

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 all carrier charges. Charges in each distinct section of the bill must be separately subtotaled. These separate subtotals for carrier and non-carrier charges also must be clearly and conspicuously displayed along with the bill total on the payment page of a paper bill or equivalent location on an electronic bill. For purposes of this subparagraph “equivalent location on an electronic bill” shall mean any location on an electronic bill where the bill total is displayed and any location where the bill total is displayed before the bill recipient accesses the complete electronic bill, such as in an electronic mail message notifying the bill recipient of the bill and an electronic link or notice on a website or electronic payment portal.<sup>192</sup>

67. We believe that these requirements are critical to enabling consumers to detect the most common types of unauthorized charges on their telephone bills. The *Senate Staff Report* concluded that most cramming involves non-carrier third-party charges. In light of that finding, and the numerous cases discussed in the record involving state and federal agencies suing non-carrier third-party crammers under consumer protection laws, we believe it is especially necessary to adopt a rule requiring carriers that choose to place non-carrier third-party charges on their own bills to their consumers to put such charges in a distinct section of the bill separate from charges assessed by carriers that provide telecommunications services to the consumer. The Truth-in-Billing rules already require charges from different carriers to be separated and displayed by carrier, but do not require that charges from each carrier or type of carrier, *e.g.* local or long distance, be placed in distinct sections of the bill. Although, as we discuss below, carriers are free to separate carrier charges into different sections on their bills,<sup>193</sup> we find nothing in the record that convinces us to require carriers to do so at this time. The record indicates that cramming is more prevalent with non-carrier third parties. Further, the Commission has the authority to take enforcement action against carriers who engage in cramming, and will do so.<sup>194</sup>

68. These new measures should ensure that carriers’ choice of bill format does not, even unwittingly, contribute to consumer confusion about whether a third-party charge is from a carrier or from a third party that does not provide telecommunications services to them. It also should make it much easier for consumers to identify the charges on their bill that the record suggests are most likely to be crammed.

69. The comments reveal diverse support for a requirement that non-carrier third-party charges be placed in a distinct bill section separate from carrier charges.<sup>195</sup> Some commenters, however, argue that requiring carriers to place third-party charges in a separate section of the bill, by itself, will not effectively reduce cramming.<sup>196</sup>

70. We disagree. While we acknowledge that additional rules might provide additional protections against cramming – and we seek comment on such additional rules in the *Further Notice* – the requirements we adopt today should make it easier for consumers to detect cramming of charges that are

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<sup>192</sup> See Appendix A.

<sup>193</sup> See *infra* ¶70.

<sup>194</sup> See June 2011 NALs.

<sup>195</sup> See, *e.g.*, BSG Comments at 8; ITTA Comments at 9; NASUCA Comments at 28-29; Michigan Public Service Commission Comments at 2; Wheat State Comments at 2.

<sup>196</sup> See, *e.g.*, Attorneys General of IL, NV and VT Comments at 9; 17 State Attorneys General Comments at 19; FTC Comments at 4-5 (arguing that recent enforcement experience demonstrates that separation of charges does not work because consumers have no reason to scrutinize a bill for charges that they did not authorize).

described so as to appear to be for a telecommunications service. For example, we believe it would be much easier for a consumer to detect unauthorized charges described as being for voicemail if that charge appears in a section of the bill designated solely for non-carrier third-party charges, as this will make it more obvious that the charge is not from their telephone company or any other carrier. Consumers should benefit from this requirement even if their carrier already displays such a charge with the name of the third party and a notice that the charge is billed on behalf of that vendor. As long as a carrier places such charges on its bill so that they are comingled, the record clearly suggests that the carrier runs the risk of confusing or misleading its consumers. This requirement also should help consumers to be aware that their telephone bills may contain non-carrier charges, including charges for services that are not provided by their presubscribed telecommunications carrier or carriers.

71. The record supports our conclusion that the distinct separation of carrier and non-carrier third-party charges is likely to be an effective means of combating cramming. As noted, both the *Senate Staff Report* and the *Inc21.com* court identified carriers' practice of placing non-carrier third-party charges on their own bills to consumers instead of on a separate bill as the key that enables cramming and even attracts "fraudsters."<sup>197</sup> Separately, the South Dakota Public Utilities Commission describes a situation in which charges that easily could have been viewed as being associated with a telecommunications service were quickly identified as unauthorized charges when they were billed on separate bills instead of being placed on carriers' telephone bills.<sup>198</sup> Commenters who have been cramming victims similarly state that they easily could have detected the crammed charges had they been on a separate bill instead of being on their telephone bills.<sup>199</sup> We believe that requiring distinct separation as described above, along with separate subtotals, will benefit consumers while responding to record concerns about preserving flexibility, efficiency, and the convenience associated with a single bill.

72. We stress that the rule does not prohibit carriers from using the same basic format for all third-party charges, provided the format otherwise complies with our rules. This rule does, however, require that non-carrier third-party charges be completely separated from carrier charges by placing them in their own distinct section of the bill so that it is clear and conspicuous to the consumer that all non-carrier third-party charges are in one part of the bill and that all carrier charges are elsewhere on the bill. Although a carrier's compliance with this rule will be determined on a case-by-case basis, a carrier might seek to comply by, for example, designating "Part A" of its bill for carrier charges and "Part B" for non-carrier charges. Similarly, a carrier may prefer "Part A" for its own charges, "Part B" for third-party carrier charges, and "Part C" for non-carrier third-party charges. With clear and conspicuous labeling of each section of the bill, such formats likely would comply with the requirement we adopt today. We do not mandate any specific format, however, and carriers have flexibility to develop their own solutions that comply with the rule.

73. We also clarify, as we noted in the *NPRM*, that this rule does not change anything with respect to carrier billing for bundled services. Therefore, a carrier that offers a triple-play bundle that consists of its own telecommunications services, Internet services provided by a non-carrier affiliate, and satellite television provided by an unaffiliated third-party, may continue to place the bundle charge in the section of the bill containing carrier charges. The record contains little or nothing to indicate that cramming is a significant problem for bundles. Further, we find that it likely would be extremely confusing to consumers, and make it difficult for them to verify whether they are being billed the correct

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<sup>197</sup> See *FTC v. Inc21.com*, 745 F.Supp.2d at 994-999 and *FTC v. Inc21.com*, 688 F.Supp.2d at 929; *Senate Staff Report* at iv.

<sup>198</sup> Letter from Chris Nelson, Chairman, South Dakota Public Utilities Commission, to FCC (Feb. 15, 2012) at 1-2.

<sup>199</sup> See, e.g., FCC Complaint 11-C00271946-1 (consumer would have realized the charges were fraudulent if the third party companies were billing the consumer directly).

price, if they were billed for a bundle as if they were buying each service ala carte. For purposes of this rule, the facts that the bundle is marketed by the carrier as its product, is marketed as a single product at a single price, and includes telecommunications services provided by the carrier, is sufficient for the bundle to be treated as a carrier charge.

74. *Sub-totals.* We also require wireline carriers to provide separate subtotals for carrier charges and for non-carrier third-party charges on the bill payment page or the equivalent location in electronic bills. The record is clear that one of the reasons consumers have difficulty detecting unauthorized charges is that these charges often are at or near the end of bills that may run many pages.<sup>200</sup> Further, as we noted in the *NPRM*, the *Inc21.com* court stated that having third-party charges included in the total amount due on a bill without any differentiation between those charges and carrier charges made it difficult for consumers to detect unauthorized charges.<sup>201</sup> Several commenters share this concern.<sup>202</sup> By requiring separate subtotals on the payment page, which usually is the first page of a paper bill, we address these concerns and guard against the unintended consequence that the requirement to place non-carrier third-party charges in a distinct section of the bill could be implemented in a way that exacerbates problems associated with such charges being near the end of a bill. Requiring separate subtotals on the payment page also helps to alert consumers that their bill contains non-carrier third-party charges and that these charges are detailed in a distinct section of the bill. We note that the majority of state Attorneys General support this requirement.<sup>203</sup>

75. In adopting this and the other rules we adopt today, we are mindful of the need to be consistent with the additional measures we may potentially adopt as a result of comments received in response to the *Further Notice*. Many commenters who urge us to adopt an opt-in requirement support this “separate section” rule as part of an opt-in requirement such that this rule would apply to carriers’ billing of consumers who opt-in to receiving non-carrier third-party charges on their bills. Thus, the record indicates that our adoption of this rule now would not limit our flexibility to adopt measures from the *Further Notice* nor would it subject carriers to inconsistent or rapidly changing requirements. Further, we believe that all consumers of carriers that place non-carrier third-party charges on their own bills will benefit from this rule, which will help make consumers aware that their telephone bills may contain non-carrier charges and enable them to more effectively monitor for any unauthorized charges. Our adoption of this rule, however, should not be taken as prejudging the merits of matters on which we seek additional comment.

76. Despite widespread support for a separation requirement, some carriers express their opposition to Commission rules regarding separate bill sections for carrier and third-party charges because of potential costs involved in bill formatting changes.<sup>204</sup> For example, AT&T does not oppose a requirement that carriers separate their charges from unaffiliated third-party charges on the bill, provided that their bills would not have to be reformatted in order to be in compliance.<sup>205</sup> ITTA opposes the adoption of specific content or formatting requirements, emphasizing that carriers are in the best position to convey information to their consumers in a clear and accurate manner.<sup>206</sup> Should the Commission

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<sup>200</sup> See, e.g., 17 State Attorneys General Comments at 19.

<sup>201</sup> *NPRM*, 26 FCC Rcd at 10040, ¶48 (citing *FTC v. Inc21.com*, 745 F.Supp.2d at 994-995, 1000-01).

<sup>202</sup> See, e.g., Florida AG Comments at 2; Nebraska Public Service Commission Comments at 3.

<sup>203</sup> 17 State Attorneys General Comments at 19.

<sup>204</sup> See, e.g., CenturyLink Comments at 3.

<sup>205</sup> AT&T Comments at 16.

<sup>206</sup> ITTA Comments at 5.

decide to implement a separation of charges requirement for wireline carriers, Verizon proposes a modification to the proposed rule language in order to minimize consumer confusion that may result from seeing billing aggregators' names appear multiple times on the bill, while still allowing consumers to distinguish between carrier charges and third-party charges.<sup>207</sup>

77. We are mindful of carrier concerns that bill formatting changes resulting from a bill separation requirement will be expensive. It is impossible to assess such claims because the carriers provide no estimates of what the costs might be despite our request in the *NPRM* for specific cost information.<sup>208</sup> Further, we note that many carriers already separate third-party charges from carrier charges on their bills to some degree and that we are requiring only incremental changes affecting the degree and clarity of how charges are separated. Thus, we can only conclude that the burden of compliance will not be prohibitive, especially given that annual savings to consumers could approach \$2 billion<sup>209</sup> and that carriers have received over a billion dollars in revenue from their placement of third-party charges, a significant percentage of which are unauthorized, on their bills.<sup>210</sup>

78. Overall, we believe that this rule strikes an appropriate balance among the competing views reflected in the record, including those of commenters that may oppose the rule for different reasons. The rule received support from a diverse range of commenters, including some billing aggregators.<sup>211</sup> AT&T notes that the record generally supports the separation rule.<sup>212</sup> It is an incremental step forward from the status quo where many carriers already separate carrier and non-carrier charges on their bills, but may not place the non-carrier third-party charges in a distinct bill section or otherwise clearly and conspicuously differentiate between carrier and non-carrier charges.

### C. Other Proposals

#### 1. Disclosure of Commission Complaint Contact Information

79. To address concerns in a Government Accountability Office report about consumers' lack of knowledge about how to file complaints, we proposed in the *NPRM* a requirement that wireline billing carriers include on their bills, as well as the customer service section of their websites, a clear and conspicuous statement indicating that the consumer may submit inquiries and complaints to the Commission.<sup>213</sup> More specifically, we suggested that the statement include the Commission's telephone

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<sup>207</sup> Verizon Comments at 11-13; *see also supra* ¶61.

<sup>208</sup> *NPRM*, 26 FCC Rcd at 10041, ¶49.

<sup>209</sup> The *Senate Staff Report* states that a significant percentage of the \$2 billion in annual third-party charges are fraudulent. *Senate Staff Report* at ii.

<sup>210</sup> The *Senate Staff Report* states that carriers have earned \$10 billion in revenue over the last five years from third-party billing, and that carriers may receive between \$1 and \$2 for each of the 300 million third-party charges they place on their bills each year. *Senate Staff Report* at ii-iii. Thus, carriers may receive between \$300 million and \$600 million annually for placing third-party charges, a significant number of which are fraudulent, on their bills.

<sup>211</sup> *See, e.g.*, BSG Comments at 8; ITTA Comments at 9; Michigan Public Service Commission Comments at 2; NASUCA Comments at 28-29; PaymentOne Comments at 18; Wheat State Comments at 2.

<sup>212</sup> AT&T Reply Comments at 12.

<sup>213</sup> *NPRM*, 26 FCC Rcd at 10041-42, ¶51. *See FCC Needs to Improve Oversight of Wireless Phone Service*, GAO Report 10-34 to Congressional Requesters at 18 (Nov. 2009), *found at* <http://www.gao.gov/new.items/d1034.pdf> ("many consumers that experience problems with their wireless phone service may not know to contact FCC for assistance or may not know at all whom they could contact for help").

number for complaints, website address for filing complaints and, on the carrier's website, a direct link to the Commission's webpage for filing such complaints.<sup>214</sup>

80. In the *NPRM*, we sought comment on whether any of the proposed rules for wireline carriers should also be applied to CMRS carriers.<sup>215</sup> Although we are not extending any of the proposed rules to CMRS carriers at this time, we note that the CMRS carriers strongly oppose the required disclosure of Commission contact information on telephone bills. CTIA claims that the proposed requirement to include Commission complaint contact information would not be useful in preventing cramming from occurring in the first place.<sup>216</sup> Sprint argues that the requirement would delay or thwart resolution of consumer concerns and, further, would overwhelm the Commission with ordinary billing or operational inquiries.<sup>217</sup> Specifically, Sprint estimates that it would take a minimum of twelve (12) months to implement this change to Sprint's CMRS invoice.<sup>218</sup> T-Mobile agrees that the requirement to include Commission contact information would lead to consumer confusion and unnecessary frustration.<sup>219</sup>

81. The vast majority of commenters urge the Commission not to mandate disclosure on telephone bills and carrier websites of the Commission's complaint contact information. We agree with the state public utility commissions who warn against the possibility of consumer confusion and frustration regarding which entity consumers should contact for complaint resolution.<sup>220</sup> NASUCA warns against adopting the disclosure requirement because it could have the unintended consequence of overwhelming the Commission with complaints, or worse, directing state complaints away from state public utility commissions and state attorney general offices, thereby thwarting their efforts.<sup>221</sup> Most of the state attorneys general suggest that if the consumer is directed or encouraged to contact the Commission, the consumer may be left with the mistaken impression that the Commission will mediate the complaint or even direct removal of the charge.<sup>222</sup> Most carriers also oppose the required disclosure of the Commission's complaint contact information on consumers' bills on a variety of grounds, including cost and effect.<sup>223</sup>

82. Based on the record, we decline to adopt our proposal. We are concerned this requirement ultimately would disserve consumers because of the potential for confusing them about where complaints should be filed given the contours of state and federal jurisdiction. Among other things, filing a complaint in the wrong jurisdiction could delay resolution of a consumer's complaint. Moreover, we understand the importance to the consumer of responsiveness to complaints and timeliness in the resolution of complaints. We acknowledge the significant roles of the state public utility

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.* at 10042, ¶52.

<sup>216</sup> CTIA Comments at 27.

<sup>217</sup> Sprint Nextel Corporation Comments at 2-3.

<sup>218</sup> *Id.* at 4.

<sup>219</sup> T-Mobile USA, Inc. Comments at 7.

<sup>220</sup> *See, e.g.*, NEC Comments at 22-23.

<sup>221</sup> NASUCA Comments at 30.

<sup>222</sup> 17 State Attorneys General Comments at 20.

<sup>223</sup> *See, e.g.*, AT&T Comments at 16; ILD Teleservices Comments at 4; Frontier Comments at 61; IITTA Comments at 4.

commissions and state attorneys general in protecting their citizens, and the interests of consumers and carriers in expeditiously resolving complaints.

83. In light of the GAO's concerns regarding consumers' lack of knowledge about how to file cramming complaints and in light of the handful of commenters who support the *NPRM's* proposal,<sup>224</sup> we encourage states to consider alternative methods of educating and assisting consumers with regard to complaint processes.<sup>225</sup> The Commission has itself made it easier for consumers to file complaints about cramming and other matters. Specifically, consumers may file complaints via the Internet, email or phone. An FCC complaint specialist will generally serve the complaint on the billing carrier and direct it to respond in writing to the FCC with a copy to the consumer.<sup>226</sup>

## 2. Prohibiting All Third-Party Charges on Wireline Telephone Bills

84. In the *NPRM*, we asked whether the Commission should prohibit wireline carriers from including charges from third parties on their bills.<sup>227</sup> We also solicited comment on the impact that such a ban, possibly including an opt-in feature, may have on wireline carriers, consumers, and third parties.<sup>228</sup> As we noted, the state of Vermont has banned almost all third-party charges on wireline telephone bills.<sup>229</sup>

85. We decline to prohibit carriers from placing third-party charges on their bills. We also decline to adopt an opt-in requirement for third-party billing at this time. Instead, we seek comment in the *Further Notice* about opt-in and adopt disclosure and formatting requirements that will empower consumers to detect and prevent cramming. We believe that this approach will materially reduce cramming while we develop a fuller record regarding how the specific implementation of the further measures supported by many commenters would work, thereby avoiding potentially unnecessary and burdensome costs that a piecemeal approach poses.

86. The record reveals that consumers can benefit from legitimate third-party billing. Several commenters, including billing aggregators and carriers, highlight the consumer benefits of legitimate third-party billing and oppose a complete ban on third-party billing. For example, some parties discuss the convenience to consumers of having a single bill and access to a diverse array of products and services at low cost.<sup>230</sup> Some of these commenters challenge the *Senate Staff Report's* conclusions

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<sup>224</sup> See, e.g., Public Interest Commenters Comments at 3-4, Reply Comments at 5; Michigan Public Service Commission Comments at 3.

<sup>225</sup> For example, where they have the authority and wish to do so, states can require carriers to provide our contact information to consumers.

<sup>226</sup> Consumers can file complaints at <http://www.fcc.gov/complaints>. Consumers can access from this page FCC Form 2000B for cramming complaints, along with instructions on how to complete and electronically file the form. Once a consumer has completed and submitted the form, the Commission issues a complaint number and assigns it to a consumer specialist. Consumers may also file a complaint by calling the Commission's toll-free number 888-CALL-FCC (888/225-5322).

<sup>227</sup> *NPRM*, 26 FCC Rcd at 10047, ¶62.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.* at 10035, ¶33 and n.78.

<sup>230</sup> See, e.g., BSG Comments at 2-3 (third-party billing provides for a convenient way for people to donate to charities); BOP Comments at 2 and Reply Comments at 2-5 (there are benefits such as one-stop shopping for services).

because of its method of data collection or claim that most third-party billing charges are legitimate.<sup>231</sup> Some advocates of third-party billing also emphasize that third-party billing is a convenient method for small businesses that often do not have dedicated accounts receivable departments and employees.<sup>232</sup> One commenter believes that third-party billing is important for commerce in general and is actually increasing because telephones are being used for e-commerce and other business – all of which are important to encourage overall economic growth.<sup>233</sup>

87. Carriers oppose a complete ban on third-party billing, pointing to their experience with billing legitimate third-party charges as being valuable to consumers. For example, AT&T argues that the alleged widespread prevalence of cramming is based largely on speculation, and that a ban unnecessarily would punish the majority of entities that submit legitimate, consumer-authorized charges.<sup>234</sup> CenturyLink claims that third-party billing remains a legitimate enterprise, benefits commercial entities as well as consumers and, thus, should not be prohibited entirely.<sup>235</sup> Frontier suggests that a ban would be an overbroad response that deprives consumers of convenient payment options.<sup>236</sup>

88. A number of parties express concern that a ban on third-party billing would include a ban on the billing of 1+ long distance service or other telecommunications services provided by other carriers, such as calling card services, dial-around services, collect calls, and directory assistance calls.<sup>237</sup> Included in this group concerned about the reach of a ban are inmate service providers that express concern about increased costs to their business and potentially irreparable damage to business growth.<sup>238</sup> There is concern expressed in the record that if these types of telecommunications services are included in a ban on third-party billing, the result would be devastating to the companies providing the calls.<sup>239</sup> One carrier, Central Telecom Long Distance, Inc., predicts that as a result of a ban most, if not all, resellers of long distance services would be put out of business, decreasing competition and increasing costs to consumers.<sup>240</sup>

89. The FTC urges the Commission to ban some or all third-party billing, acknowledging that the ban could provide exceptions as needed.<sup>241</sup> NASUCA argues for a ban, suggesting that a “disclosure-focused approach is far too timid”<sup>242</sup> and that a prohibition would more effectively eliminate cramming

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<sup>231</sup> See, e.g., BSG Reply Comments at 1-7 (stating that its own data and industry data show that cramming is far less prevalent than the *Senate Staff Report* suggests); ISO Reply Comments at 3-4 (arguing that the scope of the cramming problem is not as broad as the *NPRM* indicates).

<sup>232</sup> See, e.g., ISG Comments at 2-3 (convenient billing method for small businesses).

<sup>233</sup> PaymentOne Corporation Comments at 4-5.

<sup>234</sup> AT&T Comments at 5-7.

<sup>235</sup> CenturyLink Comments at 11-12.

<sup>236</sup> Frontier Comments at 7.

<sup>237</sup> See, e.g., BDP Comments at 2-3.

<sup>238</sup> See, e.g., Securus Technologies, Inc. Comments at 3-6.

<sup>239</sup> See, e.g., PayTel Communications, Inc. Comments at 1.

<sup>240</sup> Central Telecom Long Distance, Inc. Comments at 5.

<sup>241</sup> FTC Comments at 5-6 & n. 19 (citing Vermont’s state cramming law which bans third-party billing except for three categories of third-party billing).

<sup>242</sup> NASUCA Comments at 13.

than would disclosure-based alternatives or a required blocking option.<sup>243</sup> Most of the state attorneys general also argue that a ban, with certain limited exceptions, would be the most effective means to combat cramming.<sup>244</sup> Many consumer groups also support a total prohibition on third-party billing for wireline telephone bills. The National Consumers League, for example, supports a prohibition, with limited exceptions, as the most effective way to reduce cramming, claiming that a ban would not be burdensome to the industry.<sup>245</sup>

90. While we agree with these parties that cramming is a significant consumer problem that requires regulatory action to help consumers, we disagree that third-party billing offers no, or so few, consumer benefits that it is appropriate to ban it altogether. We recognize the importance of consumer choice and benefits of legitimate third-party billing for consumers, carriers, and third parties. At this time, we believe there remain less restrictive measures available to address cramming. Indeed, the record is clear that some third-party charges are very beneficial. Notably, the Vermont legislation that many commenters find exemplary does not prohibit all third-party charges.<sup>246</sup> Based on the record, however, we remain concerned about carrier practices associated with cramming and understand that voluntary industry practices have not been sufficient to solve the cramming problem. Therefore, while today we adopt additional requirements rooted in the existing Truth-in-Billing rules and carrier practices, we also seek comment in the *FNPRM* on the structure and mechanics of an opt-in approach to third-party billing, as well as additional comment on the benefits and burdens of such an approach.<sup>247</sup>

### 3. Requiring Wireline Carriers to Block Third-Party Charges Upon Request

91. We sought comment in the *NPRM* on whether wireline carriers should be required to block all third-party charges upon request.<sup>248</sup> We noted that the fact that many wireline carriers already offer blocking options at no charge suggests that there are no significant barriers to making such options available to consumers.<sup>249</sup>

92. Although many carriers currently offer blocking of third-party charges to their consumers and generally oppose government mandates regarding blocking,<sup>250</sup> AT&T states that it would not oppose a requirement that carriers offer third-party blocking.<sup>251</sup> One billing aggregator suggests that service

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<sup>243</sup> *Id.* at 14-15.

<sup>244</sup> *See, e.g.*, Attorneys General of IL, NV and VT Comments at 3, 10; 17 State Attorneys General Comments at 23.

<sup>245</sup> National Consumer League Comments at 7-8, Reply at 6-7.

<sup>246</sup> 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).

<sup>247</sup> *See Further Notice of Proposed Rulemaking infra.* We are free to proceed in an incremental fashion. *See, e.g., FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1815 (2009) ("Nothing prohibits federal agencies from moving in an incremental manner").

<sup>248</sup> *NPRM*, 26 FCC Rcd at 10046-47, ¶60.

<sup>249</sup> *Id.*

<sup>250</sup> *See, e.g.*, CenturyLink Comments at 9.

<sup>251</sup> AT&T Comments at 14.

providers should be required to provide blocking services.<sup>252</sup> As noted above, the FTC encourages the Commission to adopt a ban of third-party billing or, alternatively, an opt-in approach.<sup>253</sup>

93. The FTC claims that a blocking requirement is unlikely to reduce cramming because consumers are often unaware of the ability of third parties to place charges on their telephone bills in the first place; thus, consumers fail to notice or understand the meaning of the disclosed information about the blocking option.<sup>254</sup> Recent FTC enforcement actions show that giving consumers the option to block third-party charges did not help consumers receiving unlawful third-party charges in the first place.<sup>255</sup> Most of the state attorneys general also recommend a ban on third-party billing or, alternatively, an opt-in approach.<sup>256</sup> In contrast, other commenters predict that requiring all wireline carriers to block third-party charges upon consumer request would have an appreciable benefit.<sup>257</sup>

94. In this action, we adopt a rule requiring disclosure of blocking options. At the same time, we believe it premature to mandate specific blocking requirements or to decide what those requirements should be. The record indicates that many wireline carriers already offer blocking options, although their capabilities may vary,<sup>258</sup> suggesting that the offering of blocking alone is not a sufficient fix for the problem and that consumer awareness of blocking options is critical to consumer choice.<sup>259</sup> We seek comment in the *Further Notice* on the possibility of requiring opt-in, which may subsume a requirement for carriers to block those third-party charges for which opt-in approval is required but not received. We do not prejudge the structure or mechanics of any future opt-in approach by adopting specific blocking requirements now.

#### 4. Requiring Wireline Carriers to Disclose That They Do Not Offer Blocking of Third-Party Services

95. In the *NPRM*, we sought comment on whether wireline carriers that do not offer blocking should be required to disclose that fact to consumers.<sup>260</sup> The record reflects minimal support for a requirement that carriers disclose that they do not offer blocking of third-party services.<sup>261</sup> One state public utility commission notes that to the extent the Commission does not require carriers to provide blocking services, carriers should be required to disclose that they do not offer blocking services.<sup>262</sup> One billing company supports a requirement that carriers disclose whether they offer opt-out procedures.<sup>263</sup>

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<sup>252</sup> ILD Teleservices Comments at 5 (notes that the costs of providing blocking services are not debilitating).

<sup>253</sup> FTC Comments at 5-6.

<sup>254</sup> *Id.* at 4.

<sup>255</sup> *Id.* at 5.

<sup>256</sup> 17 State Attorneys General Comments at 25.

<sup>257</sup> *See, e.g.*, Iowa Utilities Board Comments at 9 (also predicting that if carriers were required to offer blocking, it is likely that cramming complaints would decrease).

<sup>258</sup> *See, e.g.*, Verizon Comments at 5; Frontier Comments at 5, n.9; AT&T Comments at 14, n.27; *CenturyLink ex parte*.

<sup>259</sup> *Cf.* Virginia State Corporation Commission Comments at 5.

<sup>260</sup> *NPRM*, 26 FCC Rcd at 10046-47, ¶59.

<sup>261</sup> *See, e.g.*, 1800 Collect, Inc. Comments at 5-6.

<sup>262</sup> Michigan Public Service Commission Comments at 2.

<sup>263</sup> BSG Comments at 8.

Based on the record, we do not at this time adopt a requirement that carriers disclose that they do not offer a blocking option. Although the few commenters who addressed this proposal offer some support for it, we do not believe that it would significantly benefit – and may confuse – consumers to be advised that their carrier does not offer a service. We also are cognizant that this disclosure requirement would require carriers that do not offer blocking options to expend resources that could be better expended developing and implementing blocking options.

#### 5. Disclosure of Third Party Contact Information

96. In the *NPRM*, we sought comment on a requirement that carriers clearly and conspicuously provide the contact information for each third party in association with that vendor's charges on the telephone bill.<sup>264</sup> Even though our Truth-in-Billing rules already require that bills contain information to help consumers contest charges on a bill or make inquiries, consumers remain confused about how to resolve problems associated with third-party billing.<sup>265</sup> Given this confusion, we sought comment not only on whether third party contact information should be required, but also what specific information should be disclosed.<sup>266</sup>

97. As a general matter, the carriers that commented on this issue are not opposed to the disclosure of third party contact information.<sup>267</sup> For example, CenturyLink does not oppose the disclosure requirement in principle, but notes that there would be programming time and costs involved.<sup>268</sup> While Sprint is not "categorically opposed" to the requirement, Sprint is not in favor of a government mandate to disclose this information and believes that disclosure is unnecessary.<sup>269</sup> As explained above, the majority of state attorneys general argue that this type of vendor disclosure requirement has not been effective in protecting consumers from cramming.<sup>270</sup> However, if the Commission decides to adopt a vendor contact information requirement, most of the state attorneys general suggest that the Commission require the vendor to disclose its full legal name, the physical address where its business is conducted, its local landline telephone number, a complete description of the product or service purchased and the date the product or service was purchased by the consumer.<sup>271</sup>

98. Other parties, including state public utility commissions, support a disclosure requirement concerning vendor contact information,<sup>272</sup> but vary with respect to what specific information should be included in the disclosure. The California Public Utility Commission suggests required disclosure of the vendor's toll-free telephone number and address;<sup>273</sup> CCTM supports disclosure limited to the vendor's

<sup>264</sup> *NPRM*, 26 FCC Rcd at 10044-45, ¶55.

<sup>265</sup> *Id.* at 10045-46, ¶57.

<sup>266</sup> *Id.* at 10044-45, ¶55.

<sup>267</sup> *See, e.g.*, ITTA Comments at 5 (supports disclosure of vendor information provided that carriers have discretion as to what information is most relevant to provide).

<sup>268</sup> CenturyLink Comments at 15.

<sup>269</sup> Sprint Nextel Corporation Comments at 4-5.

<sup>270</sup> 17 State Attorneys General Comments at 18.

<sup>271</sup> *Id.* The attorneys general also suggest that the Commission should specify that the use of post office boxes, private mailboxes, virtual office addresses, UPS mail drops or VoIP telephone numbers and other devices used to conceal a vendor's true identity or physical location is a rule violation. *Id.* at 18-19.

<sup>272</sup> *See, e.g.*, IURC Comments 3 (requiring vendor contact information would be of significant benefit to Indiana consumers); BSG Comments at 8.

<sup>273</sup> CPUC Comments at 7.

name and toll-free telephone number;<sup>274</sup> the Michigan Public Service Commission supports disclosure of the third party's full legal name and toll-free telephone number as well as any billing company's full legal name and telephone number along with an explanation of the relationship between the biller and the third party.<sup>275</sup> Other parties in support of a vendor contact information disclosure requirement comment on the preferred location of that information.<sup>276</sup>

99. We are not convinced, on the record before us, that consumers would benefit sufficiently from this requirement to require carriers to bear the costs of providing contact information. We note evidence in the record that consumers have experienced difficulty contacting third parties who are listed on their bills or have found that the third party lacks either the information or the authority to assist them. The record also indicates that consumers often encounter similar problems when their carrier refers them to a third party after declining to directly assist the consumer. As such, referral to a third party may often be an ineffective way to resolve the consumer's problem. Given these problems, we see little benefit to requiring carriers to provide contact information for third parties.

100. We remain concerned, however, that consumers appear often to have serious problems contacting someone who can and will answer their questions and resolve disputes. Existing Truth-in-Billing rules already require carriers to provide a "toll-free telephone number or numbers by which consumers may inquire or dispute any charges on the bill."<sup>277</sup> Our rules give carriers the option to provide a toll-free number for a billing agent, clearinghouse, or other third party, provided that such person or entity can answer questions about the consumer's account and is authorized to resolve consumer complaints.<sup>278</sup> Thus, the rules already require the carrier to answer questions and resolve disputes unless it elects to use a third party who can and will do so. We remind carriers of their obligations under the Truth-in-Billing rules and that they are subject to enforcement actions for violations.

#### **6. Due Diligence of Carriers to Ensure that Third-Party Charges are Legitimate**

101. Despite carrier efforts to ensure that third parties and the charges they submit are legitimate, there is evidence that current voluntary measures are insufficient to protect consumers from cramming.<sup>279</sup> Thus, we asked in the *NPRM* whether carriers should be required to screen vendors to ensure that they have operated and will continue to operate in compliance with relevant state and federal law.<sup>280</sup>

102. The Michigan Public Service Commission proposes that the Commission establish complaint thresholds at which third parties are put on notice or prohibited from billing.<sup>281</sup> The Virginia

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<sup>274</sup> CCTM Comments at 16.

<sup>275</sup> Michigan Public Service Commission Comments at 4-5.

<sup>276</sup> The Florida AG recommends the information be required on a separate page of the bill and include the vendor's name, street address and telephone number. *See* Florida AG Comments at 2. The Michigan PSC recommends the information be placed "prominently" on the bill. *See* Michigan Public Service Commission Comments at 4. The Nebraska PSC recommends the information be listed on the first page of the bill along with the charges. *See* Nebraska Public Service Commission Comments at 3.

<sup>277</sup> 47 C.F.R. § 64.2401(d).

<sup>278</sup> *Id.*

<sup>279</sup> *NPRM*, 26 FCC Rcd at 10047-48, ¶63.

<sup>280</sup> *Id.* at 10048, ¶64.

<sup>281</sup> Michigan Public Service Commission Comments at 5.

Corporation Commission Staff's position is that the Commission should require independent third-party verification of a consumer's authorization to bill charges before a carrier can enter into a billing agreement with a third party or billing agent.<sup>282</sup> There is otherwise minimal support in the record for a due diligence requirement.<sup>283</sup> Most of the parties that comment on the due diligence issue question the need for a due diligence requirement.<sup>284</sup> Several parties comment at great length about the ways in which they currently handle due diligence of third parties and guard against questionable vendors. Verizon and CenturyLink both discuss the screening processes that they already have in place.<sup>285</sup> CCTM views the disclosure requirement as unnecessary because carriers already employ a strict screening and monitoring process for third parties.<sup>286</sup> ITTA contends that existing industry practice of monitoring third-party behavior and taking corrective action as necessary is sufficient to address any unlawful activity.<sup>287</sup> Moreover, ITTA argues, Commission requirements with respect to forced due diligence would limit carriers' flexibility in responding to consumers and market concerns.<sup>288</sup> Other parties outline the safeguards and processes that are already in place to protect consumers from unauthorized charges.<sup>289</sup> The majority of state attorneys general also argue against the imposition of a vendor due diligence requirement. They explain that requiring carriers to perform due diligence will be ineffective because the carriers deal primarily with billing aggregators and not the third parties and rely on the due diligence efforts of the billing aggregators.<sup>290</sup> The state attorneys general also explain that third parties have found ways to circumvent the complaint thresholds put into place by telephone companies.<sup>291</sup>

103. In light of these substantial concerns and a lack of evidence in the record to support a conclusion that our proposed due diligence requirements would materially benefit consumers, we decline to adopt such a requirement. We are not convinced that requiring carriers to perform due diligence reviews of third parties will be effective at reducing cramming. Many carriers already perform some level of due diligence, but cramming remains problematic. Further, the *Senate Staff Report* and the *Inc21.com* court have demonstrated how third parties that engage in cramming evade detection and due diligence efforts by several methods, such as changing names, using multiple front companies, and listing the names of different people as officers or directors, even though the same people ultimately are behind each of the companies.<sup>292</sup> Thus, for example, checking for the history or background of a specific company appears unlikely to be effective at identifying crammers; even if it did identify a crammer, the

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<sup>282</sup> Virginia State Corporation Commission Staff Comments at 6.

<sup>283</sup> See, e.g., CPUC Comments at 12-14 (the Commission should adopt rules placing an affirmative obligation on the carriers to screen third parties prior to contracting with them to ensure that they have and will comply with relevant consumer protection laws).

<sup>284</sup> A few parties that oppose a due diligence requirement question whether our due diligence proposal raises constitutional concerns in that it would require carrier adjudication of vendor legal compliance in violation of due process. See, e.g., BVO Comments at 8-9; ISG Comments at 8-9.

<sup>285</sup> Verizon Comments at 3, 6; CenturyLink Comments at 12-13.

<sup>286</sup> CCTM Comments at 15.

<sup>287</sup> ITTA Comments at 6-7.

<sup>288</sup> *Id.* at 6.

<sup>289</sup> BSG Comments at 5; PaymentOne Corporation Comments at 10-11.

<sup>290</sup> 17 State Attorneys General Comments at 21-22.

<sup>291</sup> *Id.*

<sup>292</sup> See *Inc21.com*; *Senate Staff Report* at 22.

crammer easily could change its name or create another front company before going back to the carrier. We therefore conclude that the benefits of a due diligence requirement are likely to be minimal and insufficient to justify imposing such a requirement on carriers.

104. We again remind carriers of their existing obligations under the Truth-in-Billing rules to provide on their bills a toll-free telephone number, either for themselves or a third party, so that consumers can reach someone who can answer questions and resolve disputes about their bills, and that a carrier that fails to provide this information may be subject to enforcement action.

## 7. Accessibility

105. The *NPRM* raised the question of how our proposed rules will affect, or could be improved to better assist, people with disabilities, people living in Native Nations on Tribal lands and in Native communities, and people with limited English proficiency.<sup>293</sup> Only the California Public Utility Commission makes a specific recommendation regarding accessibility.<sup>294</sup> We decline at this time to mandate additional requirements beyond those contained in our accessibility and Truth-in-Billing rules.<sup>295</sup> We note that our Truth-in-Billing rules already require that telephone bills must contain clear and conspicuous disclosure, *i.e.* notice that would be apparent to the reasonable consumer, of any information the consumer may need to inquire about or dispute any charge on the bill.<sup>296</sup>

## 8. Definition of Service Provider or Service

106. In the *NPRM*, we asked whether changes to the definitions of “service provider” or “service” in the context of the Truth-in-Billing rules or other Truth-in-Billing rule changes could be effective in preventing cramming.<sup>297</sup> The purpose of this query was to ascertain whether any uncertainty exists about whether all charges that appear on a telephone bill, regardless of the description of the charge, are subject to our Truth-in-Billing rules and, if so, what changes may be necessary to eliminate that uncertainty. It also allowed commenters to identify other changes that may be helpful. Commenters did not directly address the need to change the definitions of “service provider” or “service.” In response to the more open-ended part of this inquiry, the Iowa Utilities Board expressed concern that the Truth-in-Billing rules do not appear to enable us to take enforcement action directly against non-carrier third-parties whose unauthorized charges are placed on telephone bills by carriers. It noted that our enforcement actions are against carriers, while the FTC takes similar actions against non-carriers.<sup>298</sup> While we appreciate this concern, our statutory jurisdiction is limited and we must continue to rely upon the FTC to exercise its jurisdiction over non-carriers. In light of the record before us, we find no basis for concern that our existing Truth-in-Billing rules are insufficiently broad to cover all charges on telephone bills. We believe that the existing rules are sufficiently broad to encompass all charges that appear on a telephone bill and that no changes are needed.

## 9. Federal-State Coordination

107. We are cognizant of the fact that our federal and state regulatory partners have a wealth of information regarding cramming complaints and enforcement and, therefore, we sought comment in

<sup>293</sup> *NPRM*, 26 FCC Rcd at 10049-50, ¶68.

<sup>294</sup> CPUC Comments at 16 (disclosures should be in the same language as the bill).

<sup>295</sup> See 47 C.F.R. §§ 6.1 *et seq.*, 7.1 *et seq.*, 64.2400 *et seq.*

<sup>296</sup> See 47 C.F.R. § 64.2401.

<sup>297</sup> *NPRM*, 26 FCC Rcd at 10050, ¶¶70-71.

<sup>298</sup> Iowa Utilities Board Comments at 3.

the *NPRM* on how to better coordinate the sharing of information related to cramming.<sup>299</sup> Further, we sought updated information from state and local regulatory entities such as cramming complaint data, state enforcement actions and legislation.<sup>300</sup>

108. With respect to the sharing of information, the FTC invites and encourages all federal and state regulators, including the Commission, to submit all cramming complaints to its Consumer Sentinel database and to utilize the database to research and develop cases against crammers.<sup>301</sup> Florida's attorney general suggests that carriers should be required to submit annual cramming reports to the Commission that would be accessible to the state attorneys general and other consumer protection enforcement agencies.<sup>302</sup> The California Public Utility Commission recommends that the Commission require carriers to file reports with the state commissions.<sup>303</sup> The Michigan Public Service Commission suggests that we create a comprehensive list of all state and federal agency contacts interested in cramming as a way to share information and increase federal-state coordination.<sup>304</sup>

109. Several consumers groups and state entities express a concern that our proposed cramming rules will adversely affect state processing of cramming complaints, and that our cramming rules would preempt state cramming laws. NASUCA recommends that the Commission continue to promote current state processing of cramming complaints and enforcement efforts.<sup>305</sup> The Nebraska Public Service Commission advises the Commission to allow states to handle cramming complaints and report complaint resolution to the Commission.<sup>306</sup> Some parties urge the Commission not to preempt more stringent state cramming laws.<sup>307</sup> NARUC requests that the Commission confirm that federal cramming rules will not preempt more stringent or other state cramming standards or consumer protection rules.<sup>308</sup>

110. Some parties provide information about their experience with slamming regulation to support their views that the processing of cramming complaints should be left to the states. NASUCA notes that the Commission generally refers slamming complaints to the states and processes complaints only when the states elect not to process them.<sup>309</sup> This approach, they argue, should be carried over to cramming.<sup>310</sup> The Iowa Utilities Board encourages the Commission to model cramming regulations after Iowa's cramming regulations, which are very similar to our slamming regulations in that they require

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<sup>299</sup> *NPRM*, 26 FCC Rcd at 10049, ¶66.

<sup>300</sup> *Id.* at 10049, ¶67.

<sup>301</sup> FTC Comments at 6-7. The Consumer Sentinel is a secure online database of consumer complaints filed with the FTC and other consumer agencies that is made available to law enforcement. The Commission can view the database, but it currently does not contribute the cramming complaints it receives from consumers to the database.

<sup>302</sup> Florida AG Comments at 2.

<sup>303</sup> CPUC Comments at 16.

<sup>304</sup> Michigan Public Service Commission Comments at 5-6.

<sup>305</sup> NASUCA Comments at 31.

<sup>306</sup> Nebraska Public Service Commission Comments at 4.

<sup>307</sup> NEC Comments at 18.

<sup>308</sup> NARUC Reply Comments at 5.

<sup>309</sup> NASUCA Comments at 33.

<sup>310</sup> *Id.*

independent verification of a consumer's decision to change service providers.<sup>311</sup> The Board believes that it would not be overly burdensome to subject service providers to a requirement – similar to that in the Commission's carrier change rules – that they provide valid verification of consumer authorization to include specific third-party charges on their telephone bills.<sup>312</sup> The California Public Utility Commission believes that state commissions should be permitted to enforce the federal cramming regulations just as they enforce federal slamming regulations.<sup>313</sup>

111. We acknowledge the important role that all of our federal and state regulatory partners play in protecting consumers from unauthorized charges on their telephone bills. We expect that the carriers and the states will continue to play their primary roles in handling consumers' cramming inquiries and complaints, and we do not adopt any specific requirements in terms of federal-state coordination at this time. We intend to continue to coordinate with state and local governments, and with the FTC, on this and other issues of mutual interest.

112. We also appreciate the suggestions regarding how coordination and enforcement may be improved and intend to examine these suggestions as we move forward. We find, however, that the record before us does not suggest adopting specific rules at this time. Finally, we emphasize that we are not pre-empting any state cramming restrictions. We also note that our Truth-in-Billing rules expressly do not pre-empt consistent state laws or rules.<sup>314</sup>

#### **D. Implementation**

113. Finally, we address the timing for implementation of the rules we adopt herein. We seek to ensure that the consumer protection measures we adopt are timely implemented so that consumers can begin to realize the benefits as soon as feasible, while allowing a reasonable time for wireline carriers to make the necessary changes to their billing systems, websites, and point-of-sale operations. We recognize that it likely will take carriers longer to make changes to their billing systems than to provide the required disclosures on their websites and at their points of sale. Considering this and the time it will take to obtain OMB approval of these rules, we conclude that it is reasonable to require carriers to implement required changes to their billing systems within 60 days after publication in the *Federal Register* of a notice that OMB approval has been obtained, and to require carriers to implement required disclosures on their websites and at their points of sale within 15 days after such notice.

### **V. LEGAL ISSUES**

#### **A. Communications Act**

114. In the *NPRM*, we sought comment on our legal authority to adopt the rules we proposed, as well as comments on our legal authority regarding other proposals and issues raised therein. We noted that our proposed rules were rooted in the basic Truth-in-Billing concepts of clear, conspicuous, non-misleading, and unambiguous billing. We asserted that we have authority over these issues under section 201(b) of the Act, which is one of the jurisdictional bases for existing Truth-in-Billing rules, and sought comment on the need to invoke our Title I jurisdiction as additional authority.<sup>315</sup> We explained that section 201(b) requires that all "practices . . . in connection with" common carrier services be "just and reasonable," and that the Commission has explained previously that "the telephone bill is an integral part

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<sup>311</sup> Iowa Utilities Board Comments at 9-10.

<sup>312</sup> *Id.* at 8.

<sup>313</sup> CPUC Comments at 2.

<sup>314</sup> 47 C.F.R. § 64.2400(c).

<sup>315</sup> *NPRM*, 26 FCC Rcd at 10054-55, ¶¶83-85.

of the relationship between a carrier and its customer.<sup>316</sup> We further stated that third-party charges appear on a telephone bill only as a result of carriers' practice of placing them there, and that the problem of crammed third-party charges depends on and arises from the relationship between the common carrier and its consumer.<sup>317</sup> In this regard, we noted that if it is not clear on the bill specifically what the charge is for and who the service provider is, a consumer may believe that the charge is related to a subscribed-to telecommunications services provided by the carrier.<sup>318</sup> We also inquired in the *NPRM* about whether our Title I ancillary jurisdiction applies.<sup>319</sup>

115. Section 201(b) Authority. Consistent with the Commission's determination in the *First Truth-in-Billing Order*,<sup>320</sup> we conclude that section 201(b) provides authority for the rules we adopt today. Commenters generally agree that our authority to adopt these rules is defined by the section 201(b) requirement that carrier practices "for and in connection with" telecommunications services must be just and reasonable.<sup>321</sup> State, federal, and consumer advocacy commenters agree that section 201(b) supports our authority to address cramming,<sup>322</sup> and that our jurisdiction to adopt the existing Truth-in-Billing rules applies equally to these proposed rules.<sup>323</sup> The 17 State Attorneys General assert that adoption of Truth-in-Billing rules in 1999 firmly established that we have jurisdiction over the placement of any and all charges on telephone bills.<sup>324</sup>

116. The rules we adopt today, including requirements for disclosure on bills, carrier websites, and at the point of sale, are an incremental outgrowth of the Truth-in-Billing rules that have been in place for more than a decade. In the *First Truth-in-Billing Order*, the Commission concluded that a critical part of the effective operation of a competitive telecommunications marketplace is to ensure that telephone bills provide consumers with all of the information they need to make informed telecommunications choices, as well as the tools to protect themselves against telecommunications-related fraud, because the telephone bill is an integral part of the relationship between a carrier and its consumer.<sup>325</sup> The Truth-in-Billing rules adopted in the *First Truth-in-Billing Order* require that telephone bills: 1) be clearly organized, clearly identify the service provider, and highlight any new providers; 2) contain full and non-misleading descriptions of charges that appear therein; and 3) contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges on the bill.<sup>326</sup> On March 29, 2000, the Commission modified some of the Truth-in-Billing rules, but kept these basic

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<sup>316</sup> *First Truth-in-Billing Order*, 14 FCC Rcd at 7503, ¶20.

<sup>317</sup> *NPRM*, 26 FCC Rcd at 10054, ¶83.

<sup>318</sup> *Id.*

<sup>319</sup> *Id.* at 10055, ¶85.

<sup>320</sup> See *First Truth-in-Billing Order*, 14 FCC Rcd at 7503, ¶21.

<sup>321</sup> See, e.g., AT&T Comments at 17; CenturyLink Comments at 17; Public Interest Commenters Comments at 4-5; Michigan Public Service Commission Comments at 6; NASUCA Comments at 14-15; 17 State Attorneys General Comments at 24.

<sup>322</sup> See, e.g., Public Interest Commenters at 4-5; Michigan Public Service Commission Comments at 6; NEC Comments at 23-24; 17 State Attorneys General Comments at 24.

<sup>323</sup> See, e.g., 17 State Attorneys General Comments at 24.

<sup>324</sup> 17 State Attorneys General Comments at 24.

<sup>325</sup> See *First Truth-in-Billing Order*, 14 FCC Rcd at 7503, ¶20.

<sup>326</sup> See *id.* at 7496, ¶5.

requirements in place.<sup>327</sup> As the record overwhelmingly demonstrates, cramming continues to be a significant problem in the telecommunications marketplace and has resulted in millions of fraudulent charges being placed on consumers bills.<sup>328</sup>

117. The Commission determined that its authority to adopt the Truth-in-Billing rules, which are designed to deter both slamming and cramming, derives from sections 201(b) and 258 of the Act.<sup>329</sup> The Commission noted that section 201(b) requires that all carrier charges, practices, classifications, and regulations “for and in connection with” interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement.<sup>330</sup> The additional Truth-in-Billing rules we adopt today are aimed solely at cramming and equally rest on our section 201(b) authority over interstate services. Like the existing Truth-in-Billing rules, these new rules serve to deter carriers from engaging in unjust and unreasonable practices “for and in connection with” their telecommunications services that are subject to Title II generally and to section 201(b), specifically.

118. The Commission has made clear that billing for telecommunications services is an integral part of the provision of telecommunications services.<sup>331</sup> As the *Senate Staff Report* and the *Inc21.com* court made clear, carriers’ practice of placing non-carrier third-party charges on their own bills for their own telecommunications services enables cramming and attracts “fraudsters” who, the record amply demonstrates, exploit the carriers’ relationship with their telecommunications consumers to induce those consumers to pay unauthorized charges.<sup>332</sup> This carrier practice simultaneously makes the carriers’ bills for the telecommunications services they provide to consumers the vehicle by which unauthorized third-party charges are delivered to the carriers’ consumers and the device that makes it difficult for consumers to detect that the charges are unauthorized, not for a telecommunications service, or from a third party instead of from their carrier. This conclusion is further supported by other commenters and victims of cramming who state that they easily would have detected the unauthorized charges had they been on a separate bill and instead of on their telephone bill,<sup>333</sup> and by the South Dakota Public Utilities Commission’s description of a situation in which consumers in that state readily detected an unauthorized charge that they might easily have missed on a telephone bill as it was described in a manner that easily could have been taken as being associated with a telecommunications service.<sup>334</sup>

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<sup>327</sup> See *Order on Reconsideration*. Specifically, the *Order on Reconsideration*: 1) modified the requirement for identification of new service providers to apply only to subscribed services for which the provider places periodic charges on the bill (i.e., not per-transaction charges resulting from use of dial-around or directory assistance services—although such charges must be separated by provider); and 2) modified the “contact” requirement to allow for other electronic means in addition to the toll-free number, in limited cases where the customer does not receive a paper copy of the bill (for example billed by e-mail or Internet).

<sup>328</sup> See *infra* section III; see also *Senate Staff Report*.

<sup>329</sup> See *First Truth-in-Billing Order* at 7503, citing 47 U.S.C. §§ 201(b), 258. In addition, section 332 of the Act, 47 U.S.C. § 332, also provides us with jurisdiction to enact rules concerning CMRS carriers.

<sup>330</sup> See *First Truth-in-Billing Order* at 7503, citing 47 U.S.C. § 201(b).

<sup>331</sup> *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, Report and Order, 102 F.C.C.2d 1150 (1986), recon. denied, 1 FCC Rcd 445 (1986) (“*Detariffing Order*”).

<sup>332</sup> See *FTC v. Inc21.com*, 688 F.Supp.2d at 929; *Senate Staff Report* at 11.

<sup>333</sup> See, e.g., FCC Complaint 11-C00271946-1 (consumer would have realized the charges were fraudulent if the third party companies were billing the consumer directly).

<sup>334</sup> See Letter from Chris Nelson, Chairman, South Dakota Public Utilities Commission, to FCC (Feb. 15, 2012) at 1-2.

119. Over a decade ago, the Commission rejected arguments that its authority to combat cramming is limited to charges for telecommunications services on a carrier's own bill, and that it lacked jurisdiction to enforce its cramming rules against a carrier for non-carrier charges on the carrier's own bill to consumers.<sup>335</sup> In that case, the carrier, LDDI, billed unauthorized charges for a psychic hotline provided by a partner company and contended that the Commission did not have jurisdiction under section 201(b) because the psychic hotline was an enhanced service. The Commission concluded that "the practice was 'in connection with' telecommunications service because it was inextricably intertwined with LDDI's long distance service." It was being jointly marketed with LDDI's own services, was included on the bill LDDI mailed for its own charges, and LDDI received a portion of the enhanced service's "membership" fees.<sup>336</sup> The record in this proceeding shows that carriers continue to benefit financially from the placement of third-party charges on the bills for their own telecommunications services and that such charges often are described to look like they are associated with a telecommunications service provided by the carrier. We therefore conclude that the findings underlying the rules we adopt today are consistent with the Commission's findings in the LDDI case, and thus likewise within the Commission's section 201(b) authority.

120. Arguments that our section 201(b) authority applies only to charges for telecommunications services on telephone bills are also contrary to the text of the statute. Our jurisdiction extends to carrier practices "for and in connection" with telecommunications services, not just to carrier practices "for" telecommunications services.<sup>337</sup> Such an interpretation leads to irrational outcomes and thus is unreasonable. Under this view, the Commission would have jurisdiction over those specific line items on a carrier's bill that are in fact for a telecommunications service, but would be powerless to address even the most blatant fraud on the rest of the bill, including fraud by the carrier related to non-telecommunications services and charges that are misleadingly described as being for a telecommunications service, because those charges are not in fact for a telecommunications service. We conclude that our authority is not so limited.

121. A number of commenters argue that the rules we proposed in the *NPRM* are not "in connection with" carriers' telecommunications services and therefore fall outside our section 201(b) jurisdiction because the rules are aimed at governing the relationship between the carrier and the third parties to which it provides unregulated billing-and-collection services rather than the relationship between the carrier and the consumers to which it provides telecommunications services.<sup>338</sup> We disagree that our rules are aimed at the carriers' relationship with their customers for unregulated billing-and-collection services. As we explained in the Discussion section of this *Report and Order*<sup>339</sup> and in this discussion, our rules are designed to address the specific carrier practices that affect their telecommunications service consumers. Carriers would not be subject to the Truth-in-Billing rules, including the rules we adopt today, if they issued a separate bill on behalf of non-carrier third-parties instead of comingling their own and third-party charges on their own bill.

122. For all of these reasons, we disagree with those commenters who argue that the carrier practices at issue are not "for and in connection with" their telecommunications services.

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<sup>335</sup> See *Long Distance Direct, Inc. Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302 (2000) ("LDDI").

<sup>336</sup> See *id.*

<sup>337</sup> 47 U.S.C. § 201(b).

<sup>338</sup> See, e.g., BSG Reply Comments at 17-20; MetroPCS Communications, Inc. Comments at 16.

<sup>339</sup> See *supra* section III.

123. *The Detariffing Order.* We also disagree with commenters who suggest that our rules are aimed at regulating the billing-and-collection services carriers provide to third parties when the Commission deregulated those services in 1986 or at the carriers' relationship with such third-party purchasers of its billing-and-collection services.<sup>340</sup> In the *First Truth-in-Billing Order*, the Commission determined that the *Detariffing Order*<sup>341</sup> did not prevent it from requiring that carrier billing practices "for and in connection with" telecommunications services must be just and reasonable.<sup>342</sup>

124. In this regard, we note that several commenters appear to misunderstand our inquiry in the *NPRM* about whether the Commission has authority to prohibit carriers from placing non-carrier third-party charges on their own bills to their own consumers for their own telecommunications services, and whether we should adopt such a prohibition. We did not intend to suggest that we were considering prohibiting carriers from providing billing-and-collection services to third parties on a comprehensive basis. Our focus has been and remains carriers' practices on their own bills to consumers of telecommunications services. To be clear, the kind of prohibition about which we inquired would not prevent carriers from continuing to provide billing-and-collection services to third parties.

125. Prior to the *Detariffing Order*, these billing-and-collection services were deemed to be common carrier services<sup>343</sup> subject to section 201(b). Thus, both the carriers' own charges and the third-party charges they placed on their bills were related to the carriers' provision of regulated services: the telecommunications services provided to end-user consumers and the billing-and-collection services provided to third parties. When the Commission reclassified and deregulated carriers' billing-and-collection services, it did not require carriers to cease placing third-party charges on their own bills,<sup>344</sup> and carriers continued the practice. As we have noted, it is this practice of placing third-party charges on bills for telecommunications services that makes cramming possible, as hindsight and the record demonstrate. Indeed, the record demonstrates that carriers' practice of placing non-carrier third-party charges on their own bills for telecommunications services enables their customers for now-deregulated billing-and-collection services to defraud their consumers for regulated telecommunications services and even attracts new "fraudsters,"<sup>345</sup> further demonstrating that carriers' practice of placing third-party charges on their own bills for their own services is "for and in connection with" their telecommunications services.

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<sup>340</sup> See, e.g., ISO Comments at 3-7; CCTM Comments at 4.

<sup>341</sup> The *Detariffing Order* states that:

"Although carrier billing and collection for a communication service that it offers individually or as a joint offering with other carriers is an incidental part of a communications service, we believe that carrier billing or collection for the offering of another unaffiliated carrier is not a communication service for purposes of Title II of the Communications Act."

*Detariffing Order*, 102 F.C.C.2d at 1168.

<sup>342</sup> See *First Truth-in-Billing Order*, 14 FCC Rcd at 7506, ¶25 (citing 47 U.S.C. § 201(b)).

<sup>343</sup> We note that the term "telecommunications service" was first defined in the Telecommunications Act of 1996, and that many services that previously were deemed common carrier services fell under the new definition.

<sup>344</sup> See *Detariffing Order*.

<sup>345</sup> We do not suggest that all third parties engage in fraud. The record shows, however, that a significant percentage of the charges from third parties are unauthorized.

## B. First Amendment

126. We also sought comment on First Amendment considerations related to our proposed rules and the other proposals and issues raised in the *NPRM*.<sup>346</sup> Based on the record, we find that the rules we adopt today do not unconstitutionally burden carrier speech.

127. Commenters that addressed First Amendment issues generally argued that our rules must satisfy the standards set forth in *Central Hudson*,<sup>347</sup> an intermediate scrutiny standard which provides that a regulation of commercial speech will be found compatible with the First Amendment if: (1) there is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest.<sup>348</sup> CenturyLink asserts that the rules we proposed in the *NPRM* and adopt in this *Report and Order* fail these standards because they are not necessary to achieve our objective of an “educated consumer body.”<sup>349</sup> MetroPCS states that the rules we adopt today satisfy none of the three prongs of the *Central Hudson* test, but describes our interest as “assisting consumers in detecting and preventing placement of unauthorized charges on their telephone bills.”<sup>350</sup> Other commenters characterize our interest similarly.<sup>351</sup> Fewer commenters discussed the more lenient First Amendment standard set forth in *Zauderer*,<sup>352</sup> a case in which the Supreme Court held that disclosure requirements are consistent with the First Amendment so long as they are “reasonably related to the [government’s] interest in preventing deception of consumers.”<sup>353</sup> CenturyLink, for example, cautioned that disclosure requirements can offend the First Amendment, even under the *Zauderer* standard, but did not assert that the disclosure requirements proposed in the *NPRM* did so.<sup>354</sup> We also note that wireline carriers generally did not address First Amendment issues in their comments.

128. As a threshold matter, we note that untruthful or misleading commercial speech does not enjoy First Amendment protections.<sup>355</sup> Nor does misleading speech or speech concerning unlawful activity raise First Amendment concerns.<sup>356</sup> The record clearly indicates that a substantial percentage of non-carrier third-party charges are unauthorized, and many of the unauthorized charges are fabricated or otherwise fraudulent in violation of state and federal laws. The record demonstrates that in some cases, upwards of 90 percent of charges by some non-carrier third-parties are unauthorized.<sup>357</sup> The record also

<sup>346</sup> *NPRM*, 26 FCC Rcd at 10055, ¶¶ 86-87.

<sup>347</sup> See, e.g., MetroPCS Comments at 16-17; CenturyLink Comments at 20; Billing Concepts Comments at 11; CCTM Comments at 14; Online Business Association Comments at 8. See also *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) (“*Central Hudson*”).

<sup>348</sup> *Central Hudson*, 447 U.S. at 566.

<sup>349</sup> CenturyLink Comments at 20.

<sup>350</sup> MetroPCS Comments at 17-18.

<sup>351</sup> See, e.g., ISO Comments at 8; CCTM Comments at 10.

<sup>352</sup> *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) (“*Zauderer*”). The Commission in its *NPRM* cited both *Zauderer* and *Central Hudson*. *NPRM*, 26 FCC Rcd at 10055, nn. 162, 163.

<sup>353</sup> *Zauderer* at 651.

<sup>354</sup> CenturyLink Comments at 22.

<sup>355</sup> See, e.g., *Ibanez v. Florida Department of Business and Professional Regulation*, 512 U.S. 136, 142 (1994).

<sup>356</sup> See, e.g., *In re R. M. J.*, 455 U.S. 191, 203 (1982).

<sup>357</sup> Attorneys General of Illinois, Nevada and Vermont Comments at 2.

makes clear that many of the unauthorized charges are misleadingly described in a manner designed to make them appear to be associated with a telecommunications service in order to make it more difficult for consumers to detect and dispute them. Therefore, it appears that a significant percentage of the speech that the rules target is not protected by the First Amendment. Nevertheless, as the rules we adopt require speech in the form of mandatory disclosure and related format requirements as a means to combat unauthorized billing, the First Amendment is implicated. For the reasons set forth below, we hold that the disclosure and related formatting rules adopted today do not unconstitutionally burden speech.

129. We begin our analysis by determining the First Amendment standard of scrutiny applicable to those rules. The rules only implicate commercial speech<sup>358</sup> and, under well-established law, the First Amendment “accords a lesser protection to commercial speech than to other constitutionally guaranteed expression.”<sup>359</sup> Moreover, even within the category of commercial speech, the Constitution “accords varying levels of protection depending on the type of commercial speech at issue.”<sup>360</sup> As shown below, we believe that the more lenient *Zauderer* standard rather than the intermediate *Central Hudson* standard applies to the rules adopted herein.

130. The Supreme Court has long recognized that the government “has substantial leeway in determining appropriate information disclosure requirements for business corporations.”<sup>361</sup> That latitude stems from the “material differences between disclosure requirements and outright prohibitions on speech.”<sup>362</sup> Disclosure requirements, unlike speech bans, are not designed to prevent anyone from “conveying information.”<sup>363</sup> Instead, those requirements “only require [persons] to provide somewhat more information than they might otherwise be inclined to present.”<sup>364</sup> Where the required disclosure involves “only factual and uncontroversial information,”<sup>365</sup> the required disclosure “does not offend the core First Amendment values of promoting efficient exchange of information or protecting individual liberty interests.”<sup>366</sup> To the contrary, because “the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides,” a person’s “constitutionally protected interest in *not* providing any particular [noncontroversial] factual information . . . is minimal.”<sup>367</sup> The Supreme Court thus has held that the *Zauderer* standard, and not the intermediate *Central Hudson* standard, applies to the required disclosure of purely factual, non-controversial information that does not suppress speech.<sup>368</sup>

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<sup>358</sup> Commercial speech is “expression related solely to the economic interests of the speaker and its audience.” *Central Hudson*, 447 U.S. at 561. See *Jerry Beeman and Pharmacy v. Anthem Prescription*, 652 F.3d 1085, 1106 (9th Cir. 2011).

<sup>359</sup> *Central Hudson*, 447 U.S. at 564. See *Zauderer*, 471 U.S. at 637.

<sup>360</sup> *New York State Restaurant Ass’n. v. New York City Bd. of Health*, 556 F.3d 114 132 (2d Cir. 2009) (“*NY State Restaurant Ass’n*”). See *Milavetz Gallop & Milavetz v. United States*, 130 S.Ct. 1324 (2010).

<sup>361</sup> *Pac. Gas & Electric Co. v. Pub. Util. Comm’n of Calif.*, 475 U.S. 1, 15 n.12 (1986).

<sup>362</sup> *Zauderer*, 471 U.S. at 650. See *Int’l Dairy Foods Ass’n v. Boggs*, 622 F.3d 628, 641 (6<sup>th</sup> Cir. 2010).

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Nat’l Elec. Mfrs. Ass’n v. Sorrell*, 272 F.3d 104, 113 (2d Cir. 2001). *NY State Restaurant Ass’n*, 556 F.3d at 132.

<sup>367</sup> *Zauderer*, 471 U.S. at 651 (emphasis in original). See *Milavetz*, 130 S.Ct. at 1339-40.

<sup>368</sup> *Milavetz*, 130 S.Ct. at 1339.

131. We find that the *Zauderer* standard governs the constitutional review of the rules adopted herein.<sup>369</sup> Our rule requiring carriers to disclose blocking options on its face is a disclosure requirement. Although crafted as format requirements, the purpose and effect of rules requiring the segregation of non-carrier third-party charges and the provision of separate subtotals for carrier and non-carrier charges is the disclosure of third-party charges. All the disclosures compelled by the rules involve “only factual and uncontroversial information.”<sup>370</sup> None of the rules prohibit carriers “from conveying any additional information.”<sup>371</sup>

132. We find that the rules we adopt today easily satisfy the *Zauderer* standard. The purpose of those rules is to curtail unauthorized charges on telephone bills. As explained elsewhere in this order, the means we have chosen to achieve that objective, *i.e.*, requiring carriers to disclose blocking options, to segregate non-carrier third-party charges, and to provide separate subtotals for carrier and non-carrier charges, enhances consumers’ ability to detect and to prevent those unauthorized charges. By giving consumers greater ability to identify and prevent fraudulent telephone charges, the rules are “reasonably related to the [governmental] interest”<sup>372</sup> of preventing unauthorized charges on telephone bills.

133. Even if the commenters were correct in claiming that the intermediate three-part *Central Hudson* standard applies, however, we find that the rules pass constitutional muster. Under the first part of the *Central Hudson* test, we find that we have a substantial interest in assisting consumers in detecting and preventing placement of fraudulent, unauthorized charges on their telephone bills. The record is clear that cramming represents a major problem for consumers, with third-party billing providing approximately \$2 billion in annual revenue, and evidence that a substantial portion of this revenue represents fraudulent billing.<sup>373</sup> Cramming continues to be a major source of consumer complaints filed at the Commission, at the FTC, and the states.<sup>374</sup> Moreover, the courts have long recognized fraud prevention to be a substantial governmental interest under the *Central Hudson*.<sup>375</sup> We disagree with the commenter that suggests our interest lies primarily in educating consumers. Based on the record, we believe that our rules will lead to better consumer education about cramming, but the thrust of the rules is enabling consumers to detect and prevent placement of unauthorized charges on their telephone bills.

134. We also find that the rules we adopt today also satisfy *Central Hudson*’s second prong by advancing the government’s substantial interest. The FCC, through the Truth-in-Billing regulations, has a longstanding practice of regulating the format and organization of carrier invoices in order to “reduce . . . telecommunications fraud,” including cramming and to “aid customers in understanding their telecommunications bills.”<sup>376</sup> As discussed above, the record persuades us that these rules, *i.e.*, requiring carriers to disclose blocking options, to separate non-carrier third-party charges into a distinct section of

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<sup>369</sup> See *id.* at 1339-40.

<sup>370</sup> *Zauderer*, 471 U.S. at 650.

<sup>371</sup> *Milavetz*, 130 S.Ct. at 1340.

<sup>372</sup> *Zauderer*, 471 U.S. at 651.

<sup>373</sup> See *Senate Staff Report* at ii.

<sup>374</sup> See FCC Quarterly Reports on Informal Consumer Inquiries and Complaints (2011); FTC Halts Massive Cramming Operation That Illegally Billed Thousands, [www.ftc.gov/opa/2010/03/inc21.shtm](http://www.ftc.gov/opa/2010/03/inc21.shtm) (Mar. 1, 2010); Attorneys General of Illinois, Nevada and Vermont Comments at 2.

<sup>375</sup> See, e.g., *Edenfield v. Fane*, 507 U.S. 761, 770, (1993); *Pagan v. Fruchey*, 492 F.3d 766, 772 (6<sup>th</sup> Cir, 2007); *Guardian Plans Inc. v. Teague*, 870 F.2d 123, 132 (4<sup>th</sup> Cir. 1989). We note that at least one commenter admits that our rules may satisfy this prong. See CTTM Comments at 10-11.

<sup>376</sup> 47 C.F.R. § 64.2400(a).

the bill, and to provide separate subtotals for carrier and non-carrier charges, are needed to advance our interest in assisting consumers in detecting and preventing unauthorized charges on their telephone bills. If consumers know about blocking options offered by their carrier, they can take action to prevent cramming by blocking from their bills the types of charges that the record indicates are most likely to be unauthorized. Similarly, identifying these kinds of charges in a section of the bill that is separate and distinct from the portion of the bill that lists telecommunications charges, and putting a separate subtotal for each type of charge on the payment page of the bill, will alert consumers if their bills contain the crammed charges, clearly and conspicuously identify those kinds of charges, and enable consumers to scrutinize those charges to detect any that are unauthorized. That these rules advance our stated interest is further confirmed by information in the record that consumers have difficulty detecting unauthorized charges given current practices related to formatting of bills and describing charges.

135. With respect to the third prong of *Central Hudson*, the rules we adopt today are no broader than necessary to serve our substantial interests. To satisfy this prong of the test, we do not have to demonstrate that we have adopted the least restrictive means of achieving our objective, that our rules perfectly fit our stated interest, or that we have adopted the best of all conceivable means for achieving our objective.<sup>377</sup> Instead, this prong of the *Central Hudson* test requires only that our rules be proportionate to the substantial interest we intend to advance.<sup>378</sup> Given the magnitude of the problem reflected in the record, the rules we adopt today represent an incremental, moderate approach to the prevention of cramming. For example, our requirement to place non-carrier third-party charges in a distinct section of the bill separate from carrier charges is far less intrusive than the alternative — suggested by some commenters — of banning third-party billing altogether.<sup>379</sup> Our rules are narrowly crafted so that they are no more extensive than necessary to further our objective of enhancing the ability of consumers to detect and to prevent unauthorized charges on their telephone bills, and thus they satisfy the third prong of *Central Hudson*.<sup>380</sup>

## VI. FURTHER NOTICE OF PROPOSED RULEMAKING

136. As described in the *Report and Order*, the record reflects significant concern that bill formatting changes and greater transparency alone are not sufficient to deter the widespread problem of cramming. Commenters suggest a number of approaches that go beyond bill format changes, arguing that stronger measures, such as prohibiting all or most third-party charges from being placed on telephone bills or requiring carriers to obtain a consumer's affirmative consent before placing third-party charges on their own bills to consumers ("opt-in"), are necessary.<sup>381</sup> 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.<sup>382</sup> In fact, state attorneys general note, contrary to some carrier practices discussed in the *NPRM*, that recent consumer complaints do not indicate that carriers offered a blocking service to their consumers, even after those consumers

<sup>377</sup> *Bd. of Trs. of State Univ. of New York v. Fox*, 492 U.S. 469, 477 (1989); *Nat'l Cable & Telecomms. Ass'n v. FCC*, 555 F.3d 996, 1002 (D.C. Cir. 2009).

<sup>378</sup> *Nat'l Cable*, 555 F.3d at 1002.

<sup>379</sup> See CTTM Comments at iv, 3 and 10-11 (prohibition is most extreme option).

<sup>380</sup> See, e.g., BSG Comments at 11 and CTTM Comments at 10-11 (arguing against meeting this standard).

<sup>381</sup> See FTC Comments at 6; Florida AG Comments at 2; IURC Comments at 6; Iowa Utilities Board Comments at 9-10; Minnesota Attorney General Comments at 9; NASUCA Comments at 16; Virginia State Corporation Commission Staff Comments at 6; 17 State Attorneys General Comments at 25.

<sup>382</sup> See, e.g., 17 States Attorneys General Comments at 23-25.

complained about cramming.<sup>383</sup> These parties, who argue in favor of prohibiting third-party billing or requiring an opt-in approach, express concern that requiring carriers to place third-party charges in a separate section of the bill, by itself, will not effectively reduce cramming.<sup>384</sup> In fact, the FTC submits that recent enforcement actions have shown that placing third-party charges in a separate section of the bill did not help consumers prevent or identify the crammed charges.<sup>385</sup> Furthermore, state attorneys general claim that the separation of third-party charges does not address the “root problem” of cramming and “merely makes it somewhat less likely that the phone bill cramming will go unnoticed for several months.”<sup>386</sup> Should the Commission determine that additional measures are necessary, commenting consumer groups 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.<sup>387</sup>

137. We recognize that the FTC, consumer groups, and state commenters have already urged us to adopt much more stringent requirements, primarily either by prohibiting carriers from placing non-carrier third-party charges on their own bills or by adopting an opt-in requirement whereby all carriers would be prohibited from placing non-carrier third-party charges on their own bills to any consumers unless they first obtained affirmative consumer approval.<sup>388</sup> While the record already gathered shows some support for the conclusion that such measures would be effective at preventing cramming and directly address the carrier practice that both the *Senate Staff Report* and the *Inc21.com* court identified as enabling and even encouraging cramming, we seek additional comment on whether we should adopt additional measure to prevent cramming, such as an opt-in approach, and, if so, the best way to implement such measures. In order to adequately evaluate an opt-in approach, we believe that a more detailed record is needed, especially with respect to the structure and mechanics of an opt-in approach and how opt-in could be implemented for existing consumers whose carrier already may be placing non-carrier third-party charges on their telephone bills. We also seek to bolster the record here with respect to the Commission’s authority to adopt additional anti-cramming measures.

138. Additionally, Verizon recently agreed to settle a class-action lawsuit regarding cramming by agreeing to not place third-party charges on new consumers’ bills unless the new consumers give Verizon affirmative approval. As a result, in this *Further Notice*, we seek comment on further measures to prevent cramming, including an opt-in requirement similar to what Verizon has agreed to do. We seek additional detailed information on whether an “opt-in” approach is warranted and if so, how the opt-in requirement should be structured, and how best to implement such a mechanism.

139. As a threshold matter, we seek additional comment on whether an “opt-in” approach is warranted and how it should be structured. For example, should an opt-in requirement apply only to new consumers or to all consumers? Should an opt-in requirement, if adopted, apply to all third-party charges or should third-party charges for telecommunications services be exempt? Should the exemption apply to

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<sup>383</sup> See Attorneys General of IL, NV and VT Comments at 8.

<sup>384</sup> See, e.g., Attorneys General of IL, NV and VT Comments at 9; 17 State Attorneys General Comments at 19; Public Interest Commenters Reply Comments at 4-5.

<sup>385</sup> FTC Comments at 4-5.

<sup>386</sup> Attorneys General of IL, NV and VT Comments at 9.

<sup>387</sup> 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.

<sup>388</sup> See, e.g., 17 State Attorneys General Comments at 16; Public Interest Commenters Comments at 3; Nebraska Public Service Commission Comments at 3; FTC Comments at 5-6.