

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

In the Matter of)	
)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”))	CG Docket No. 11-116
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Truth-in-Billing and Billing Format)	CG Docket No. 98-170

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (VON Coalition)¹ hereby submits these comments in response to the *Further Notice of Proposed Rulemaking* (“FNPRM”) regarding consumer empowerment and the prevention of “cramming” – the unlawful practice of adding unauthorized charges to consumers’ telephone bills.² The Voice over Internet Protocol (VoIP) industry is diligent about protecting consumers from unauthorized charges and usually does not bill third party charges. Given the nature of the industry and lack of substantive evidence of any problem, the Commission should not apply the cramming rules to interconnected VoIP providers.

In this proceeding the Commission seeks comments concerning whether additional safeguards are needed to assist customers in detecting and preventing cramming.³ Specifically, the Commission proposes imposing additional safeguards on carriers that will require them to

¹ The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. Its members – including AT&T, Broadvox, BT, Cloud Communications Alliance, Google, iBasis, Microsoft, Nextiva, Skype, Vonage, and Yahoo – are developing and delivering voice and other communications applications that may be used over the internet.

² *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information Disclosure; Truth-in-Billing and Billing Format*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 11-116; CG Docket No, 09-158; CC Docket No. 98-170, FCC 12-42 (rel. April 27, 2012) (the “FNPRM”).

³ *See Truth in Billing Order; In the Matter of Truth-in-Billing and Billing Format, et al.*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005), *vacated in part sub nom. Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006).

obtain a consumer's affirmative consent before placing third-party charges on their own bills to consumers ("opt-in") and to place charges from third-parties in a separate section of the bill.⁴ The Commission also asks whether any of the rules proposed in the *FNPRM* should apply to providers of interconnected VoIP, though the Commission rejected doing so in the initial Report and Order.⁵ The Commission also seeks to know if alternative measures can be implemented to combat cramming.⁶

DISCUSSION

VON has previously demonstrated (and the Commission agreed) that there was no evidence supporting imposing cramming related obligations on the VoIP industry or that VoIP providers place on unauthorized charges on consumers' bills. Indeed, VoIP cases only make up less than 2% of all cramming complaints,⁷ and no billing complaints related to interconnected VoIP appear on the Commission's most recent Report of Informal Consumer Inquiries and Complaints.⁸

VON also submits that the proposed "opt-in" requirement or placing charges from third-parties in a separate section of the bill to combat cramming are unnecessary and should also not be imposed on the VoIP industry. VoIP provider bills generally bundle services, and their bills are both consistent and predictable. Moreover, the competitive nature of VoIP industry drives

⁴ See *FNPRM* at ¶ 3.

⁵ *Id.* at ¶47 (The record does not demonstrate a need for rules to address cramming for VoIP customers at this time.); ¶ 146 (seeking comments on the proposals, "to the extent that cramming issues develop for VoIP services").

⁶ See *FNPRM* at ¶ 53.

⁷ See Joel Gurin, *Unauthorized Fees: What's Hiding in Your Phone Bill?*, Official FCC Blog, Jul. 12, 2011, available at <http://www.fcc.gov/blog/unauthorized-fees-whats-hiding-your-phone-bill>. VoIP cases make-up only zero to two percent of all cramming complaints. Presumably the number is small enough that the Commission does not independently identify the number or percentage of complaints by VoIP customers, instead lumping VoIP into a category identified as "other." *Id.*

⁸ See Report of Informal Consumer Inquiries and Complaints; First Quarter, Calendar Year 20102 (rel. Aug. 15, 2011), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0601/DOC-314414A4.pdf.

innovation and practices that protect customers from unexpected charges without the need for Commissions regulations. Dissatisfied VoIP customers can simply change service providers at little or no transition cost.

I. The Proposed Regulations should not be Applied to VoIP because of Differences in VoIP Billing Platforms and Industry Practices.

VoIP product offerings and billing procedures vary fundamentally from other providers. The majority of VoIP service providers offer bundled plans that are based on a flat recurring fee for services and features and do not depend on the number, duration or distance of the calls.⁹ Customers generally purchase VoIP service seeking consistency and predictability in billing. VoIP providers distinguish themselves from their competitors by offering and promoting the consistency and predictability of their low monthly charges. Customers can easily and quickly identify any added charges impacting their expected monthly charge. This simple and easy billing structure used by VoIP industry is consistent with the intended goals of the proposed regulations.

The highly competitive nature of the VoIP industry also protects consumers against cramming. According to www.voipproviderslist.com, there are 1,186 VoIP providers in the United States. Competition creates substantial incentives to protect and fully inform customers about their service charges and any potential changes that could impact those charges (included changes in taxes and fees imposed on VoIP providers). As a result, consumers have a wide variety of choices, requiring VoIP providers to cater to consumer needs and offer their customers the protection and predictability they seek. Unexpected or hidden charges will drive consumer to change their VoIP providers. The highly competitive VOIP industry also creates a strong

⁹ Ooma offers unlimited domestic calling for a one time purchase price for the equipment with monthly state and regulatory taxes to be paid, *available at <http://www.ooma.com/buy>*. magicJack also offers unlimited domestic calling for a consistent recurring yearly fee, *available at <http://www.magicjack.com/plus-v05/>*.

incentive for VoIP providers to meet consumer demand and ensures that consumers are protected against cramming. Imposing additional rules and regulations on the growing and constantly innovating VoIP industry will stifle development and impose additional costs on service providers that will disproportionately impacts smaller VoIP companies and necessarily be passed through to consumers in higher rates. This could reduce competition and limit the availability of VoIP as an alternative means to the traditional service providers.

II. There is no evidence in the record that cramming is a problem for VoIP customers.

The *FNPRM* does not present any evidence that would warrant extending the proposed cramming rules to interconnected VoIP service providers. According to the *FNPRM*, the California Public Utilities Commission (“CPUC”) reported there were six VoIP cramming complaints (out of 2,430 total cramming complaints) in 2009 and 26 VoIP cramming complaints (out of 2,782 total cramming complaints) in 2010.¹⁰ The VoIP complaints represent only 0.2% of the total cramming complaints in 2009 and 0.9% for 2010. This evidence demonstrates that VoIP service providers bill only those charges that have been authorized by their customers and provide full disclosure of such charges (or resolve complaints before they are brought to the attention of regulators). The FCC should not burden the VoIP industry with new obligations where cramming or other billing issues have not been shown to exist.¹¹

¹⁰ See *FNPRM* at ¶ 10-11.

¹¹ Moreover, there is nothing in the record of this proceeding that demonstrates that VoIP providers bill for third parties, another source of cramming complaints.

CONCLUSION

The Commission should act in accordance with the recommendations herein.

Respectfully submitted,

VOICE ON THE NET COALITION

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