail), and only an estimated 27.4% noticed the charge within the first three months of its appearance on their telephone bill.”¹⁷

¹⁶ See Cramming NPRM at 3-4.

¹⁷ Testimony of Elliot Burg Before the U.S. Senate Committee on Commerce, Science, and Transportation (July 13, 2011) at 2. (available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=0aad044e-a842-4f97-b937-cd81ffca4f1e) (accessed: October 24, 2011).

We believe that since consumers are unaware that their telephone bill can be used to bill for products and services unrelated to their telephone service, they are not accustomed to reviewing their bills to identify such suspicious charges.

Second, crammed charges on consumers' telephone bills are intentionally meant to go unnoticed. Vague and misleading descriptions of charges such as "Internet services," "eBusiness Marketing Materials," "electronic facsimile," and "Instant 411" are just a few of the ways that crammed charges have been listed on consumers' bill.¹⁸ Cramming victims have reported that they did not understand that third-party vendors we even permitted to place unauthorized charges on their telephone bills, using words like "hoodwinked," "taking advantage," "disgusted," and "unethical" to describe their experiences with third-party billing.¹⁹

Third, we believe that the effectiveness of the proposed rules -- dependent as they are on consumers reviewing their bills and disputing suspicious charges -- is undermined by consumers' increasing use of paperless billing and automatic bill pay. We believe that these industry trends reduce consumers' incentives to peruse their bills closely and identify suspicious charges.

Finally, consumer usage rates of third-party billed products and services indicate that there is very little legitimate use of third-party billing on wireline telephone bills. For example, multiple FCC investigations of suspected cramming operations found that only 20 of 17,384 consumers used the third-party services for which they were billed, a usage rate of 0.1%.²⁰ This conclusion is supported by the Commerce Committee Cramming Report, which found that "[w]ith the exception of legitimate third-party vendors that offer services like satellite television and long distance, third-party billing

¹⁸ See Senate Commerce Committee Cramming Report at 14.

¹⁹ *Id.* at iv, 17.

²⁰ See Federal Communications Commission, Cramming Infographic (June 22, 2011). (available at: <http://transition.fcc.gov/cgb/cramminggraphic.pdf>) (accessed October 24, 2011).

appears to be primarily used by con artists and unscrupulous companies to scam telephone customers.”²¹

Instead of a proactive solution that seeks to address the roots cause of cramming – the inherent susceptibility of the third-party billing system to fraud – the proposed rules continue to rely on consumers to notice and report deceptive charges. It might perhaps be true that the enhanced disclosure requirements in the proposed rules may help more consumers notice and presumably dispute crammed charges. However, we argue that given the scope of the problem, the demonstrated skill of crammers in hiding their charges and evading LEC anti-cramming safeguards, and consumers’ increasing use of alternative billing and payment technologies, these enhanced disclosures do not go far enough in addressing cramming fraud.

III. PROHIBITING MOST THIRD-PARTY BILLING ON WIRELINE TELEPHONE BILLS IS THE MOST EFFECTIVE WAY TO REDUCE CRAMMING

NCL believes that aggressive action is necessary if the Commission wishes to significantly reduce incidences of cramming. In the Cramming NPRM, the Commission seeks comment on prohibiting all third-party charges on wireline telephone bills. NCL supports such a prohibition with certain exceptions.

NCL believes that a nuanced prohibition on third-party billing would be the most effective means to control cramming. The Senate Commerce Committee Cramming Report found, with few exceptions, that there is very little legitimate use of third-party billing on wireline telephone bills. In addition, the Vermont legislature has passed a bill banning third-party billing on wireline telephone bills with the following three limited exceptions:

²¹ See Senate Commerce Committee Cramming Report at ii.

1. Goods or services marketed or sold by persons subject to the jurisdiction of the Vermont public service board
2. Direct dial or dial around services initiated from the consumer's telephone; or
3. Operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communications from correctional center inmates.²²

NCL believes that the Commission should adopt regulations modeled on the Vermont legislation to control cramming. The common-sense exceptions in the bill would ensure that legitimate third-party billed services such as satellite television, non-LEC provisioned Internet service, and direct dial and dial around long distance service would not be affected by the prohibition.

IV. CONCLUSION

As our comments indicate, cramming fraud affects millions of consumers annually. More than a decade of industry self-regulation and reliance on reactive anti-cramming measures has failed. While we applaud the Commission for taking this issue seriously, we believe that the proposed rules are insufficient to the nature and scope of the cramming problem. We urge the Commission to therefore take far more aggressive action to protect consumers from this category of scam – cramming - once and for all.

Respectfully submitted,



²² 9 V.S.A. § 2466(f) (as amended by 52 Vermont Laws § 78 (2011)). Available at: <http://www.leg.state.vt.us/docs/2012/bills/Passed/H-287.pdf> at 105. (Accessed October 24, 2011).

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