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Federal Communications Commission
Washington, D.C. 20554

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In the Matter 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

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Genachowski and Commissioners McDowell and Clyburn issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION 1
II. BACKGROUND 5
A. How Cramming Occurs..... 6
B. Current Voluntary Industry Practices..... 9
C. Truth-in-Billing 10
D. Consumer Information and Disclosure Notice of Inquiry 13
E. Notice of Proposed Rulemaking..... 18
III. EVIDENCE OF CRAMMING 20
A. Federal and State Agencies 20
1. Commission Inquiries and Complaints..... 20
2. Federal Trade Commission 24
3. State Government Complaints 26
B. Congressional Investigations, Inquiries, and Report..... 31
C. FCC Commenters 37
IV. DISCUSSION 41
A. The Need for Rules..... 41
B. New Rules to Protect Consumers 48
1. Rules to Prevent Cramming From Happening..... 51
2. Rules to Help Consumers Detect Cramming After it Happens 61
C. Other Proposals 79
1. Disclosure of Commission Complaint Contact Information..... 79
2. Prohibiting All Third-Party Charges on Wireline Telephone Bills 84
3. Requiring Wireline Carriers to Block Third-Party Charges Upon Request..... 91

4. Requiring Wireline Carriers to Disclose That They Do Not Offer Blocking of Third-Party Services	95
5. Disclosure of Third Party Contact Information	96
6. Due Diligence of Carriers to Ensure that Third-Party Charges are Legitimate	101
7. Accessibility	105
8. Definition of Service Provider or Service.....	106
9. Federal-State Coordination	107
D. Implementation.....	113
V. LEGAL ISSUES	114
A. Communications Act.....	114
B. First Amendment.....	126
VI. FURTHER NOTICE OF PROPOSED RULEMAKING	136
VII. PROCEDURAL MATTERS	150
A. Report and Order	150
1. Final Regulatory Flexibility Analysis.....	150
2. Final Paperwork Reduction Act Analysis.....	151
3. Congressional Review Act.....	152
B. FNPRM	153
1. Initial Regulatory Flexibility Act Analysis.....	153
2. Paperwork Reduction Act.....	154
3. Ex Parte Rules.....	155
4. Filing Requirements.....	156
VIII. ORDERING CLAUSES.....	160
A. Report and Order	160
B. FNPRM	165
APPENDIX A – Final Rules	
APPENDIX B – Comments Filed	
APPENDIX C – Final Regulatory Flexibility Analysis	
APPENDIX D – Initial Regulatory Flexibility Analysis	

I. INTRODUCTION

1. In this *Report and Order and Further Notice of Proposed Rulemaking*, we adopt and propose additional rules to help consumers¹ prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as “cramming.” The record compiled in this proceeding to date, including a report prepared by the Majority Staff of the Senate Commerce Committee and the Commission’s own complaint data, suggests that cramming is a significant and ongoing problem that has affected telecommunications consumers for over a decade, drawing the concern of Congress as well as multiple state and federal agencies.²

2. By some estimates, cramming affects between 15 and 20 million American households each year, and third-party billing – the practice that enables most cramming – is a \$2 billion-a-year industry. The widespread nature of cramming and the fact that the number of wireline cramming

¹ “Consumers” as used herein refers to all users or purchasers – including residential or business – of telecommunications. We use the term “third parties” to refer to all purchasers or users of billing-and-collection services provided by telecommunications carriers.

² See *infra* section III; see also United States Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, Majority Staff, Staff Report for Chairman Rockefeller, “Unauthorized Charges on Telephone Bills” (July 12, 2011) (*Senate Staff Report*).

complaints received by the Commission, the Federal Trade Commission (“FTC”), and state agencies, such as public service commissions and attorneys general, remains high are strong evidence that the current voluntary industry practices, while well intended, have been ineffective to prevent cramming and make clear the need for additional protection for consumers.

3. Compounding the need for additional rules, the record in this proceeding shows that crammers often use schemes designed to minimize the possibility of detection, such as charging small amounts or labeling the charges to appear to be associated with a telecommunications service,³ making it difficult for consumers to detect and dispute unauthorized charges and resulting in a significant overall cost to consumers.⁴

4. The Commission previously has determined that cramming is an unjust and unreasonable practice prohibited by section 201(b) of the Act⁵ and has adopted Truth-in-Billing rules in part to address cramming.⁶ Yet, based on the record, the substantial volume of consumer complaints, and other evidence that cramming remains a persistent and widespread consumer problem, we adopt additional safeguards for wireline telephone consumers that build on existing industry efforts to prevent cramming and that are necessary to better enable consumers to prevent cramming before it occurs and detect it if it does happen to them. In the *Further Notice*, we seek comment on whether the Commission should take additional steps, including requiring carriers to obtain a consumer’s affirmative consent before placing third-party charges on their own bills to consumers (*i.e.*, “opt-in”). We expect to evaluate the record in response to the *Further Notice* and take any appropriate next steps in a timely manner.

II. BACKGROUND

5. In the *NPRM*, the Commission provided detailed background information regarding cramming, including describing how cramming occurs and summarizing how the Commission previously

³ Crammers often label charges “voicemail” or “web services,” which can make the charges appear to be associated with services a carrier normally provides. See Press Release, Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands (Mar. 31, 2011) (“The services typically offered . . . include voicemail services, electronic fax services, webhosting, online gaming, and e-mail”), available at http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=165806cd-d931-4605-aa86-7fafc5fd3536&MonthDisplay=3&YearDisplay=2011.

⁴ For example, a recent FTC investigation found that a single company had crammed unauthorized charges on the telephone bills of thousands of consumers and small businesses over a five-year period resulting in millions of dollars in charges for services they never agreed to buy. See *FTC Halts Massive Cramming Operation That Illegally Billed Thousands*, www.ftc.gov/opa/2010/03/inc21.shtm (Mar. 1, 2010); see also *FTC v. Inc21.com Corp.*, 688 F.Supp.2d 927 and 745 F.Supp.2d 975 (N.D. Cal. 2010), (together, “*Inc21.com*”).

⁵ See, e.g., *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, ¶14 (2000) (imposing a forfeiture for a company’s practices of cramming membership and other unauthorized fees on consumer telephone bills); *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (rel. Jun. 16, 2011) (\$4.2 million proposed forfeiture); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (rel. Jun. 16, 2011) (\$3 million proposed forfeiture); *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863 (rel. Jun. 16, 2011) (\$3 million proposed forfeiture); *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844 (rel. Jun. 16, 2011) (\$1.5 million proposed forfeiture) (collectively, excluding *Long Distance Direct*, the “June 2011 NALs”). As discussed in greater detail below, the cramming entity can be the customer’s own telecommunications service provider or an unaffiliated third party that may or may not be a common carrier. These third-party charges can be for additional telephone services or unrelated products and services, such as chat lines, diet plans, and horoscopes.

⁶ The Truth-in-Billing rules are codified at 47 C.F.R. §§ 64.2400-64.2401.

has addressed cramming.⁷ For convenience and to provide complete context for the actions we take today, we reiterate some of that background along with information that emerged since the Commission issued the *NPRM*.

A. How Cramming Occurs

6. Last year, staff of the United States Senate Committee on Commerce, Science, and Transportation completed an investigation into cramming for consumers of wireline telephone service. The subsequent report explained that cramming occurs when telephone companies allow third parties to place charges on their consumers' telephone bills, enabling consumers' telephone numbers to operate similarly to a credit or debit card account number for vendors. Information obtained from investigations by the Commission's Enforcement Bureau shows that the crammers and billing aggregators that purchase billing-and-collection services from a carrier need only an active telephone number, which can be obtained from a telephone directory, to place unauthorized charges on the consumer's telephone bill. Cramming occurs when the consumer has not authorized the charge.⁸

7. The *Senate Staff Report* states that most cramming involves third parties who, rather than contract directly with the billing carrier, bill through an intermediary billing aggregator.⁹ Billing aggregators contract directly with carriers for billing-and-collection services on behalf of the third parties they represent. The aggregators amass charges from numerous third parties and forward these charges to the billing carrier whose consumer allegedly purchased the third party's service. According to information obtained by the Enforcement Bureau, the billing aggregator typically, and by contract, supplies the billing carrier with the consumer's telephone number and the amount to be charged, and requests that the charge be placed on the consumer's telephone bill. The billing aggregator generally does not need the consumer's name or address for the cram to take place, and proof of authorization is not generally provided to or required by the billing carrier. The billing carrier may not require the aggregator to clearly identify the good, product, or service for which the consumer is being charged. The billing carrier then includes these charges in its own bill to its consumer, collects payment from the consumer, and remits payment to the billing aggregator, which in turn remits payment to the third party. Both the billing carrier and the billing aggregator receive compensation from the third party for their services.¹⁰ The process works similarly if the vendor contracts directly with the carrier rather than using an intermediary billing aggregator.¹¹ Actually authorized third-party charges are processed in the same fashion.¹²

8. In addition to compensation for billing-and-collection services, the carrier may receive additional compensation from the billing aggregator or third party for each consumer cramming

⁷ *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 No. 98-170, Notice of Proposed Rulemaking, 26 FCC Rcd 10021, 10025-29, ¶¶6-18 (2011) (*NPRM*). A complete list of commenters, including the full names associated with the abbreviations used herein, can be found *infra* at Appendix B.

⁸ See *NPRM*, 26 FCC Rcd at 10025, ¶¶7-8; *Senate Staff Report* at 12-17.

⁹ See *Senate Staff Report* at 8-9.

¹⁰ See *id.* at 8-10.

¹¹ See June 2011 NALs; see also *Senate Staff Report* at 8-10.

¹² See *Senate Staff Report* at 12.

complaint or inquiry it handles. Similarly, the billing aggregator may be compensated by the third party for handling interactions with the consumer regarding the crammed charge.¹³

B. Current Voluntary Industry Practices

9. In 1998, the nation's wireline local exchange carriers ("LECs") and providers of billing-and-collection services adopted a voluntary code of "best practices" designed to prevent cramming.¹⁴ According to these best practices: (1) bills should be comprehensible, complete, and include information the consumer may need to discuss, and if necessary, dispute billed charges with the carrier; (2) consumers should be provided with options to control whether a third party may include charges for its products and services on their telephone bills; (3) consumer authorization of services ordered should be appropriately verified; (4) LECs should screen products, services, and third-party service providers prior to allowing their charges on the telephone bills; (5) clearinghouses that aggregate billing for third-party providers and submit that billing to LECs should ensure that only charges that have been authorized by the consumer would be included; (6) LECs should continue to educate consumers as to their rights and the process for resolution of disputes; and (7) LECs should provide appropriate law enforcement and regulatory agencies, as well as other LECs, with various categories of data to assist in controlling carrier inclusion of unauthorized charges on a consumer's bill.¹⁵ Despite these voluntary industry practices, there is strong evidence that they have been ineffective to prevent cramming, and that cramming is still a significant problem for consumers.¹⁶

C. Truth-in-Billing

10. In 1999, the Commission adopted the *First Truth-in-Billing Order* to address growing confusion related to billing for telecommunications services and an increase in practices such as "slamming"¹⁷ and cramming.¹⁸ The Commission concluded that Truth-in-Billing requirements were necessary to deter carriers from engaging in unjust and unreasonable practices, including cramming, in violation of section 201(b) of the Act. Citing its authority under sections 201(b) and 258(a) of the Act, the Commission chose to adopt a flexible approach by adopting "broad, binding principles" to promote

¹³ See June 2011 NALs; see also *FTC v. Inc.21.com*, 745 F.Supp.2d at 994-995.

¹⁴ See Anti-Cramming Best Practices Guidelines, available at http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html ("Best Practices Guidelines").

¹⁵ Statement of William Kennard, Chairman, Federal Communications Commission on the Release of Local Exchange Company Best Practices to Combat "Cramming," 1998 WL 406058 (1998); see also Best Practices Guidelines.

¹⁶ See *Senate Staff Report* at i; FTC NOI Reply Comments at 9; 25 State Attorneys General Joint NOI Comments at 9. See generally *infra* section III.

¹⁷ "Slamming" is the unlawful practice of changing a subscriber's selection of a provider of telephone service without that subscriber's knowledge or permission. See *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492, 7494, ¶3 (1999) ("*First Truth-in-Billing Order*"); see also 47 U.S.C. § 258 ("Illegal Changes In Subscriber Carrier Selections.").

¹⁸ See *First Truth-in-Billing Order*; Order on Reconsideration, 15 FCC Rcd 6023 (2000) ("*Order on Reconsideration*"); *Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 20 FCC Rcd 6448 (2005) ("*Second Truth-in-Billing Order*") vacated in part *sub nom. Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006) (invalidating preemption of certain state requirements for CMRS bills).

Truth-in-Billing, rather than mandating more detailed rules to govern the details or format of carrier billing practices.¹⁹

11. The Truth-in-Billing principles are codified at sections 64.2400 and 64.2401 of the Commission's rules and, among other things, require that consumer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new provider (*i.e.*, one that did not bill the customer for service during the last billing cycle); (2) separate charges by service provider; (3) contain full and non-misleading descriptions of the charges that appear therein; and (4) contain clear and conspicuous disclosure of any information that the consumer may need to make inquiries about, or to contest charges on, the bill.²⁰

12. In 2005, the Commission adopted the *Second Truth-in-Billing Order* which emphasized the prohibition against misleading information on telephone bills and provided examples of improper line-item charges and descriptions.²¹ It also extended the requirements concerning charge descriptions to Commercial Mobile Radio Service ("CMRS") carriers.²²

D. Consumer Information and Disclosure Notice of Inquiry

13. In 2009, the Commission adopted the *Consumer Information NOI* to consider other ways to empower consumer choice in the rapidly evolving marketplace for communications services and plans.²³ The Commission noted that telecommunications consumers continued to file complaints about the inclusion of unauthorized charges on their bills,²⁴ and questioned whether the Truth-in-Billing rules have been effective in protecting consumers and making telephone bills easier to understand.²⁵ Specifically, the Commission sought comment on the extent to which cramming remains a problem for consumers and why.²⁶

14. In response to the *Consumer Information NOI*, several state and federal regulatory and law enforcement entities and consumer advocacy organizations stated that cramming continues to be a substantial problem for consumers.²⁷ For example, the FTC has indicated that it receives thousands of cramming complaints annually.²⁸ These commenters noted that consumers often have difficulty detecting unauthorized charges on their bills because consumers often do not realize that third parties can bill for

¹⁹ See *First Truth-in-Billing Order*, 14 FCC Rcd at 7498, ¶9.

²⁰ 47 C.F.R. § 64.2401.

²¹ See *Second Truth-in-Billing Order*, 20 FCC Rcd at 6460-6462, ¶¶25-29.

²² See *id.* at 6456-6458, ¶¶16-20.

²³ See *Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP-Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380 (2009) ("*Consumer Information NOI*").

²⁴ See *id.* at 11393, ¶41.

²⁵ See *id.* at 11392, ¶36.

²⁶ See *id.* at 11393-94, ¶41.

²⁷ See, e.g., CPUC NOI Comments at 2-5; Citizens Utility Board (CUB) NOI Comments at 5; Minnesota Attorney General NOI Comments at 1-2; NASUCA NOI Comments at 42-56; Utility Consumers' Action Network (UCAN) NOI Comments at 2, 9-11; FTC NOI Reply Comments at 9. These comments and the comments and replies cited herein that refer to the NOI were filed in response to the *Consumer Information NOI*. Unless otherwise noted, all comments and reply comments referenced herein refer to submissions in response to the Commission's *NRPM* in the instant proceeding.

²⁸ FTC NOI Reply Comments at 9 and *Senate Staff Report* at i.

their products and services on telephone bills, and that these line items can represent relatively small monthly costs.²⁹

15. These and many others who commented in response to the *Consumer Information NOI* suggested a number of measures to address cramming. These measures included: (1) requiring the billing carrier to offer consumers the option to block third-party billing;³⁰ (2) requiring billing carriers to undertake due diligence measures to screen third-party service providers and billing aggregators before placing a third-party charge on the carrier's bill;³¹ (3) enhancing cooperation among law enforcement entities including sharing of complaints among state and federal regulators;³² (4) clarifying that consumers may find unauthorized charges not only on their LEC bills but also on bills for CMRS and Voice over Internet Protocol ("VoIP") service;³³ and (5) requiring that the bill identify and provide contact information for third-party billers.³⁴

16. By contrast, the carriers contended that no regulatory mandates are necessary to address cramming.³⁵ They argued that all carriers have incentives to protect consumers from unauthorized charges and have already implemented adequate measures to do so.³⁶ These cited safeguards include compliance with all federal and state laws, taking corrective measures against third-party billers that exceed specified complaint levels, pre-screening and monitoring service providers, offering blocking options, and expeditiously resolving cramming complaints.³⁷

17. During the first quarter of 2011, Commission staff met with several billing carriers and consumer advocacy groups to discuss cramming and other issues facing communications consumers.³⁸ The *NPRM* stemmed largely from information gathered from the *Consumer Information NOI* comments, these meetings, and review of the Commission's own complaint data.

E. Notice of Proposed Rulemaking

18. On July 12, 2011, the Commission adopted the *NPRM* in this docket.³⁹ In the *NPRM*, the Commission sought comment on concrete measures to address cramming. Specifically, the Commission proposed measures to assist consumers in detecting and preventing cramming before it occurs. These measures included requiring wireline carriers who already offer consumers the option to block third-party

²⁹ See, e.g., 25 State AGs Joint NOI Comments at 9; Minnesota Attorney General NOI Comments at 6-7.

³⁰ See, e.g., CPUC NOI Comments at 4-5; 25 State AGs Joint NOI Comments at 10; FTC NOI Reply Comments at 15.

³¹ See, e.g., UCAN NOI Comments at 9; FTC NOI Reply Comments at 12.

³² FTC NOI Reply Comments at 12.

³³ NASUCA NOI Comments at 42.

³⁴ See, e.g., BSG NOI Comments at 4; CPUC NOI Comments at 5.

³⁵ See, e.g., Qwest NOI Comments at 32-34; Verizon NOI Comments at 54.

³⁶ See, e.g., Verizon NOI Comments at 48; Qwest NOI Reply Comments at iii, 10.

³⁷ See, e.g., AT&T NOI Comments at 16; Verizon NOI Comments at 42-48.

³⁸ See, e.g., Letter from Olivia Wein, Staff Attorney, National Consumer Law Center, to Marlene Dortch, Secretary, FCC (February 3, 2011); Letter from Breck Blalock, Director, Government Affairs, Sprint Nextel, to Marlene Dortch, Secretary, FCC (February 9, 2011); Letter from Chris Riley, Policy Counsel, Free Press, to Marlene Dortch, Secretary, FCC (February 9, 2011).

³⁹ See *NPRM*.

charges to disclose that option to consumers, and requiring separate billing sections for third parties and other bill format modifications.⁴⁰ The Commission also asked for comment on whether to require wireline carriers to offer consumers the option to block third-party charges from their telephone bills and to conspicuously notify consumers of that option.⁴¹ The Commission also sought comment on whether to include contact information for the Commission on bills to assist consumers in filing complaints.⁴² The Commission asked whether it should require the carrier generating the telephone bill to provide clear and conspicuous contact information for the third party,⁴³ whether to require wireline carriers to disclose if they do not offer third-party blocking,⁴⁴ whether to prohibit all third-party charges or adopt an opt-in approach,⁴⁵ and whether to require carriers to screen vendors before contracting with them to provide billing-and-collection services that would result in third-party charges being placed on the carriers' own bills.⁴⁶ The *NPRM* also sought comment on whether these proposed rules should apply only to wireline telephone service or also to CMRS and VoIP services.⁴⁷

19. In response to the *NPRM*, all commenters offer support for current or new measures to combat cramming.⁴⁸ Similar to their responses to the *Consumer Information NOI*, however, industry commenters state that there is little need for further regulation in this area and that voluntary measures have been successful in curbing cramming.⁴⁹ By contrast, consumer groups and state agencies or groups representing nearly every state argue that cramming has become an even greater problem for consumers, and that even more stringent measures are needed to stop it.⁵⁰

III. EVIDENCE OF CRAMMING

A. Federal and State Agencies

1. Commission Inquiries and Complaints

20. In the *NPRM*, the Commission noted that its complaint records show that during the period from 2008 to 2010, the Commission received between 2,000 and 3,000 cramming complaints each year.⁵¹ Furthermore, cramming consistently ranks among the top billing-related complaints received by

⁴⁰ See *id.* at 10039-41, ¶¶45-49, Appendix A.

⁴¹ See *id.* at 10038-39, ¶¶40-44.

⁴² See *id.* at 10041-42, ¶¶50-51.

⁴³ See *id.* at 10044-46, ¶¶55-58.

⁴⁴ See *id.* at 10046, ¶59.

⁴⁵ See *id.* at 10047, ¶62.

⁴⁶ See *id.* at 10047-49, ¶¶63-65.

⁴⁷ See *id.* at 10042-44, 10050, ¶¶52-54, 69.

⁴⁸ See, e.g., American Roaming Network, Inc. Comments at 1; BSG Comments at Executive Summary; BDP Comments at 2; CTI Comments at 1-2; Public Interest Commenters Comments at 2-3; AT&T Comments at 14-16.

⁴⁹ See, e.g., CenturyLink Comments at 3; BDP Comments at 2; CTI Comments at 2-3; BVO Reply Comments at 5-6; ISG Reply Comments at 5-6; PCP Reply Comments at 6; Securus Technologies, Inc. Comments at 3-6.

⁵⁰ See, e.g., Public Interest Commenters Comments at 3; CPUC Comments at 4; Michigan Public Service Commission Comments at 2; NASUCA Comments at 15; 17 States Attorneys General Comments at 16.

⁵¹ See generally FCC Quarterly Reports on Informal Consumer Inquiries and Complaints (2008-2010). The cramming complaint numbers were determined by Commission staff from the set of complaint data used to produce these reports. During the years of 2008, 2009 and 2010, the Commission received 2,157; 3,181; and 2,516 annual cramming-related complaints, respectively.

the Commission involving wireline telephone service.⁵² Of the cramming complaints received from 2008 to 2010, 82 percent related to wireline telecommunications and 16 percent related to wireless telecommunications.⁵³

21. Cramming remained among the top billing-related complaints during 2011; the Commission received nearly 1,700 complaints.⁵⁴ Of these, 63 percent related to wireline telecommunications and 30 percent related to wireless telecommunications,⁵⁵ which indicates that wireline cramming complaints still constitute approximately two-thirds of all cramming complaints. Apart from the volume of complaints, staff's analysis of the complaints reveals a consistent fact pattern: consumers detect an unauthorized charge on their telephone bill; receive, in their view, insufficient assistance from the carrier on whose bill the charges appear; are unable to obtain a full – and sometimes any – refund from the carrier or third party; and file a complaint with the Commission hoping for a full refund.⁵⁶

22. The overwhelming evidence in the record shows that the volume of complaints received by the Commission understates the extent of consumer frustration with cramming. Consistent with observations made by several commenters and complaints discussed in the *NPRM*,⁵⁷ these complaints also suggest that it often takes consumers months or years to detect unauthorized charges on their bills – if they detect them at all – because of the way third parties describe the unauthorized charges or the way carriers present the unauthorized charges on their bills. Consumers are often unaware that such charges can even be placed on their bills and how to file complaints disputing such charges, and third parties try to avoid drawing attention to unauthorized charges.⁵⁸

23. In response to consumer complaints to the Commission, on June 16, 2011, the Commission released four NALs proposing an aggregate of \$11.7 million in forfeitures against a number of long distance resellers for apparent cramming violations. In general, the complaining parties stated that they did not sign up for the service in question, had no contact with the reseller prior to being billed for the service, and never used the service. In each case, the reseller billed for its services using a billing aggregator, which provided the consumer's telephone number to the local telephone company for billing. It was determined that the billing aggregator had submitted these unauthorized charges to carriers for

⁵² *Id.*

⁵³ *Id.* The remaining two percent of complaints do not make clear whether the carrier at issue is wireline or CMRS.

⁵⁴ See generally FCC Quarterly Reports on Informal Consumer Inquiries and Complaints (2011). The cramming complaint numbers were determined by Commission staff from the set of complaint data used to produce these reports.

⁵⁵ *Id.* The remaining seven percent of complaints do not make clear whether the service at issue is wireline or CMRS.

⁵⁶ *Id.* See, e.g., IC-11-C00270284-1.

⁵⁷ *NPRM*, 26 FCC Rcd at 10030, ¶19.

⁵⁸ See, e.g., Minnesota Attorney General NOI Comments at 4-7; 25 State AGs Joint NOI Comments at 9; see also *FTC v. Inc21.com*, 745 F. Supp.2d at 994-95 (Court relied upon a survey of defendant crammer's customers showing that less than 5 percent of them were aware that the crammed charges were on their bills); *NPRM*, 26 FCC Rcd at 10030, ¶19, citing FCC complaints 10-C00196562-1 (“charges appear ... as a line item that is not obvious unless a customer scrolls for such detail”); 10-C00203445-1 (“[t]hese are very small charges which can be easily overlooked”); 10-C00210315-1 (charges included in a bill for two years before consumer noticed and complained); 10-CO0185133-1 (consumer did not realize charge was from a third party because it appeared to be a valid “voice mail” charge).

placement on thousands of telephone bills. In each NAL, the Commission alleged that the long distance reseller apparently operated a constructively fraudulent enterprise, in which it billed consumers for services that they never ordered or authorized.⁵⁹

2. Federal Trade Commission

24. As indicated in the *NPRM*, the FTC has investigated and brought suit against crammers. In response to the *Consumer Information NOI*, the FTC confirmed that cramming is a significant area of increasing consumer complaints.⁶⁰ At that time, the FTC stated that it had received more than 3,000 consumer complaints relating to unauthorized charges on telephone bills in the previous 12 months.⁶¹ It commented that placing unauthorized charges on telephone bills harms consumers because they are likely to pay the charges simply because they appear on their telephone bills.⁶² The FTC also noted that, even if an individual consumer incurs only a small dollar amount in unauthorized charges, the aggregate cost to all consumers can be substantial.⁶³ The FTC cited one case, *FTC v. Nationwide Connections, Inc.*, in which a company had used a billing aggregator to place more than \$30 million of fabricated collect call charges on the phone bills of millions of consumers.⁶⁴ The FTC recently hosted a forum at which numerous state and federal officials and representatives of consumer groups highlighted the serious and ongoing nature of this problem for telecommunications consumers.⁶⁵

25. As discussed in more detail below, the FTC describes continued abuse and fraud associated with telecommunications carriers' billing of third-party charges on their own bills to their consumers. It cites several state and federal enforcement actions against crammers, including *FTC v. Inc21.com*, in which a crammer for years successfully used a variety of schemes to prevent consumers from detecting its charges and to circumvent the voluntary industry safeguards.⁶⁶ In that case, only five percent of the consumers billed by the defendants were aware that the charges were on their telephone bills.⁶⁷ The court described in detail how the defendants used the ability to have carriers place unauthorized charges on telephone bills to defraud the carriers' consumers out of millions of dollars and how they circumvented carriers' anti-cramming safeguards.⁶⁸ It found that the billing carriers' practice of placing third-party charges on their own telephone bills to their consumers is what enables crammers like the defendants to defraud consumers, and that the billing carriers' practice attracts "fraudsters."⁶⁹

⁵⁹ See June 2011 NALs.

⁶⁰ FTC NOI Reply Comments at 9.

⁶¹ *Id.*

⁶² As noted above, increasing numbers of consumers use automatic payment or debit mechanisms and may pay before noticing any unauthorized charges.

⁶³ FTC NOI Reply Comments at 9-10.

⁶⁴ *Id.* at 11 (citing *FTC v. Nationwide Connections, Inc.*, No. 06-80180).

⁶⁵ See News Release, FTC Will Record and Post for Viewing May 11 Cramming Workshop (May 11, 2011), available at http://www.ftc.gov/opa/2011/05/cramming_info.shtm (visited March 11, 2012).

⁶⁶ FTC NOI Comments at 3-5 and NOI Reply Comments generally; see also *FTC v. Inc21.com Corp.*, 688 F.Supp.2d 927 and 745 F.Supp.2d 975 (N.D. Cal. 2010).

⁶⁷ *FTC v. Inc21.com*, 745 F.Supp.2d at 996.

⁶⁸ *Id.* at 994-999; see also *FTC v. Inc21.com*, 688 F.Supp.2d at 929.

⁶⁹ *Id.*

3. State Government Complaints

26. State and local governments and government groups have indicated that they each have received a growing number of cramming complaints from telecommunications consumers. As the Commission noted in the *NPRM*, the 25 State Attorneys General stressed the extent and seriousness of the cramming problem.⁷⁰ They noted that, “despite both the success of state-federal regulatory cooperation in fighting cramming and Attorney General lawsuits against crammers for violations of consumer protection laws, cramming remains a problem. The profitability of cramming and the ease with which crammers can submit unauthorized charges continues to make it an attractive business model, and complaints are once again on the rise.”⁷¹ NASUCA has also reported “a steady stream of complaints of frauds and abuses as well as negligent practices, all resulting in unauthorized charges for such telephone services as long distance calls, directory assistance, 800 calls, 900 calls, calling card calls and repair services... voice mail services...[and] internet services of various types, including web hosting or web page services, e-mail services, and online yellow page services.”⁷²

27. Consistent with the FTC’s *Inc.21.com* case and the Senate Commerce Committee’s investigation, state investigations into cramming confirm that only small percentages of charges from non-carrier third parties are authorized and that consumers often are unaware that the unauthorized charges are on their telephone bills. One investigation by the Vermont Attorney General revealed that 89.5 percent of the third-party charges on Vermont consumers’ telephone bills were unauthorized. In a different investigation by the New York Attorney General, none of the cramming victims contacted reported authorizing the subject charges, 2.5 percent reported being unsure, and 97.5 percent reported that they did not authorize the charges. The New York Attorney General reports that even one of the telephone companies that billed the crammed charges to its consumers had the same crammed charges billed to its own lines, but did not discover that it, like its consumers, was a victim of cramming until the Attorney General’s investigation.⁷³

28. In response to consumer complaints in its state, the California Public Utilities Commission (“CPUC”) has adopted rules that require reports of cramming complaints from wireline carriers and billing aggregators.⁷⁴ Wireline carriers and billing aggregators reported to the CPUC that, in 2009, they had received 132,398 cramming complaints from consumers.⁷⁵ They reported that they had received 120,554 cramming complaints from consumers in 2010.⁷⁶ Additionally, the CPUC reported that, in 2009, it received 2,420 cramming complaints directly from consumers, consisting of 2,298 complaints regarding wireline bills, 116 regarding CMRS bills, and six complaints regarding VoIP bills.⁷⁷ In 2010,

⁷⁰ These include Attorneys General of Arizona, Arkansas, Connecticut, Delaware, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington, West Virginia, Wyoming, and American Samoa.

⁷¹ See 25 State Attorneys General Joint NOI Comments at 9.

⁷² See NASUCA NOI Comments at 44-45, 50, 52.

⁷³ 17 State Attorneys General Comments at 7-8.

⁷⁴ See Letter from Phillip Enis, Program Manager, California Public Utilities Commission, to Stephen Klitzman, Deputy Chief, Office of Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC (April 5, 2011) (“CPUC Letter”).

⁷⁵ See CPUC Letter.

⁷⁶ *Id.*

⁷⁷ *Id.*

the CPUC received 2,782 cramming complaints directly from consumers: 2,630 regarding wireline bills, 126 regarding CMRS bills, and 26 regarding VoIP bills.⁷⁸

29. Similarly, the Illinois Office of the Attorney General reported an increase “in cramming complaints every year from 2003 to 2008, with complaints remaining at an elevated level from 2008 to the present. These complaints primarily involved wireline consumers, but the Office has noticed cramming on CMRS telephone bills as well in recent years.”⁷⁹ The State of Illinois has also filed 30 cramming-related lawsuits since 1996⁸⁰ “alleging that the defendants had billed Illinois consumers for products and services that the consumers did not request or agree to purchase.”⁸¹ The Attorney General also has described in detail the “deceptive” solicitations cramming entities direct at telephone consumers.⁸²

30. In their comments to the *NPRM*, the Minnesota Office of the Attorney General and Virginia State Corporation Commission both indicated that cramming is a substantial problem for consumers⁸³ that has been occurring with increasing frequency.⁸⁴ Similarly, the Vermont Attorney

⁷⁸ *Id.* According to the CPUC, there are several reasons for the discrepancies between the number of cramming complaints the CPUC received directly from consumers and the much larger number of cramming complaints reported to the CPUC by wireline carriers and billing aggregators. These include: (1) a CPUC requirement that directs consumers to complain first to the carrier before filing a complaint with the CPUC; (2) a liberal refund policy of many carriers which obviates the need for consumers to complain to the CPUC; (3) consumers may be more familiar with the carriers than with the CPUC complaint process. See CPUC Letter (citing *Final Decision Adopting California Telephone Corporation Billing Rules*, Decision (D.) 10-10-034, adopted Oct. 28, 2010 at 40).

⁷⁹ Letter from Lisa Madigan, Illinois Attorney General, Elizabeth Blackston, Chief, Consumer Fraud Bureau, Southern Region, and Philip Heimlich, Assistant Attorney General, Consumer Fraud Bureau, to Stephen Klitzman, Deputy Chief, Office of Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC (May 20, 2011) (“Madigan Letter”). According to the Consumer Fraud Bureau of the Illinois Attorney General’s Office, Illinois has “vigorously pursued enforcement actions against entities we allege have engaged in phone bill cramming. While we have had success prosecuting individual entities, a comprehensive regulatory solution would be helpful in ending this practice once and for all.” *Id.*

⁸⁰ See 25 State Attorneys General Joint NOI Comments at 9.

⁸¹ Madigan Letter.

⁸² The letter states that

[i]n our experience gained throughout the course of dozens of law enforcement investigations, the solicitations directed at consumers are deceptive. Material facts, such as the fact that the consumer is being asked to make a purchasing decision, and that he will be billed on his telephone bill, often are not disclosed clearly and conspicuously if at all. In some cases, telemarketing scripts lead consumers to believe they are agreeing to receive written information or a free trial and decide later whether to accept the offer. In reality, their silence will be construed as acceptance of the offer, and they will be billed on their telephone bills unless they take affirmative action to cancel the order. In other cases, consumers are duped into providing their information to claim a prize they allegedly won, or to obtain free recipes or coupons. This process, called co-registration, also is construed as authority to bill them on their telephone bills for products and services, but complaining consumers have no knowledge of such authorization.

Id.

⁸³ See Minnesota Attorney General NOI Comments at 1. In its Comments on the NOI, the Minnesota Attorney General’s Office described in detail the nature and practices of both wireline and CMRS crammers. With regard to wireline cramming, the Office noted that complaints identified the billing agent as the sole culprit or a co-culprit responsible for the unauthorized charge in almost two-thirds of the complaints. It said:

(continued...)

General's Office concluded as a result of its investigation into cramming complaints involving wireline phone bills, that these "complaints appeared to be the very tip of the iceberg" and "that large numbers of consumers who have been charged on their phone bills are not aware of the charges, and that many third parties who bill this way may be engaging in deceptive soliciting."⁸⁵ This investigation prompted the Vermont State Legislature in May 2011 to enact legislation banning most third-party charges on wireline telephone bills.⁸⁶

B. Congressional Investigations, Inquiries, and Report

31. In December 2010, the Majority Staff of the Senate Commerce Committee launched an investigation into cramming after a preliminary finding that a significant percentage of companies placing third-party charges on telephone bills had been the subject of cramming complaints⁸⁷ and after sending letters to three carriers – AT&T, Verizon, and Qwest – requesting information about their awareness of cramming and the steps they had taken to address it.⁸⁸ The Majority Staff of the Committee, having learned that many of the services for which third parties charge are not legitimate, expanded its probe by sending letters on December 17, 2010 to three additional companies – daData, Inc., My Service and Support, and MORE International – that appeared to have relationships with multiple companies that were the subject of cramming complaints.⁸⁹ Letters also were sent to five more telephone carriers on

(Continued from previous page)

When nearly two-thirds of cramming victims are unsure of the company responsible for third-party charges appearing in their telephone bill, this overwhelmingly indicates that more concrete standards are needed governing the formatting of telephone bills including a rule remedying the current practice of prominently listing the billing agent at the top of a bill instead of the actual service provider." "Moreover, consumer confusion in identifying the actual third-party service provider responsible for the unauthorized charge frequently results in the consumer naming the wrong company in any complaint filed with the relevant governmental enforcement agency. This misidentification, in turn, allows the actual crammer to escape detection for a longer period of time, and makes it more difficult for regulatory agencies to track the source of cramming complaints and focus their enforcement efforts accordingly.

Id. at 1-2.

⁸⁴ See Virginia State Corporation Commission Staff Comments at 4.

⁸⁵ See Letter from Sandra W. Everitt, Assistant Attorney General and Director, Consumer Assistance Program, Office of the Attorney General, Public Protection Division, State of Vermont, to Stephen Klitzman, FCC (May 24, 2011).

⁸⁶ Vermont's new anti-cramming legislation was signed into law as "Act 52" on May 27, 2011 as part of the 2011 Vermont jobs bill and became effective immediately. 9 V.S.A. § 2466 (as amended). The text of the law can be found at <http://www.leg.state.vt.us/docs/2012/bills/Passed/H-287.pdf>, starting on page 105. The three very limited exceptions to Vermont's outright prohibition of third-party billing are: "(A) billing for goods or services marketed or sold by persons [e.g., telecommunications carriers or companies] subject to the jurisdiction of the Vermont Public Service Board, (B) billing for direct-dial or dial-around services initiated from the consumer's telephone, or (C) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates." See 9 V.S.A. §2466(f)(1)-(A)-(C).

⁸⁷ See Press Release, Chairman Rockefeller Announces Investigation into Telephone "Mystery Charges" (December 17, 2010) available at http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=32ce91be-1841-4cd4-8fc4-1f8388df7942&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=4b968841-f3e8-49da-a529-7b18e32fd69d&MonthDisplay=12&YearDisplay=2010 (visited March 16, 2012).

⁸⁸ See *id.*

⁸⁹ See *id.*

March 31, 2011,⁹⁰ and stated that over 250 third-party billers that were the subject of cramming complaints had received a grade of “D” or “F” from the Better Business Bureau.⁹¹ According to Senator John D. Rockefeller IV, the Chairman of the Committee, “Cramming is a widespread problem. It is likely harming millions of consumers . . . Telephone companies have allowed these unauthorized third-party charges to be placed on their customers’ telephone bills for far too long.”⁹²

32. The Commission has also received correspondence from members of Congress, whose constituents either sought assistance or otherwise made their representatives aware of certain business practices of telecommunications providers. These constituents describe cramming on both wireline and CMRS carrier bills. The issues raised by the constituents include the difficulty of getting charges removed or credited; the failure of the billing carrier to assist consumers in resolving disputes;⁹³ and the difficulty consumers face in uncovering unauthorized charges from third parties when reviewing dense and voluminous phone bills.⁹⁴

33. On July 12, 2011, Majority Staff of the Senate Commerce Committee released the *Senate Staff Report* with the results of its investigation into unauthorized charges on consumer telephone bills.⁹⁵ In that report, the Senate staff found that despite the Commission’s existing Truth-in-Billing requirements, “thousands of consumers still regularly complain to the FTC and the FCC about cramming, while state and federal authorities continue to bring law enforcement actions against individuals and companies for cramming.”⁹⁶ The report found that on a yearly basis, billing carriers place approximately 300 million third-party charges on their consumers’ bills, which amount to more than \$2 billion worth of third-party charges on telephone bills every year. The report noted that over the previous five years, telephone companies had placed more than \$10 billion worth of third-party charges on their consumers’ landline telephone bills.⁹⁷ The report also concluded that billing carriers are profiting from these third-

⁹⁰ See Press Release, Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands (Mar. 31, 2011), available at http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=165806cd-d931-4605-aa86-7fafc5fd3536 (visited March 16, 2012) (the additional letters were sent to CenturyLink, Windstream, Frontier Communications, FairPoint Communications, and Cincinnati Bell).

⁹¹ See *id.*

⁹² See Majority Statement, Unauthorized Charges on Telephone Bills: Why Consumers Lose (July 13, 2011), available at http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=66d7c82d-9a39-40df-99bf-ecb1b8da6185&Statement_id=5bf6519d-e1ea-4136-8581-8301d3c02d75&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=dcb92227-73d9-4ff2-a610-9f43df72faa5&MonthDisplay=7&YearDisplay=2011 (visited March 16, 2012).

⁹³ See, e.g., Letter from Rep. Charlie Dent (PA) on behalf of constituent; Letter from Sen. Pat Roberts (KS) on behalf of constituent (carrier referred the consumer to the third party who referred the consumer back to the carrier).

⁹⁴ See, e.g., Letter from Rep. Steve Israel (NY) on behalf of constituent (difficult to understand the consumer’s bill; consumer had been charged for one year before he realized it); Letter from Sen. Patrick Leahy (VT) on behalf of constituent (“bills are confusing and dense”); Rep. Timothy Bishop (NY) on behalf of constituent (her bill is 11 pages); Letter from Sen. Bill Nelson (FL) on behalf of constituent (discovered charge buried in last pages of bill after 18 months).

⁹⁵ See *Senate Staff Report*.

⁹⁶ *Id.* at i.

⁹⁷ *Id.* at ii.

party charges and that over the past decade, billing carriers have generated well over \$1 billion in revenue by placing third-party charges on their consumers' telephone bills.⁹⁸

34. The investigation also determined that the "evidence obtained and analyzed by Committee staff suggests that third-party billing on landline telephones has largely failed to become a reliable method of payment that consumers and businesses use to conduct legitimate commerce."⁹⁹ Committee Majority Staff concluded that many third parties are illegitimate.¹⁰⁰ For example, Majority Staff reported that it called approximately 1,700 randomly selected "customers" of third parties and spoke to approximately 500 of them.¹⁰¹ According to the report, "[n]ot a single individual or business owner reported that they had authorized the third-party vendors' charges on their telephone bills."¹⁰² It also concluded, like the *Inc21.com* court, that many third parties are created solely to exploit the telephone company's practice of placing third-party charges on their own bills to their consumers. Committee investigators found third parties operating out of post office boxes, fake offices, and apartments, with "presidents" that know nothing about their "companies."¹⁰³

35. The report concluded that the telephone companies' anti-cramming safeguards have largely failed.¹⁰⁴ According to the report, billing carriers have inaccurately used low complaint statistics to show cramming is not a problem and to prove that their consumers appreciate the convenience of third-party billing.¹⁰⁵ Also, according to the report, telephone companies are aware that cramming is a major problem on their third-party billing systems.¹⁰⁶ The report also noted that, over the past five years, more than 500,000 consumers have contacted Qwest, Verizon, and AT&T to complain about cramming, but consumers and businesses frequently reported that the billing carriers' customer service representatives provided little to no assistance when they called about unauthorized third-party charges.¹⁰⁷

36. The *Senate Staff Report* focused on wireline cramming and indicated that the majority of complaints come from wireline consumers. It noted, however, that there is reason to believe that cramming could become a significant problem for CMRS users.¹⁰⁸ The *Senate Staff Report* did not directly address VoIP.

C. FCC Commenters

37. In general, all commenters on the *NPRM* support efforts to protect consumers from cramming, but differ on the types of measures necessary to combat the problem and whether Commission action is necessary. This divide among commenters generally falls along industry/non-industry lines. Carriers that provide third-party billing and billing aggregators support voluntary industry efforts and

⁹⁸ *Id.* at iii.

⁹⁹ *Id.* at ii.

¹⁰⁰ *Id.* at 22.

¹⁰¹ *Id.* at 29.

¹⁰² *Id.*

¹⁰³ *Id.* at iv.

¹⁰⁴ *Id.* at 33.

¹⁰⁵ *Id.* at iv.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 6.

support government regulations so long as they do not impose what they view as undue burdens on carriers or other parties.¹⁰⁹ Consumer groups and state commenters support more stringent measures than those believed warranted by carriers and billing aggregators.

38. Several industry commenters assert that the evidence of cramming is overblown and exaggerated.¹¹⁰ For example, Billing Concepts, Inc. d/b/a BSG Clearing Solutions argues that there is no evidence in the record that non-telecommunications services are more vulnerable to cramming.¹¹¹ Many of these same commenters aver that the current Truth-in-Billing rules in place to combat slamming, as well as the current voluntary measures taken by many carriers and billing aggregators, have been successful in thwarting cramming.¹¹² An additional concern raised by industry commenters is that third-party billing is a great benefit to businesses and consumers and that any measures that eliminate their ability to offer that billing option would inhibit their businesses' ability to remain competitive.¹¹³

39. In contrast, consumer groups and state agencies argue that the *Senate Staff Report* and recent consumer complaint numbers show that consumers are frequently unaware that third-party charges may appear on their bill.¹¹⁴ These commenters support measures such as prohibiting all or most third-party charges from being placed on telephone bills or changing from the current opt-out approach to an opt-in approach,¹¹⁵ requiring carriers to allow consumers to block third-party charges,¹¹⁶ and requiring carriers to clearly and conspicuously notify consumers of their ability to block third-party charges.¹¹⁷

40. Consumer groups also argue that a requirement for consumer consent or an affirmative opt-in to receive third-party charges should apply to consumers' wireline, VoIP, and/or CMRS bills and that any requirement to separate third-party charges on the bills of those consumers who opt-in should apply across all platforms because many communications services are now bundled.¹¹⁸ Commenters opposing additional cramming requirements for CMRS and VoIP services note that there are far fewer

¹⁰⁹ See, e.g., American Roaming Network, Inc. Comments at 1; AT&T Comments at 13-14; BSG Comments at Executive Summary; CTI Comments at 1-2; Tim McAteer, Inmate Calling Solutions Comments at 1.

¹¹⁰ See, e.g., AT&T Comments at 5; SEP Reply Comments at 2-3; BSG Reply Comments at 1-7; BVO Comments at 3-5; OBA Reply Comments at 2-4; PCP Reply Comments at 2.

¹¹¹ BSG Reply Comments at 1-7.

¹¹² See, e.g., AT&T Comments at 9-10; CenturyLink Comments at 3; BDP Comments at 2; CTI Comments at 2-3; BVO Reply Comments at 5-6; ISG Reply Comments at 5-6; PCP Reply Comments at 6; Securus Technologies, Inc. Comments at 3-6.

¹¹³ See, e.g., BSG Comments at 2-3; BOP Reply Comments at 2-5; ISO Comments at 2; OBA Reply Comments at 2-4.

¹¹⁴ See, e.g., FTC Comments at 4; Public Interest Commenters Reply Comments at 2-3; Iowa Utilities Board Comments at 9.

¹¹⁵ See, e.g., Public Interest Commenters Comments at 3; Michigan Public Service Commission Comments at 2; National Consumers League Comments at 7-8; Nebraska Public Service Commission Comments at 3; 17 State Attorneys General Comments at 16.

¹¹⁶ See, e.g., FTC Comments at 6; CPUC Comments at 4; NASCUA Comments at 15; National Consumers League Reply Comments at 3, 6-7; Nebraska Public Service Commission Comments at 3; 17 State Attorneys General Comments at 16; Florida AG Comments at 2; NEC Comments at 19.

¹¹⁷ See, e.g., CPUC Comments at 3; IURC Comments at 3-4; Michigan Public Service Commission Comments at 2; NEC Comments at 19-20; Tennessee Regulatory Authority Comments at 2; Wheat State Comments at 2.

¹¹⁸ See, e.g., Public Interest Commenters Comments at 3-6; ITTA Comments at 7; CPUC Comments at 9; Michigan Public Service Commission Comments at 3; NASCUA Comments at 16.

CMRS cramming complaints.¹¹⁹ Other commenters acknowledge the fewer CMRS complaints, but view additional cramming safeguards for CMRS as preventative measures.¹²⁰ CMRS carriers, however, argue that there are fundamental operational differences between wireline and CMRS services that make additional regulations unnecessary for CMRS at this time.¹²¹ For example, Verizon points out that because CMRS bills are generated based upon handset use, the itemized charges on a CMRS bill are fundamentally different from the types of charges on wireline bills and presumably there would be less opportunity for consumers to be billed for unauthorized charges.¹²² Commenters also noted that the CMRS industry as a whole uses a different type of billing platform than wireline providers and also has a segment of its service providers that - unlike wireline - offer prepaid services and flat-rate services for unlimited use that do not generate a bill of the type common to wireline services.¹²³ Further, most CMRS providers assert that they already have a double opt-in process for consumers to agree to receive third-party charges and/or use a third-party compliance monitoring service to ensure consumer approval of each premium short message service.¹²⁴ In addition, commenters assert that as an industry, CMRS providers have implemented best practices guidelines that are more up-to-date than, and go beyond, those adopted by wireline carriers.¹²⁵ Several of these providers also argue that additional cramming regulations would stifle innovation in the CMRS marketplace as well as impose significant costs to CMRS billing and network systems without any additional benefit to consumers.¹²⁶

IV. DISCUSSION

A. The Need for Rules

41. The record reflects that third-party billing can be a convenience for carriers, third parties, and consumers, and there are some legitimate uses for third-party billing by wireline telephone companies, such as billing charges for bundled services and for long distance service on consumers' local telephone bills.¹²⁷ Nevertheless, the record demonstrates that cramming, primarily of third-party charges, continues to be a significant problem on wireline telephone bills and that existing industry safeguards and Commission rules have proven inadequate to effectively combat it. The record also demonstrates that it is the wireline telephone companies' practice of placing third-party charges, primarily non-carrier third-

¹¹⁹ See, e.g., Sprint Nextel Corporation Comments at 13; National Consumers League Reply Comments at 8; Nebraska Public Service Commission Comments at 2-4; MetroPCS Communications, Inc. Comments at 3-5; Verizon Comments at 9-11; CTIA Comments at 3-4.

¹²⁰ See, e.g., NASCUA Comments at 16; National Consumers League Comments at 8; NEC Comments at 18.

¹²¹ See, e.g., MetroPCS Communications, Inc. Comments at 19; Leap Wireless Comments at 3; Sprint Nextel Corporation Comments at 5; Verizon Comments at 9-11.

¹²² Verizon Comments at 9-11.

¹²³ See, e.g., MetroPCS Communications, Inc. Comments at 12, 19; Leap Wireless Comments at 2-5.

¹²⁴ See Mobile Marketing Association, U.S. Consumer Best Practices, Version 6.1 (May 2, 2011), available at http://mmaglobal.com/files/Consumer_Best%20Practices_6.1%20Update-02May2011FINAL_MMA.pdf (visited April 3, 2012) ("MMA Best Practices").

¹²⁵ See, e.g., Verizon Comments at 6-7, 9-11; Leap Wireless Comments at 3-4; Sprint Nextel Corporation Comments at 6, 8-9; T-Mobile USA, Inc. Comments at 3-5.

¹²⁶ See, e.g., MetroPCS Communications, Inc. Comments at 12; Leap Wireless Comments at 5; T-Mobile USA, Inc. Comments at 3-8; Verizon Comments at 9-11.

¹²⁷ But see June 2011 NALs (apparently unauthorized charges assessed by third-party carriers).

party charges, on their own bills to their consumers that is the “root cause”¹²⁸ of the problem, as this practice enables fraud in the form of cramming and attracts “fraudsters.”¹²⁹

42. Importantly, even industry commenters that are otherwise opposed to additional cramming rules and favor voluntary measures indicate that they would support additional educational or disclosure-type measures to combat cramming.¹³⁰ In fact, Verizon recently agreed to settle a class-action lawsuit about unauthorized charges on its wireline telephone bills by agreeing, for no more than two years after the effective date of the agreement, to, among other things, send current consumers bill inserts notifying them of blocking options and implement an opt-in process for new consumers such that at “sign up” Verizon will ask whether the consumer wants to block third-party charges on their bill.¹³¹ In addition, according to the *Senate Staff Report*, AT&T has already “discontinued placing on its bills third-party charges for certain types of services that were causing cramming complaints, including voicemail services, email services, ‘Web hosting,’ and ‘Internet-based directory assistance.’”¹³²

43. Some wireline carriers have argued that they have financial incentives to prevent cramming, yet the record demonstrates that existing incentives are not sufficient to protect consumers. We recognize that third-party billing remains a significant source of revenue for wireline carriers: the *Senate Staff Report* states that in the last ten years wireline carriers have generated well over \$1 billion in revenue by placing third-party charges on their consumers’ telephone bills.¹³³ Wireline carriers may receive between \$1 and \$2 for each of the 300 million third-party charges they place on their bills to consumers annually.¹³⁴ The record reflects that many, if not the majority, of those charges are unauthorized,¹³⁵ and federal investigations have revealed that carriers may receive additional compensation from third parties for each consumer complaint or inquiry they handle regarding unauthorized charges.¹³⁶ Specifically, pursuant to a contract between them, the billing aggregator or vendor supplies the carrier with the consumer’s telephone number and the amount to be charged, and requests that the charge be placed on the consumer’s telephone bill, and proof of consumer authorization is not generally provided to or required by the carrier. In turn, the vendor compensates the billing aggregator and the carrier for their services, and the carrier is also compensated by the vendor or the billing aggregator for the billing-and-collection service it has provided.¹³⁷ Thus, carriers can receive

¹²⁸ Attorneys General of IL, NV and VT Comments at 9 (referring to the carrier practice of placing third-party charges on their own bills as the “root cause” of cramming).

¹²⁹ For a detailed discussion of how carriers’ practice of placing third-party charges on their own bills enables cramming and attracts third parties who wish to utilize the carriers’ practice as a mechanism to defraud the carriers’ consumers, see *Inc21.com.*; see also *supra* section II.A.

¹³⁰ See, e.g., American Roaming Network, Inc. Comments at 1; BSG Comments at Executive Summary; BDP Comments at 2; CTI Comments at 1-2; Public Interest Commenters Comments at 2-3.

¹³¹ *Desiree Moore, et al. v. Verizon Communications Inc., et al.*, United States District Court, Northern District of California, Case No. CV 09-1823, Stipulation and Settlement Agreement at 13-16 (filed Feb. 1, 2012) (“Verizon Cramming Settlement”).

¹³² See *Senate Staff Report* at 30 (footnote omitted).

¹³³ See *id.* at iii.

¹³⁴ See *id.* at ii-iii.

¹³⁵ See *id.*

¹³⁶ See June 2011 NALs; see also *FTC v. Inc.21.com*, 745 F.Supp 2d at 994-995.

¹³⁷ See *NPRM*, 26 FCC Rcd at 10025-26, ¶¶8-9.

revenue both for placing unauthorized charges on their bills and for handling subsequent consumer disputes over those charges. The overwhelming evidence that cramming is a widespread problem for wireline consumers and evidence that wireline carriers benefit financially both from billing their consumers for unauthorized third-party charges and for handling the subsequent consumer disputes strongly suggests that neither the incentives nor industry efforts to prevent cramming have been sufficient to protect consumers. The record therefore overwhelmingly demonstrates the need for additional wireline cramming safeguards.

44. We find that the recent announcements by Verizon, AT&T, and CenturyLink regarding plans to cease billing for certain third-party services do not eliminate the need for the cramming safeguards we adopt in this *Report and Order*. Verizon has advised the Commission that it intends to cease placing on its wireline telephone bills third-party charges for “miscellaneous” or “enhanced” services, which it describes as “unrelated to the use of Verizon’s network and include services such as web hosting, voicemail, and email.”¹³⁸ AT&T subsequently announced that it too plans to cease placing on its wireline telephone bills third-party charges for “enhanced” services.¹³⁹ AT&T says it will use a phased approach to ceasing to bill for what it considers to be “enhanced” services, which it defines as, “any products or services... other than the following: (i) telecommunications services as defined in 47 U.S.C. Section 153(46); (ii) services or goods sold by any third party that has a direct contractual arrangement for the joint or cooperative sale of such services or goods with AT&T; and (iii) contributions to charitable organizations subject to 26 U.S.C. Section 501(c)(3).”¹⁴⁰ It appears that CenturyLink is undertaking a similar commitment.¹⁴¹

45. While these pro-consumer actions are encouraging, AT&T, Verizon, and CenturyLink intend to continue placing some non-carrier third-party charges on their own bills, which is the practice that the *Inc21.com* court and the *Senate Staff Report* found enables cramming. To the extent that cramming results largely from charges imposed by third parties,¹⁴² we find that the inclusion of any such charges on telephone bills will continue to present a significant risk to consumers. Indeed, the fact that the *Senate Staff Report* found serious and significant problems with wireline cramming even after AT&T had “discontinued allowing certain types of services that were causing cramming complaints, including voicemail services, email services, ‘Web hosting,’ and ‘Internet-based directory assistance,’”¹⁴³ indicates

¹³⁸ See Letter from Ian Dillner, Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC (March 23, 2012).

¹³⁹ See Letter from Timothy P. McKone, Executive Vice President, AT&T Services, Inc. to Sen. John D. Rockefeller, Chairman, United States Senate Committee on Commerce, Science, and Transportation (March 28, 2012) attaching letter from Mark A. Kerber, General Attorney, AT&T Services, Inc. to All AT&T Billing Solutions Services Customers (March 28, 2012); also see, News Release on the website of U.S. Senator Amy Klobuchar of CenturyLink’s commitment to cease third-party billing at http://klobuchar.senate.gov/inthenews_detail.cfm?id=336476& (last checked April 5, 2012).

¹⁴⁰ See Letter from Timothy P. McKane, Executive Vice President, AT&T Services, Inc. to Sen. John D. Rockefeller, Chairman, United States Senate Committee on Commerce, Science, and Transportation (March 28, 2012) attaching letter from Mark A. Kerber, General Attorney, AT&T Services, Inc. to All AT&T Billing Solutions Services Customers (March 28, 2012).

¹⁴¹ See News Release, Klobuchar: CenturyLink Joins AT&T and Verizon in Putting a Stop to Cramming on Phone Bills (April 3, 2012), available at http://klobuchar.senate.gov/inthenews_detail.cfm?id=336476& (visited April 5, 2012).

¹⁴² See *Senate Staff Report* at 21 (finding that cramming resulted from “almost all of the third party charges” identified by bill auditors).

¹⁴³ *Id.* at 30 (footnote omitted).

that efforts to simply reduce the kinds of non-carrier third-party charges that carriers place on their bills are not likely to be fully effective in addressing the problem. In this regard, we note that AT&T, Verizon and CenturyLink have not asserted that the actions they plan to take will eliminate the need for the rules we are adopting. Moreover, the policies being implemented by these three carriers will not benefit the consumers of other wireline carriers. We find that consistent rules for all wireline carriers are necessary to protect consumers. We therefore find that additional measures by the Commission are necessary to ensure that cramming will not remain a significant problem on wireline telephone bills even after these carriers cease placing many third-party charges on their bills.

46. For these same reasons, we find that these carriers' new policies do not materially alter our analysis, discussed below, which concludes that the substantial consumer benefits of the rules we adopt in this *Report and Order* outweigh the implementation costs. We believe that consumers of these three carriers will benefit from the new rules we adopt today. Specifically, these consumers, like consumers of all wireline carriers, will be able to better identify non-carrier third-party charges – the most commonly crammed types of charges – on their bills. In addition, consumers will be clearly and conspicuously notified of available options to block third-party charges, thus enabling them to stop cramming before it happens. In sum, we conclude that the positive steps taken by these carriers should not disadvantage their consumers by denying them additional benefits that will result from the rules we adopt today.

47. Conversely, we find that the record does not demonstrate a need for rules to address cramming for CMRS or VoIP customers at this time. The record does however, indicate that there seems to be a growing cramming problem in the CMRS industry. The percentage of cramming complaints the Commission received relating to CMRS in 2011 (30 percent) appears to have nearly doubled from the aggregate percentage for the period 2008 to 2010 (16 percent).¹⁴⁴ Therefore, although we do not see the need to apply rules at this point, we will continue to monitor both services with regard to cramming.¹⁴⁵ Moreover, we seek comment in the *Further Notice* about possible solutions to CMRS cramming and request comment on any developments of cramming for VoIP customers, and will continue to monitor cramming in the CMRS, VoIP, and wireline industries to determine whether and when additional Commission action may be appropriate. We remind CMRS carriers that they remain subject to section 201(b), those Truth-in-Billing rules that already apply to them, and to the Commission's enforcement authority.

B. New Rules to Protect Consumers

48. In this *Report and Order*, we adopt some of the rules we proposed in the *NPRM*. Specifically, we require wireline carriers that currently offer blocking of third-party charges to clearly and conspicuously notify consumers of this option on their bills, websites, and at the point of sale; to place non-carrier third-party charges in a distinct bill section separate from all carrier charges; and to provide separate totals for carrier and non-carrier charges. These rules reflect an important step beyond the

¹⁴⁴ See *supra* ¶¶20-21. See also Letter from Parul P. Desai, Policy Counsel, Consumers Union, (filed April 18, 2012) (discussing separate wireless cramming reviews by the California PUC, the Florida Attorney General's Office and legal action by the Texas Attorney General).

¹⁴⁵ Commenters also note the significant adoption rate of cell phones by Americans, including low-income Americans, and the growing adoption rate of VoIP services. See Letter from Consumers Union, AARP, NCLC, The Center for Media Justice, TURN, NASUCA, IDEPSCA, Consumer Federation of America, and NCL (filed April 18, 2012). As many Americans already rely upon CMRS and VoIP services, we seek to ensure that our consumer protection efforts are sufficient to address these services, if necessary.

existing Truth-in-Billing rules by requiring additional clear and conspicuous disclosures and by requiring clearer and distinct separation of carrier and non-carrier charges.

49. While there is strong support in the record, including the *Senate Staff Report* and *Inc21.com*, for opt-in or stronger measures on which the Commission sought comment in the *NPRM*, the record contains few specifics regarding the appropriate structure and mechanics of an opt-in mechanism. Therefore, we seek comment in the *Further Notice* on additional potential measures to prevent cramming, including an “opt-in” requirement for wireline carriers, that the FTC, consumer groups, state commenters, and one wireline carrier urge us to adopt now. We expect to evaluate the record generated by the *Further Notice* and take any further necessary action in a timely manner.

50. The rules we adopt in this *Report and Order* provide additional protections to consumers and appropriately balance these competing views while we develop a more robust record regarding additional measures. We also look forward to seeing the effects of the measures announced by Verizon, AT&T, and CenturyLink.

1. Rules to Prevent Cramming From Happening

51. In the *NPRM*, we proposed to require wireline carriers that offer consumers the option to block non-carrier third-party charges from their telephone bills to clearly and conspicuously notify consumers of this option at the point of sale, on each bill, and on their websites to prevent cramming before it occurs.¹⁴⁶ We sought comment on our clear and conspicuous disclosure proposal and the kinds of disclosures on bills, on websites, and at the point of sale, that would constitute “clear and conspicuous” notice in this context and therefore satisfy this notification requirement.¹⁴⁷

52. We adopt the proposal in the *NPRM* to require wireline carriers to clearly and conspicuously notify – at the point of sale, on each bill, and on their websites – consumers of blocking options they offer. We believe that requiring this disclosure will benefit consumers by making them aware that non-carrier third-party charges can be placed on their telephone bills and by educating consumers about the blocking options carriers already offer voluntarily under the current opt-out mechanism. Consumers will have the information necessary to take advantage of blocking options and thereby prevent cramming before it happens rather than having to dispute unauthorized charges after they have been crammed.

53. There is significant record support for this approach. State attorneys general, many state public utility commissions, and public interest commenters generally support more consumer disclosure and education, although they question whether disclosure requirements, standing alone, are the most effective means to combat cramming.¹⁴⁸ Some state public utility commissions support the proposed disclosure requirement regarding blocking as outlined by the Commission,¹⁴⁹ and several emphasize the importance of a point of sale disclosure.¹⁵⁰ The Iowa Utilities Board, for example, believes that a consumer would not typically request a block on third-party charges unless that consumer had some

¹⁴⁶ *NPRM*, 26 FCC Rcd at 10038, ¶¶40-41.

¹⁴⁷ *Id.* at 10038-39, ¶42.

¹⁴⁸ *See, e.g.*, National Consumers League Comments at 7; FTC Comments at 4-5; 17 State Attorneys General Comments at 23; Attorneys General of IL, NV, VT Comments at 9; Iowa Utilities Board Comments at 9.

¹⁴⁹ *See, e.g.*, IURC Comments at 3 (informing consumers of the ability to block third-party charges would be of significant benefit to Indiana consumers).

¹⁵⁰ *See, e.g.*, Tennessee Regulatory Authority Comments at 2 (supports the Commission’s proposal to require carriers to inform consumers of third-party blocking services, but suggests that disclosure on the bill is unnecessary whereas disclosure at the point of sale is uniquely helpful to consumers).

experience with cramming,¹⁵¹ and that if carriers were to actively promote the blocking capability, then cramming complaints would be “reduced substantially.”¹⁵² NARUC urges the Commission to require all carriers to disclose third-party blocking options to their consumers.¹⁵³ Some billing aggregators do not oppose proposals to improve disclosures and clarify the procedures for offering third-party blocking services,¹⁵⁴ provided that the proposed changes do not go beyond the format of the bills or increase the carriers’ costs.¹⁵⁵

54. We acknowledge that by and large, the state attorneys general, state public utility commissions, and public interest commenters contend that the requirement that carriers disclose the option of a blocking service to consumers will be less effective in preventing cramming than a complete prohibition of third-party billing or an opt-in approach. Some commenters express concern about the number of carriers who actually offer and implement blocking,¹⁵⁶ and, if blocking is optional as opposed to mandatory, the state attorneys general assert that “there is little likelihood that wireline telephone companies would consistently and reliably offer [the blocking option] to customers.”¹⁵⁷ Carriers, on the other hand, urge us not to adopt any sort of disclosure requirement. These carriers claim that required methods of disclosure in terms of format or medium would interfere with bill formatting flexibility, be unnecessary, or be costly.¹⁵⁸ Others argue such disclosure would be potentially irrelevant to some consumers,¹⁵⁹ and would add to consumer confusion.¹⁶⁰

55. At the outset, we do not believe that it is in carriers’ interests to eliminate blocking options they may currently offer. We believe that carriers that offer blocking options can distinguish themselves in the marketplace as providing superior consumer service. Further, we believe that carriers that eliminate blocking options face potential loss of consumer good will and damage to their business reputations, and may invite further legislative or regulatory action. We will monitor industry developments to determine, if such backtracking happens, what appropriate measures we might take to ensure carriers are not taking steps to thwart consumer choice. We also seek comment on additional consumer protection measures beyond disclosure and bill changes in the accompanying *Further Notice*.

¹⁵¹ Iowa Utilities Board Comments at 9.

¹⁵² *Id.*

¹⁵³ NARUC Reply Comments at 4-5 (suggests that all voice service providers disclose blocking options on, at least, an annual basis, and that all required disclosures be clear and conspicuous).

¹⁵⁴ *See, e.g.*, BVO Comments at 1-2; PaymentOne Corporation Comments at 17.

¹⁵⁵ BVO Comments at 1-2.

¹⁵⁶ Attorneys General of IL, NV and VT Comments at 8.

¹⁵⁷ 17 State Attorneys General Comments at 16.

¹⁵⁸ *See, e.g.*, CenturyLink Comments at 6-9, n. 16 (estimates that the additional cost to fully describe third-party billing and disclose consumer’s blocking option during a point of sale communication would cost the company over \$3 million a year); AT&T Comments at 14 (would not oppose a disclosure requirement provided that AT&T would not have to change its existing processes and would have the flexibility to determine the format and manner in which the disclosure is made); BVO Comments at 1-2 (does not oppose improvement of information on bills and clarification of blocking options so long as it does not increase cost to the LEC or go beyond the format of the bills); NTCA Comments at 2.

¹⁵⁹ ITTA Comments at 4.

¹⁶⁰ *Id.*

56. We disagree with the carriers that generally oppose clear and conspicuous disclosure of existing blocking options. CenturyLink recommends that the Commission not mandate expensive disclosures such as the disclosure of blocking options at the point of sale or on each bill, but rather start with required disclosure of blocking options on the website and on bill inserts.¹⁶¹ Similarly, ITTA contends that the Commission should not require disclosure on every bill or at the point of sale because only a small percentage of consumers are likely to need or use this information in any given month and disclosure runs counter to efforts to reduce billing costs.¹⁶² NTCA cautions against mandatory changes to billing formats or consumer notification requirements for small rural carriers because they would be extremely expensive to implement and provide little benefit.¹⁶³ Despite these comments, no carrier has provided specific cost data that convinces us that it will be unduly burdensome or costly for carriers to implement this requirement – especially because we are granting carriers the implementation flexibility they requested.¹⁶⁴ It appears from the record that many or most carriers already offer blocking and, based upon the record, appear to notify consumers of blocking options when consumers dispute unauthorized charges. Thus, many carriers will be required only to expand their existing notification practices.

57. We note that one rural carrier, Wheat State, supports the Commission's proposed rule requiring notification at the point of sale, on each bill, and on their websites of the option to block third-party charges.¹⁶⁵ Frontier also supports the Commission's proposal that carriers clearly and conspicuously notify consumers of third-party blocking features.¹⁶⁶ Although Frontier cautions against the imposition of specific formats or media for such disclosures, Frontier states that disclosure of third-party blocking is an "important" consumer protection and consumer education is "paramount."¹⁶⁷

58. We note in this regard that most ITTA member companies offer blocking,¹⁶⁸ some small carriers require written consumer approval before they will place third-party charges on their bills to consumers,¹⁶⁹ and all of the carriers that provided information to the Senate Commerce Committee indicated that they offer some sort of blocking upon consumer request.¹⁷⁰ We also note that publicly available information indicates that some carriers already post information about blocking options on their websites.¹⁷¹ CenturyLink's estimate that making point-of-sale disclosures will cost it approximately \$3 million annually in additional customer service labor costs does not account for the reduced labor costs associated with having the same customer service representatives handling fewer cramming calls from consumers and therefore may overstate net costs. CenturyLink does not indicate whether it is

¹⁶¹ CenturyLink Comments at 6.

¹⁶² ITTA Comments at 4.

¹⁶³ NTCA Comments at 2.

¹⁶⁴ See *infra* ¶59.

¹⁶⁵ Wheat State Comments at 2.

¹⁶⁶ Frontier Comments at 2.

¹⁶⁷ *Id.*

¹⁶⁸ ITTA Comments at 2.

¹⁶⁹ Iowa Utilities Board Comments at 9.

¹⁷⁰ *Senate Staff Report* at 33.

¹⁷¹ See, e.g., Blocking Options, Frontier Communications website, <http://www.frontier.com/blockingoptions/> (visited March 8, 2012). We note this website only to demonstrate that some carriers already voluntarily provide some notification about blocking options, but we do not offer any opinion as to whether any current, specific type of disclosure would comply with the rules we adopt today.

compensated for handling consumer calls regarding unauthorized charges, so it is not clear what impact, if any, such compensation may have on its net costs. We find that it is conceivable that carriers could experience a net reduction in labor costs. Even AT&T, which is a strong proponent of flexibility, notes that commenters “generally support notifying consumers of third-party blocking options and separating their charges from third-party charges on the bill.”¹⁷²

59. Consistent with our existing Truth-in-Billing rules, we afford carriers the flexibility to implement this requirement in the manner that best accomplishes the goal of the rule within the context of each carrier’s individual website, bill, and point-of-sale scripts.¹⁷³ This flexibility should enable carriers to avoid unnecessary costs while still providing effective disclosures to their consumers. Further, we note that blocking capabilities can vary among carriers. For example, CenturyLink advises that its legacy CenturyLink companies can selectively block non-carrier third-party charges without also blocking long distance charges from other carriers, while its legacy Qwest companies cannot.¹⁷⁴ Each carrier’s disclosures must accurately reflect the capabilities of its blocking options. We believe that granting carriers flexibility will better enable them to customize their disclosures to their blocking capabilities while avoiding potential confusion or inaccuracies that could occur if we were to adopt more specific requirements. Of course, the Commission has the authority to take enforcement action and to act on complaints against carriers who fail to implement this requirement in a manner that provides clear, conspicuous, and accurate notice to consumers.

60. We recognize that some commenters assert that our rules unduly burden consumers, while others assert that they unduly burden carriers. We believe that the benefits of this requirement to consumers significantly outweigh the burdens of implementation. As discussed above, there is widespread recognition that cramming harms consumers, even among those that advocate voluntary measures as a solution.¹⁷⁵ The record also reveals that cramming has remained a significant problem, notwithstanding voluntary industry efforts, especially with respect to non-carrier third-party charges on wireline telephone bills.¹⁷⁶ The requirement we are adopting that wireline carriers notify consumers of blocking options they offer, appropriately balances consumer convenience and protection by enabling consumers to make informed choices about whether to utilize blocking options available to them. This rule ensures that consumers are aware of blocking options available to them and enables consumers to choose whether to utilize those options and thereby to choose whether to receive third-party charges on their telephone bills. Indeed, consumers frequently are unaware that non-carrier third-party charges can be placed on their bills at all,¹⁷⁷ and informing consumers of blocking options will also help make consumers aware of the potential for such charges even if they elect not to avail themselves of blocking. We believe that the incremental approach we are taking in the rules we adopt today will provide meaningful protections for consumers without creating undue burdens on anyone, and will build upon existing rules and practices in a way that we believe appropriately balances benefits and burdens.

¹⁷² AT&T Reply Comments at 12.

¹⁷³ See *First Truth-in-Billing Order*.

¹⁷⁴ See Letter from Kathryn Marie Krause, Counsel for CenturyLink, to Marlene Dortch, Secretary, FCC (January 19, 2012) (CG Docket No. 11-116; CG Docket No. 09-158; CC Docket No. 98-170) at 2.

¹⁷⁵ See *supra* ¶42.

¹⁷⁶ See generally *supra* section IV.A.

¹⁷⁷ See *supra* ¶22.

2. Rules to Help Consumers Detect Cramming After it Happens

61. In the *NPRM*, we proposed that 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 of the bill separate from all carrier charges to enhance consumers' ability to review individual charges on their telephone bills and detect unauthorized or unwarranted charges.¹⁷⁸ We sought comment on whether more specific requirements are necessary to ensure that consumers can detect unauthorized charges, including whether charges from third parties should be separately totaled on the first page of the bill.¹⁷⁹ We noted our intention not to disrupt the Truth-in-Billing rules that permit a carrier offering a bundle¹⁸⁰ to treat the bundle as a single service offering even though the bundle may contain services provided by others.¹⁸¹ Additionally, we requested comment on ways to minimize any burdens associated with alterations to existing billing systems to comply with this requirement.¹⁸²

62. There is significant support for greater separation of bill charges. Although some carriers have stated in the record that they already separate non-carrier third-party charges in some fashion,¹⁸³ some public interest groups encourage the Commission to strengthen its rules regarding the separation of third-party charges on the bill, in addition to adopting an opt-in requirement.¹⁸⁴ Some state public utility commissions and state attorneys general go further in their support of a separation-of-charges requirement and recommend that third-party charges appear separately in the body of the bill and be separately identified on the first page of the consumer's bill.¹⁸⁵ The majority of the state attorneys general argue that third-party charges frequently appear after numerous pages detailing carrier charges and fees, "effectively obscuring the disclosure from notice by customers."¹⁸⁶ Thus, the state attorneys general recommend that the total amount of third-party charges be disclosed on the summary of charges appearing at the very beginning of the consumer's bill.¹⁸⁷

63. As an initial matter, we partly agree with Verizon that the wording of our proposed rule requiring separation of carrier and non-carrier charges needs to be changed. As proposed, the text of the rule is:

¹⁷⁸ *NPRM*, 26 FCC Rcd at 10039-40, ¶45. We note that the Commission's Truth-in-Billing rules already require that charges for two or more *carriers* be listed separately on the bill, by service provider.

¹⁷⁹ *Id.* at 10040-41, ¶48.

¹⁸⁰ *See Order on Reconsideration*, 15 FCC Rcd at 6027, ¶9 ("Bundled services" are various types of services, such as telephone, cable, and Internet services, that are offered and billed by a single entity, even though they may be provisioned by multiple parties).

¹⁸¹ *NPRM*, 26 FCC Rcd at 10040, ¶47.

¹⁸² *Id.* at 10041, ¶49.

¹⁸³ *See, e.g.*, AT&T Comments at 8; BVO Reply Comments at 6; ITTA Comments at 5 (some ITTA members already do this voluntarily because it aids consumers in understanding their bill); 17 State Attorneys General Comments at 19 (many telephone companies currently place third-party charges on a separate page of the bill).

¹⁸⁴ Public Interest Commenters Reply Comments at 4-5.

¹⁸⁵ *See, e.g.*, Florida AG Comments at 2 (third-party charges should appear on the first page of the bill where the total charges are disclosed, and also on a separate page of the bill solely dedicated to third-party charges); Nebraska PSC Comments at 3.

¹⁸⁶ 17 State Attorneys General Comments at 19.

¹⁸⁷ *Id.*

Where charges from 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.

Verizon asserts that this rule, as worded, will result in consumer confusion because it requires third-party charges from carriers and non-carriers represented by the same billing aggregator to be placed in different parts of the bill. Thus, charges listed in the name of a single billing aggregator may be shown in both the carrier and non-carrier sections of the bill, depending upon whether the specific charge is for a telecommunications service.¹⁸⁸ We do not agree that this is a problem. Rather than confusing consumers, the rule alerts consumers that the charges are not all for telecommunications services and that further inquiry may be appropriate. Further, carriers may reduce the need for further inquiry by identifying the service provider for each charge rather than a billing aggregator. While the Truth-in-Billing rules permit carriers to list the billing aggregator instead of the service provider, as long as the billing aggregator can answer questions about the charge and resolve disputes about the charge,¹⁸⁹ carriers are not required to do so.

64. To reduce the potential for misinterpretation or confusion about where carriers must place charges listed in the name of a billing aggregator, we adopt a revised version of the proposed rule to focus on whether the charge is for a telecommunications service instead of whether the charge is from a carrier. In addition, we believe that the rule could be worded to better reflect that it does not affect the billing carriers' own charges, especially bundled services. As discussed throughout this *Report and Order*, the record indicates that the most commonly crammed charges are non-carrier third-party charges (*i.e.* charges for non-telecommunications services provided by third parties), and we are addressing the problem by adopting incremental rules focused on the carrier practices that enable cramming while requiring no changes in other carrier practices, including how carriers bill for bundled services.¹⁹⁰

65. For these reasons, we find that the relevant portion of the proposed rule should be reworded as follows:

Carriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from carrier charges.¹⁹¹

We believe that this wording produces exactly the same result as the prior wording with respect to how carriers display non-carrier third-party charges on their bills, while reducing the potential for misinterpretation.

66. We also require carriers to clearly and conspicuously identify and disclose separate subtotals for charges from carriers and charges from non-carrier third-parties on the payment page of their bills. For consumers who do not receive a paper bill, these subtotals must be clearly and conspicuously displayed in an equivalent location and in any bill total that is provided to the consumer before the consumer has opportunity to access an electronic version of the bill, such as in a transmittal email message, on a payment portal, or on a webpage. The new rule reads as follows:

¹⁸⁸ Verizon Comments at 11-13.

¹⁸⁹ Our rules permit carriers to provide the name and toll-free telephone number of the service provider or a billing aggregator as long as whoever is listed can answer questions about the charge and resolve disputes about the charge. 47 C.F.R. § 64.2401.

¹⁹⁰ In the *NPRM*, the Commission stated that no change was intended with respect to billing for bundled services. See *NPRM*, 26 FCC Rcd at 10040, ¶47.

¹⁹¹ This language will become the first sentence of the new 47 C.F.R. § 64.2401(a)(3). See Appendix A.