

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

.....)
In the Matter(s) of)
)
Empowering Consumers to Prevent and Detect) CG Docket No. 11-116
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
)
.....) [FCC 11-106]

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

On July 12, 2011, the Federal Communications Commission (“FCC” or “Commission”) released a Notice of Proposed Rulemaking¹ seeking comment on proposals to assist consumers in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful practice commonly referenced as “cramming.” The FCC set deadlines for filing comments at 60 and 90 days after Federal Register publication.²

¹ *In the Matter(s) of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, CG Docket Nos. 11-116 and 09-158, CC Docket 98-170, Notice of Proposed Rulemaking, FCC 11-106 (rel. Jul. 12, 2011) (*Cramming NPRM*), at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-106A1.doc, *Erratum* (rel. Aug. 3, 2011), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308879A1.doc.

² See 76 Fed. Reg. 52625 (Aug. 23, 2011), available online at: <http://www.gpo.gov/fdsys/pkg/FR-2011-08-23/pdf/2011-21547.pdf>.

Subsequently, the reply comment deadline was extended to December 5, 2011.³ Later, on November 16, 2011, after initial comments had been filed but *before* the deadline for reply comments, the National Association of Regulatory Utility Commissioners (“NARUC”), convened at their 2011 Annual Meeting in St. Louis, Missouri, adopted a “*Resolution Urging the Federal Communications Commission to Protect All Voice Service Consumers from Cramming billing Practices.*” A copy of that resolution is appended to these comments.

NARUC is a nonprofit organization founded in 1889. Its members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,⁴ energy, and water utilities.

³ See, the November 4, 2011 *Order*, which extended the deadline for reply comments to December 5, 2011 at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1860A1.doc.

⁴ NARUC’s member commissions have oversight over intrastate telecommunications services and particularly the local service supplied by incumbent and competing local exchange carriers (LECs). These commissions are obligated to ensure that local phone service supplied by the incumbent LECs is provided universally at just and reasonable rates. They have a further interest to encourage LECs to take the steps necessary to allow unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying LEC obligations to interconnect and provide nondiscriminatory access to competitors. See, e.g., 47 U.S.C. § 252 (1996).

NARUC is recognized by Congress in several statutes⁵ and consistently by the Courts⁶ as well as a host of federal agencies,⁷ as the proper entity to represent the collective interests of State utility commissions. In the Federal Telecommunications Act,⁸ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.⁹ It should come as no surprise that NARUC has adopted a resolution that specifically endorses positions raised by several commenters in this proceeding.

⁵ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains “Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

⁶ See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

⁷ NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

⁸ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

⁹ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.)

Consistent with that resolution, NARUC respectfully submits these reply comments endorsing generally key points raised by comments filed by State utility commissions in Montana, New England, Virginia, Tennessee, Nebraska, Michigan, and Iowa, along with some points raised by the National Association of State Consumer Advocates.¹⁰

NARUC's resolution targets this proceeding. It strongly endorses a federal-State collaborative approach to address cramming prevention, and urges the FCC specifically to:

- Impose mandatory cramming rules to all voice service providers that assess telephone bills on consumers, including traditional wireline service providers, interconnected Voice-over Internet Protocol service providers, and wireless service providers; and
- Mandate that all voice service providers offer a blocking option of third-party provider charges to their customers free-of-charge; and
- Mandate that all voice service providers disclose third-party blocking options to their customers on, at least, an annual basis; and

¹⁰ See the *Reply Comments of the Montana Public Service Commission (Montana Comments)*, filed November 28, 2011, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021748431>; and the October 24, 2011 filed (1) *Joint Comments of the New England Conference of Public Utilities Commissioners – the Connecticut Department of Energy and Environmental Protection Public Utilities Regulatory Authority, the Maine Public Utilities Commission, the Massachusetts Department of Telecommunications and Cable, the New Hampshire Public Utilities Commission, the Vermont Department of Public Service, and the Vermont Public Service Board – and the Rhode Island Division Of Public Utilities and Carriers (NECPUC Comments)*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021717680>; (2) *Comments of the Virginia State Corporation Commission (Virginia Comments)*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021717622>; (3) *Comments of the Nebraska PSC (Nebraska Comments)*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021717614>; (4) *Initial Comments of the National Association of State Utility Consumer Advocates (NASUCA Comments)*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021717554>; (5) *Comments of the Michigan PSC (Michigan Comments)*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021717541>; (6) *Comments of the Indiana URC (Indiana Comments)*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021717501>; and (7) *Comments of the Iowa Utilities Board (Iowa Comments)*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021716037>.

- Assure that all disclosure mandates by the FCC to address cramming billing practices be clear and conspicuous; and
- Clearly specify that federal cramming rules will not preempt more stringent or other State cramming standards, nor will they preempt States' consumer protection rules or other regulatory authority; and
- Require voice service providers to report billing complaint trends and spikes driven by activity of specific third-party vendors to appropriate federal and State entities, including the FCC, FTC, and State public utility commissions, consumer advocates, and Attorneys General; and
- Structure its cramming rules to provide protections to broadband service customers as well as voice service customers.

In support of these comments NARUC states as follows:

DISCUSSION

Cramming and related issues have long been of interest to NARUC's State commission members. In March of 2000, NARUC's Committee on Consumer Affairs announced the creation of a working group to examine the growing problem of "confusing and misleading telephone billing practices."¹¹ This working group developed a model telecommunications billing rule that ultimately was the basis of a comprehensive rule on billing issues.¹² Since then, NARUC has from time-to-time adopted other resolutions relevant to this proceeding culminating in the resolution adopted less than a month ago in St. Louis.

¹¹ See, e.g., "NARUC Task Force Targets Truth in Billing Model Rules," Press Release # 00-3 of the National Association of Regulatory Utility Commissioners, March 29, 2000.

¹² See, e.g., July 14, 2004 Reply Comments of the National Association of Regulatory Utility Commissioners, filed in the proceeding captioned: *In the Matter of National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CG Docket No. 04-208.

Partnership, Not Preemption

In spite of longstanding State and federal efforts, the record in this proceeding makes clear that market forces have not solved the problem¹³ and some FCC action is required. In such circumstances, it makes no sense to effectively “handcuff” State consumer cops and prevent them from providing constituents with either better remedies or more protection. This was a common theme of those that filed comments in this proceeding who are on the front line dealing with these abuses¹⁴ - one that NARUC’s November 2011 resolution specifically endorses noting the FCC should “clearly specify that federal cramming rules will not preempt more stringent or other State cramming standards.”

¹³ See, e.g., *NECPUC Comments* at 4-5, not10, and at 15; *Michigan Comments* at 1-2 (noting that cramming “. . . was the fourth highest telecommunications complaint received by the MPSC from Michigan consumers in 2009 and 2010. In 2009, cramming represented 18 percent of the total telecommunications complaints received. In 2010, cramming represented approximately 12 percent of the total telecommunications complaints); *Indiana Comments* at 2 (detailing how Indiana’s experience “agrees with and corroborates the evidence cited in the *Cramming NPRM* that indicates that cramming is an “ongoing and persistent problem” for consumers”); *Iowa Comments* at 2 (noting the “huge number of violations associated with individual crammers” and citing to 2011 FCC enforcement actions against just two carriers affecting over 35,000 consumers.); *Comments of Minnesota Attorney General Lori Swanson*, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021717489> (noting at page 2 that “[c]ramming is a significant problem in Minnesota that shows no sign of abating. Cramming is one of the most –if not the most – common telecommunications-related complaints that Minnesota consumers have filed with this office in recent years.”) See also, the October 24, 2011 *Initial Comments of ERIC T. SCHNEIDERMAN, New York State Attorney General, JOHN KROGER, Oregon Attorney General, ROBERT E. COOPER, JR., Tennessee Attorney General, DOUGLAS F. GANSLER, Maryland Attorney General, GREG ZOELLER, Indiana Attorney General, JACK CONWAY, Kentucky Attorney General, JIM HOOD, Mississippi Attorney General, TOM HORNE, Arizona Attorney General, CATHERINE CORTEZ MASTO, Nevada Attorney General, TOM MILLER, Iowa Attorney General, MICHAEL A. DELANEY, New Hampshire Attorney General, JOHN J. BURNS, Alaska Attorney General, JOSEPH R. BIDEN III, Delaware Attorney General, SAM OLENS, Georgia Attorney General, ROB MCKENNA, Washington Attorney General, GARY KING, New Mexico Attorney General, LUTHER STRANGE, Alabama Attorney General (17 AG Comments)*, at pages 6-10 (noting that “[i]n recent years, the Attorneys General have seen a dramatic rise in the number of cramming complaints . . . many customers are being exposed to widespread cramming violations, essentially amounting to theft. The New York Attorney General’s investigation of Unitedtel.com is just one example of the countless investigations conducted by the Attorneys General. From a list of over 41,000 third-party charges totaling more than \$613,000 billed to New York customers by this single vendor during a 15-month period.”)

¹⁴ See, e.g., *Montana Comments* at 3 agreeing “with comments submitted by both the California PUC and the New England Commissions that the FCC should clearly specify that its new regulations do not preempt more stringent state cramming requirements.”

NARUC is pleased the FCC explicitly recognizes that “a coordinated effort among the various regulatory entities that monitor and enforce federal and State laws on cramming is a critical component in protecting consumers from unauthorized charges.” *Cramming NPRM* at ¶ 66. Experience and just plain common sense suggest a partnership with State authorities is key to any adjustments to the FCC’s rules truly designed to protect consumers.

There is no possible rationale for the FCC to limit consumer access to State remedies or penalties – even for exclusive federally defined inappropriate or abusive conduct. Indeed, NARUC has consistently advocated cooperative approaches to address problems where federal and State public interest concerns overlap. Cooperative models that specifically allow State enforcement up to or above any national standards using existing State procedures and penalties yield the optimal outcome that best serves both consumers and the public interest. Any other approach actually encourages abusive behavior and necessarily limits consumer avenues of relief. Moreover, NARUC has in proceeding after proceeding noted that States frequently are both the first to recognize industry abuses and the first to provide needed relief.¹⁵

¹⁵ For example, States were the first to address the issues of cramming, slamming and other scams. At least 21 States had instituted do-not-call lists before the federal do-not-call registry was enacted. This ability to respond quickly to new issues is a key strength of State commissions. The federal government should not tie the hands of

Therefore, to provide effective protection, any FCC action must leave intact States commissions' (or Attorneys' General or State Legislatures') abilities to instigate changes to national rules based on emerging abuses.

Significantly, the November 2011 resolution also points out the obvious utility of requiring voice service providers to report billing complaint trends and spikes driven by activity of specific third-party vendors to everyone, including the FCC, FTC, State public utility commissions, consumer advocates, and Attorneys General. This gives the reporting voice provider with strong and obvious incentives to handle the most abusive problem third-party vendors themselves by requiring them to notify all government authorities likely to make inquiry if such problem vendors are not being addressed. This is a counterweight to the financial disincentive to closely monitor customers identified by NECPUC, i.e., the fact that voice service providers earn additional revenues by providing the third-party billing function.¹⁶

States by impeding their ability to act in the best interest of their residents. To do so would be a disservice to hard working, law-abiding citizens while leaving the door open for potential bad actors.

¹⁶ *NECPUC Comments*, at 7 noting that “Wireline phone companies reported netting “over a billion dollars in revenue through third-party billing over the past decade.” {Internal quotes and citation omitted}

Technology Neutral Application of Rules

The FCC's NPRM focuses on imposition of new rules primarily on traditional wireline voice providers, though comment is sought on whether the same requirements should apply to VoIP and wireless providers.¹⁷ NARUC generally agrees with the *NECPUC Comments* approach at page 17-18. The FCC should take a technology neutral approach to cramming rules.¹⁸

NECPUC suggests that the FCC's rules should apply uniformly to all voice providers utilizing a telephone number. There simply is no discernable reason for the FCC to allow one category of competing service providers to engage in abusive behavior not tolerated in others and thereby leave a host of consumers unprotected merely because of their technology choices. Certainly, there does not seem to be any technical reason why providers cannot provide customers with the ability to block such third party services. Nor can there be any rationale policy justification to object to informed consumer choices, i.e., requiring clear and conspicuous notifications before such charges are applied. Any other approach is "bound to create consumer confusion regarding the protections that apply and unfairly singles

¹⁷ *Cramming NPRM* at ¶¶ 53, 69. The Commission also considers requiring *both* traditional wireline (non-VoIP) providers and wireless providers to provide Commission contact information on consumer bills and separately seeks comment on that proposal. *Id.* at ¶¶ 50-52.

¹⁸ To promote this federal-state approach, the Commission needs to *specify* that its cramming regulations would not preempt states' consumer protection or other regulatory authority, work towards voluntary sharing of federal-state cramming complaints and information, and require providers to report complaint trends and spikes involving specific third-party vendors to all federal and state agencies that must deal with such complaints.

out a lone technology for regulation where the record shows evidence of cramming across technology types.” *NECPUC Comments* at 18.

NARUC’s resolution takes this technology neutral concept one step further. To the extent communications shift towards broadband services, and broadband service providers begin to provide third party billing, the FCC should also structure its rules so as to “provide protections to broadband service customers as well as voice service customers.”

The “Moderate Approach” Must Assure Consumers Are Protected

Instead of prohibiting carriers from placing third-party charges on telephone bills entirely, the Commission indicates that it takes “the more moderate approach of addressing the confusion and frustration that consumers experience from the *manner* in which carriers currently include both carrier charges and third-party charges on telephone bills, and by ensuring that consumers are aware of blocking options.” *Cramming NPRM* at ¶ 82. NARUC generally supports the FCC’s proposed “moderate” approach in the near-term but only to the extent that the Commission: (1) mandates that all carriers offer a blocking option to consumers free-of-charge; (2) mandates that all disclosures are clear and conspicuous; and (3) assure that State authority to provide more protections is left intact.

CONCLUSION

There is a crucial need for revision of the FCC's cramming rules. They should be mandatory, apply to all voice service providers regardless of the technology uses, and coordinate with, rather than supplant, State cramming rules. Above all, a collaborative approach between the Commission and states will best assist consumers against cramming.

Respectfully Submitted,

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Appendix A
**Resolution Urging the Federal Communications Commission to Protect All
Voice Service Consumers from Cramming Billing Practices**

WHEREAS, On July 12, 2011, the Federal Communications Commission (FCC) released a *Notice of Proposed Rulemaking* (FCC 11-106; NPRM) proposing to implement more stringent rules specifically “designed 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;’”
and

WHEREAS, The FCC indicates that it previously chose to adopt “‘broad, binding principles’ to promote truth-in-billing, rather than mandating more detailed rules to govern the details or format of carrier billing practices,” and permitted industry to adopt a voluntary code of best practices designed to prevent the placement of unauthorized charges on consumer bills; *and*

WHEREAS, The FCC deems cramming to be an unjust and unreasonable practice in violation of Section 201(b) of the Communications Act of 1934, as amended (Act); *and*

WHEREAS, The NPRM recognizes and data suggest that, despite the FCC’s previous actions and other State and federal actions, “cramming is a significant and ongoing problem that has affected consumers for over a decade, and has drawn the concern of Congress, States, and other federal agencies” and “reports of cramming likely understate the magnitude of the problem because consumers face significant challenges in detecting and preventing unauthorized charges on their telephone bills;” *and*

WHEREAS, Carriers may have a financial *disincentive* to closely monitor customer bills because: (1) voice service providers often earn revenues by placing third-party charges on their customers’ bills; and (2) unauthorized charges often go undetected and unchallenged by consumers; *and*

WHEREAS, More than twenty (20) State Attorneys General, certain State public utility commissions, the National Association of State Utility Consumer Advocates (NASUCA), and the Federal Trade Commission (FTC) responded to the NPRM urging the FCC to ban all thirdparty charges on customer telephone bills in some measure; *and*

WHEREAS, Many State public utility commissions and consumer advocates, including the California Public Utilities Commission, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the Michigan Public Service Commission, the Nebraska Public Service Commission, the Rhode Island Division of Public Utilities and Carriers, Tennessee Regulatory Authority Chairman Kenneth C. Hill, staff from the Virginia State Corporation Commission, and through the New England Conference of Public Utilities Commissioners, the Connecticut Department of Energy and Environmental Protection Public Utilities Regulatory Authority, the Maine Public Utilities Commission, the Massachusetts Department of Telecommunications and Cable, the New Hampshire Public Utilities Commission, the Vermont Department of Public Service, and the Vermont Public Service Board, as well as certain State Attorneys General, NASUCA, the FTC, and others, offer alternative recommendations short of a complete federal ban on third-party charges; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) filed a letter with the Senate Committee on Commerce, Science, and Transportation (Committee) on July 12, 2011, commending the Committee's "investigation into and hearing on cramming issues," noting that the issue "continues to affect consumers despite unprecedented technological advancements in the telecommunications space marketplace and focused federal and State enforcement activity," and indicating that it "stands willing to work with Congress, the FCC, FTC and other stakeholders to address this and other consumer concerns;" *and*

WHEREAS, NARUC adopted a Resolution in 2002, entitled *Telecommunications Consumer Bill of Rights*, which, among other things, affirmed that "consumers should have a right to receive clear and complete information about rates, terms and conditions for available products and services, and to be charged only according to the rates, terms and conditions agreed to" and called for consumers to have "fair, prompt and courteous redress for problems they encounter;"

WHEREAS, NARUC agrees that the FCC has sufficient legal authority to impose cramming prevention rules on traditional wireline service providers, interconnected VoIP service providers, wireless service providers and broadband Internet service providers; *and*

WHEREAS, The FCC and the market are quickly transitioning from a voice to a broadband-focused infrastructure; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 2011 Annual Meeting in St. Louis, Missouri, urges the FCC to implement mandatory cramming rules to all voice service providers that assess telephone bills on consumers, including traditional wireline service providers, interconnected Voice-over Internet Protocol (VoIP) service providers, and wireless service providers; *and be it further*

RESOLVED, That the FCC should mandate that all voice service providers offer a blocking option of third-party provider charges to their customers free-of-charge; *and be it further*

RESOLVED, That the FCC should mandate that all voice service providers disclose third-party blocking options to their customers on, at least, an annual basis; *and be it further*

RESOLVED, That all disclosure mandates by the FCC to address cramming billing practices be clear and conspicuous; *and be it further*

RESOLVED, That the FCC should clearly specify that federal cramming rules will not preempt more stringent or other State cramming standards, nor will they preempt States' consumer protection rules or other regulatory authority; *and be it further*

RESOLVED, That the FCC should require voice service providers to report billing complaint trends and spikes driven by activity of specific third-party vendors to appropriate federal and State entities, including the FCC, FTC, and State public utility commissions, consumer advocates, and Attorneys General; *and be it further*

RESOLVED, As we transition to a broadband-focused infrastructure, one where the broadband Internet Service Provider may be the primary billing party, that the FCC should structure its cramming rules to provide protections to broadband service customers as well as voice service customers; *and be it further*

RESOLVED, That NARUC strongly endorses a federal-State collaborative approach to address cramming prevention.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors November 15, 2011

Adopted by the NARUC Committee of the Whole November 16, 2011