

**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)	CC Docket No. 98-170

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

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Introduction

The National Association of State Utility Consumer Advocates (NASUCA)¹ replies as follows to selected initial comments submitted in response to the Further Notice of Proposed Rulemaking (FNPRM).² NASUCA's initial comments in response to FNPRM,³ as well as its earlier comments over the past several years,⁴ have previously addressed some of the issues raised by other commenters.

I. The industry's denial of the problem is not credible.

Despite the body of evidence assembled over fifteen years demonstrating a consumer protection problem of considerable dimensions, much of the industry continues to deny the existence of the problem. That is itself a problem.

AT&T characterizes this rulemaking as "a solution in search of a problem."⁵ Yet a news story as recent as last week suggests that AT&T sought to saddle an Ipswich,

¹ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42, 27 F.C.C.R. 4436 (April 27, 2012); see 77 Fed. Reg. 30972 (May 24, 2012). By order dated June 29, 2012, the time for reply comments was extended for all commenters to July 20, 2012.

³ NASUCA Initial Comments in Response to Further Notice of Proposed Rulemaking (June 22, 2012) (NASUCA 6-22-12 Comments).

⁴ NASUCA Initial Comments in Response to Notice of Inquiry (Oct. 13, 2009) (NASUCA 10-13-09 Comments), pp. 42-57; NASUCA Initial Comments in Response to Notice of Proposed Rulemaking (Oct. 24, 2011) (NASUCA 10-24-11 Comments); NASUCA Reply Comments in Response to Notice of Proposed Rulemaking (Dec. 5, 2011) (NASUCA 12-5-11 Comments).

⁵ AT&T, Inc. (June 18, 2012), p. 8. See also Citadel Contact Systems, Inc. (June 25, 2012), p. 1.

Massachusetts small business owner with more than \$1 million in unauthorized charges and interest for phone calls to Somalia. According to the small business owner, the company's collection efforts "put [him] through three years of absolute hell." He reportedly wanted the matter publicized "so people in [his] position understand the vulnerability that exists."⁶ Although the amount of the now reportedly abandoned charges to this consumer is staggering by any comparison known to NASUCA, such stories are not unfamiliar to those accustomed to cramming enforcement work.⁷

⁶ "AT&T tosses lawsuit: Victim of phone hacking not dropping counterclaim," SalemNews.com, July 11, 2012; "AT&T offers to drop suit over bill – with a catch," SalemNews.com, July 10, 2012; "Ipswich co. won't back down over \$1.15M hacked phone bill," BostonHerald.com, July 10, 2012. According to the news reports, the calls were billed at \$22 per minute, and many were allegedly shown as coming from the same line at the same time. According to the consumer's attorney, AT&T became aware of the calls as soon as they began but allowed them to continue for six days.

⁷ On March 1, 2007, the Iowa Utilities Board received a complaint (file no. C-2007-0133) from a Des Moines, Iowa small business owner against AT&T involving \$18,768.29 in charges for a series of calls allegedly placed December 23-24, 2006, most of them to the Philippines, India and "Mobile IP" (billed at \$11.59, \$14.27, and \$14.35 per minute, respectively). Several of the calls were very long: 226, 267, 355, 361 minutes. According to the consumer, someone hacked into the voice mail pass codes and programmed the system's call forwarding feature to use AT&T's 10-10 code to make the fraudulent calls. When the consumer protested the bill, AT&T offered to settle for \$12,801.24. By response dated March 20, 2007, AT&T acknowledged there was no contractual relationship between the complainant and AT&T but claimed the consumer was responsible for payment, citing FCC Tariff 30, section 5 ("Casual Calling Services"). The response claimed it is the consumer, not AT&T, who controls security. It stated that unauthorized calls delivered to AT&T by the LECs are indistinguishable from legitimate calls and that AT&T has a common carrier obligation to complete them. On May 8, 2007, Iowa Utilities Board staff issued a proposed resolution on the complaint finding the charges were unauthorized and therefore in violation of Iowa's cramming prohibition. AT&T by counsel subsequently wrote the consumer seeking collection. The letter cited *AT&T v. Jiffy Lube*, 813 F. Supp. 1164 (D. Md. 1993), for the proposition that consumers are responsible for all calls made from their number, whether authorized or not, also claiming that businesses that access AT&T's network without a contract are bound by AT&T's tariffs and/or Business Service Agreement. The consumer forwarded this letter to Iowa Utilities Board staff, which advised AT&T to discontinue the collection action. AT&T did so. The outcome on this complaint followed the work of a number of NASUCA member offices and others in the "modem hijacking" cases (see NASUCA 10-13-09 Comments, pp. 51-52), as well as the FTC's work in *FTC v. Verity Intern., Ltd.*, 335 F. Supp.2d 479 (S.D.N.Y. 2004), *aff'd in relevant part*, 443 F.3d 48 (2d Cir. 2006). In *AT&T Corp. v. Midwest Paralegal Services, Inc.*, 2007 WL 1341448, 2007 U.S. Dist. Lexis 33546 (E.D. Wis. 2007), the court denied AT&T's motion for summary judgment under similar circumstances. Distinguishing *Jiffy Lube* and citing *United Artists Payphone Corp. v. New York Tel. Co.*, FCC 93-387, 8 F.C.C.R. 5563 (1993), the court concluded the consumer (i) had not presubscribed to AT&T and (ii) had provided evidence it had taken reasonable steps to control unauthorized calling on its system, so (iii) there was a genuine issue of fact as to whether the consumer was a "customer" of AT&T within the meaning of the tariff. See also *AT&T Corp. v. Ridge Co.*, 2008 WL 2557451 (N.D. Ind. 2008) (granting summary judgment to consumer).

CenturyLink argues that rulemaking “would unfairly tip the balance against service providers and carriers who seek to provide lawful and easy-to-do business.”⁸ NASUCA respectfully disagrees. The “practical reality” is that many consumers who receive bills “simply pay them,” while others “are not willing to engage in extended debates with billers, as they lack the time or energy or simply are fearful that an alleged creditor will damage their credit [scores] and thus limit their access to credit unless they pay as demanded.”⁹ Companies, employing a “hard sustain” approach to collections, “capitaliz[e] on the inattention and fear of consumers or on the disparity of power between them and the persons they bill to extract payments which, in many cases, probably are not rightfully theirs.”¹⁰

Verizon argues it monitors complaints and seeks to resolve them quickly.¹¹ While such efforts may be commendable, the oversight function is not properly left solely to the industry. The facts underlying complaints are commonly hidden from the consumer’s view amidst industry complexities and are not easily discerned. Consumer and industry perspectives often contrast. Both deserve airing. Illustrative of the difference, NASUCA has previously documented an instance in which a company sent the consumer a letter stating the company had “thoroughly investigate[d]” alleged crams and “unequivocally determine[d] that each and every call was authorized and accepted,” when, in fact, the complaint was legitimate, and the company had not conducted a thorough investigation.¹²

⁸ CenturyLink (June 25, 2012), p. 3.

⁹ *FTC v. Verity Intern., Ltd.*, 124 F.Supp.2d 193, 203 (S.D.N.Y. 2000).

¹⁰ *Id.* See *FTC v. Verity Intern., Ltd.*, 443 F.3d 48, 54 (2d Cir. 2006).

¹¹ Verizon and Verizon Wireless (June 25, 2012), pp. 13-14.

¹² NASUCA 12-5-11 Comments, p. 26.

Two industry commenters complain that LEC oversight can be anti-competitive,¹³ one that LEC oversight is at times overdone.¹⁴ There is a public interest that demands a public accountability.

Billing Concepts, Inc., doing business as BSG Clearing Solutions, now the subject of a civil contempt proceeding brought by the Federal Trade Commission regarding the company's billings for certain supposed "enhanced" services,¹⁵ advises it will follow the lead of Verizon, AT&T and CenturyLink and "cease placing *non-telecommunications* third-party charges on consumers' bills."¹⁶ Billing Concepts faults the Commission for allegedly only "vaguely" quantifying the extent of the problem and for not responding to its previous arguments, while also maintaining that the Senate Commerce Committee report and the *Inc21* court decision are largely devoid of discussion of cramming with respect to wireline *telecommunications* services.¹⁷ On the last point, another commenter goes as far as to assert "the record is devoid of any evidence that traditional telecommunications service providers, including collect calling providers, engage in cramming or engage in practices that abuse consumers."¹⁸

¹³ Coalition for a Competitive Telecommunications Market (June 25, 2012), p. iii ("winback' programs . . . leverage LEC control over 1+ services in anticompetitive and potentially unlawful ways"); Citadel Contact Systems, Inc. (June 25, 2012), pp. 6-7 ("allowing LECs to be gatekeepers would be akin to the proverbial situation of allowing the wolf to guard the sheep").

¹⁴ See NASUCA 12-5-11 Comments, p. 26.

¹⁵ Press Release, Federal Trade Commission, "FTC Seeks Return of \$52 Million Worth of Bogus Phone Cramming Charges; Agency Charges Nation's Largest Third-Party Billing Company with Contempt" (May 8, 2012).

¹⁶ Billing Concepts, Inc. (June 25, 2012), p. ii (emphasis in original).

¹⁷ *Id.*, p. 7 (emphasis added).

¹⁸ 1 800 Collect, Inc. (June 26, 2012), p. 5.

As NASUCA previously observed, Billing Concept's own quantitative argument is flawed because Billing Concepts fails to acknowledge what the Senate Commerce Committee did acknowledge, namely, that it is all but impossible to determine the precise percentage of charges that are in fact unauthorized.¹⁹ The Commission did respond to Billing Concept's argument. It responded by observing that the volume of complaints understates the extent of consumer frustration with cramming, that it often takes consumers months or years to detect the unauthorized charges, if they detect them at all.²⁰ The Commission further responded by noting the finding of the *Inc21* court that only five percent of the consumers billed in that case were even aware of the charges.²¹

Like observations apply to billings for telecommunications services, as recently attested by a series of complaints before the Iowa Utilities Board involving continued billing for traditional long distance services after discontinuance of the services.²² More generally, NASUCA has provided abundant evidence that unauthorized charges for

¹⁹ See NASUCA 12-5-11 Comments, pp. 25-26.

²⁰ FNPRM ¶ 22.

²¹ *Id.* ¶ 25.

²² Complaint filed Oct. 24, 2011, file no. FCU-2011-0031 (Nationwide Long Distance Service, Inc.) (service discontinued in January 2009 but billing continued through July 2011); complaint filed Oct. 6, 2011, file no. FCU-2012-0001 (Consumer Telcom, Inc.) (service discontinued in September 2009 but billing resumed from March 2010 through October 2011); complaint filed Dec. 20, 2011, file no. FCU-2012-0003 (Reduced Rate Long Distance) (service discontinued in April 2009 but billing continued through August 2011); complaint filed Mar. 1, 2012, file no. FCU-2012-0007 (Consumer Telcom, Inc.) (service discontinued in March 2009 but billing continued through December 2011); complaint filed May 11, 2012, file no. FCU-2012-0012 (MCI Communications Services, Inc.) (service discontinued in February 2003 but billing continued through April 2012). See *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, FCC 05-29, 20 F.C.C.R. 4560 (2005) ¶¶ 3, 18, 20, 42, 52 (seeking to ensure that an IXC would not continue billing a customer for recurring non-usage related monthly charges after the customer had contacted the LEC to terminate the IXC's service). With respect to long distance resellers, see also *Policies and Rules concerning Changing Long Distance Carriers*, FCC 93-202, 8 F.C.C.R. 3215 (FCC 2003) ¶ 22 (underlying carrier Sprint as self-described agent of reseller); *Restatement, Third, of Agency* § 5.03 (2006), cmt. b ("imputation [of notice from agent to principal] encourages a principal to develop effective procedures for the transmission of material facts, while discouraging practices that isolate the principal . . . from facts known to an agent").

telecommunications services have been crammed with disturbing regularity onto consumer phone bills and, indeed, that the billings of some of the most notorious crammers have been billings for telecommunications services.²³

No purpose would be served by repeating the evidence here, but it is worth highlighting (i) the criminal referenced in the U.S. Justice Department press release previously cited by NASUCA operated a cramming scheme that placed approximately \$35 million in bogus collect call charges on consumer telephone bills,²⁴ and (ii) the Commission's enforcement actions last year against Norristown Telephone, Main Street Telephone, Cheap2Dial Telephone, and VoiceNet Telephone²⁵ all involved billings for traditional long distance service. While it is no doubt true, as all would assuredly hope, that most billings for telecommunications services are legitimate, it hardly follows that consumers should be deprived of needed protection when – not if – they are victimized by billings for telecommunications services that are illegitimate.

The industry argues in unison that competition will solve the problem, that the threat of losing a customer will provide an incentive to each company to implement a solution on its own.²⁶ If that were so, the problem would never have reached the dimensions it did. History, economics and common sense suggest there are some

²³ NASUCA 6-22-12 Comments, pp. 5-6 and 21 n. 71; NASUCA 12-5-11 Comments, pp. 22-24; NASUCA 10-24-11 Comments, p. 27 n. 90; NASUCA 10-13-09 Comments, pp. 49-52.

²⁴ NASUCA 6-22-12 Comments p. 21 n. 71, citing Press Release, U.S. Dep't of Justice, "Florida Man Sentenced to Over 21 Years in Prison for Operating Cramming Scheme While Incarcerated – Billed Telephone Customers for Approximately \$35 Million" (Sept. 2, 2010).

²⁵ *Norristown Telephone Co., LLC*, FCC 11-88, 26 F.C.C.R. 8844 (FCC 2011); *Main Street Telephone Co.*, FCC 11-89, 26 F.C.C.R. 8853 (FCC 2011); *Cheap2Dial Telephone, LLC*, FCC 11-90, 26 F.C.C.R. 8863 (FCC 2011); *VoiceNet Telephone, LLC*, FCC 11-91, 26 F.C.C.R. 8874 (FCC 2011).

²⁶ Verizon and Verizon Wireless (June 25, 2012), p. 1; Independent Telephone and Telecommunications Alliance (June 25, 2012), p. 2; CTIA (June 25, 2012), p. 6; Voice on the Net Coalition (June 25, 2012), pp. 2-4.

problems market forces cannot be relied upon to correct, among them consumer abuses that enhance a market participant's profits. But for regulatory action, or the spotlights of ongoing legislative and regulatory activity, it is more profitable for even mainstream carriers to encourage, or at least take no action to curtail, such practices.²⁷ Congress has implicitly recognized the inability of competitive market forces to curb consumer protection abuses by, in the case of wireless services, declining to preempt state authority to police such abuses.²⁸ The Commission, having recognized the inability of market forces to curb slamming abuses,²⁹ should do the same with respect to cramming abuses.

The Commission has reached the right conclusion. Existing incentives are not sufficient to protect consumers.³⁰ The more challenging question is what to do.

II. Consumer review of phone bills is not the solution.

One commenter argues that consumers should review their bills and that “simple, effortless, and manageable diligence and assiduousness” will reveal the cramming.³¹ The

²⁷ See S. Hrg. 112-171, “Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose,” 112th Cong., 1st Sess., Committee on Commerce, Science and Transportation, United States Senate (July 13, 2011), p. 5 (“Since 2006, AT&T, Qwest, and Verizon have earned more than \$650 million through third-party billing”).

²⁸ 47 U.S.C. § 332(c)(3)(A); see H.R. Rep. No. 103-111, 103rd Cong., 1st Sess (1993), p. 261: “It is the intent of the Committee that the states would still be able to regulate the terms and conditions of these services. By ‘terms and conditions,’ the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters . . . or such other matters as fall within a state’s lawful authority. This list is intended to be illustrative only” See also *Ting v. AT&T*, 319 F.3d 1126 (9th Cir. 2003) (competitive telecommunications marketplace envisioned by federal law depends on, and creates much larger role for, state contract and consumer protection laws, such that availability of state law remedies is essential part of protection for consumers).

²⁹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, FCC 07-223, 23 F.C.C.R. 493 ¶ 2 (2008) (“This practice, known as ‘slamming,’ distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies”).

³⁰ FNPRM ¶ 43.

proceedings before the Senate Commerce Committee, including the statement of Susan Eppley,³² support a contrary conclusion. While NASUCA fully supported the recent rule change requiring wireline carriers to place non-carrier third-party charges in a distinct bill section,³³ the Commission has itself acknowledged significant concern that bill formatting changes and greater transparency alone are not a sufficient protection for consumers.³⁴ As NASUCA has urged before, quoting the *Inc21* court, the burden should not be placed on defrauded consumers to avoid charges that were never authorized to begin with. Nor should such consumers be required to endure the hassle of obtaining reimbursements, including the investments of time, trouble, aggravation and money, especially when offending companies are uncooperative in providing remedies.³⁵

III. Strengthening industry standards for reviewing merchants before they are permitted to include their charges on a consumer's phone bill is not the solution.

A number of commenters suggest the Commission, in lieu of an opt-in mechanism, require “stronger industry standards for reviewing merchants before they are

³¹ America Net (June 26, 2012), p. 4. See also Silv (June 21, 2012), p. 3.

³² S. Hrg. 112-171, “Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose,” 112th Cong., 1st Sess., Committee on Commerce, Science and Transportation, United States Senate (July 13, 2011), p. 95: “For the next 2 months, I combed through every single AT&T bill for all of our accounts, set up a block on each account to prevent future cramming, and to my best estimation, I spent about 15 hours dedicated to this issue alone. Those hours do not include the time our accounting department and area managers have spent on it.”

³³ NASUCA 10-24-11 Comments, pp. 28-29.

³⁴ FNPRM ¶ 136.

³⁵ NASUCA 10-24-11 Comments, p. 13, quoting *FTC v. Inc21.com*, 745 F.Supp.2d 975, 1003-05 (N.D. Cal. 2010), *aff'd mem.*, No. 11-15330, 2012 WL 1065543 (9th Cir. 2012).

permitted to include their charges on a consumer's phone bill.”³⁶ As the Commission has observed, however, citing the Senate Commerce Committee staff report and the *Inc21* court decision, third parties that engage in cramming evade detection by means 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 the companies.³⁷ For these reasons, the Commission has concluded that the benefits of a due diligence requirement are likely to be minimal.³⁸ NASUCA agrees.³⁹

IV. With respect to wireline services, there is more support for a prohibition on third-party billing, with exceptions, than there is for an opt-in requirement. There is little or no persuasive opposition to such a prohibition.

The Center for Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center on behalf of its low-income clients and National Consumer League (“Joint Consumer Commenters”), noting earlier support from other commenters, including NASUCA, urge the Commission to prohibit wireline third-party billing for “unaffiliated non-telecommunications-related services.”⁴⁰ These commenters support an exception for telecommunications services, including 1+ long distance and pay-per-call dialing (dial-around long distance, collect calling,

³⁶ See, for example, Attorney General Mark L. Shurtleff of Utah (June 27, 2012).

³⁷ FNRPM ¶ 103.

³⁸ *Id.*

³⁹ Such a due diligence requirement would also do nothing to address the cramming of a billing company's own services onto a consumer phone bill. See NASUCA 6-22-12 Comments, nn. 7 and 27 and accompanying text.

⁴⁰ Center for Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center on behalf of its low-income clients and National Consumer League (June 25, 2012), p. 16.

directory assistance, inmate calling).⁴¹ They also support an exception for services of satellite television, competitive DSL and certain dial-up Internet service providers that are marketed by the billing company as part of a bundled package pursuant to a direct, contractual relationship.⁴²

The Massachusetts Department of Telecommunications and Cable expresses doubt over whether an opt-in requirement will be strong enough to protect consumers.⁴³ The Mississippi Public Service Commission echoes this concern, observing that creative con artists will be able to circumvent any opt-in mechanism.⁴⁴ The Virginia State Corporation Commission Staff, like the Joint Consumer Commenters, supports a prohibition on third-party billing.⁴⁵

Although the industry generally opposes regulatory action, its own impending actions, or at least those of Verizon, AT&T, CenturyLink and now Billing Concepts,⁴⁶ representing the lion's share of the wireline segment of the industry, support a prohibition on wireline third-party billing, with exceptions. As previously observed,⁴⁷ each of these companies will apparently end wireline third-party billing, with exceptions similar to those in Chairman Rockefeller's bill and to those advocated by the Joint Consumer Commenters.

⁴¹ *Id.*, p. 17.

⁴² *Id.*, pp. 17-18.

⁴³ Massachusetts Department of Telecommunications and Cable (June 25, 2012), p. 8.

⁴⁴ Mississippi Public Service Commission Reply Comments (July 9, 2012), p. 2.

⁴⁵ Virginia State Corporation Commission Staff (June 25, 2012), p. 1.

⁴⁶ Billing Concepts, Inc. (June 25, 2012), p. ii.

⁴⁷ NASUCA 6-22-12 at 8-9, citing FNPRM ¶ 44; text accompanying note 16 above.

Verizon states: “[r]ather than continuing its efforts to ferret out illegitimate providers of these services, Verizon decided to take the bold step of ceasing this third-party billing altogether.”⁴⁸ Bold or otherwise,⁴⁹ the step speaks volumes. If it is more trouble than it is worth for Verizon, along with AT&T, CenturyLink and Billing Concepts, to separate the legitimate from the illegitimate, the same must be so across the wireline segment of the industry as a whole, more so when the assessment is shared by the many Joint Consumer Commenters and by Senator Rockefeller following the work of the Senate Commerce Committee staff and the hearing over which he presided.

Many commenters, including Attorney General Mark L. Shurtleff of Utah, Representative Kevan Abrahams of the Nassau County (New York) Legislature, a number of religious and other groups representing minority interests, including black Americans and Hispanic Americans, a number of small business owners, including minority small business owners, and a number of industry commenters, claim substantial benefits from, and hence a need for, pay-per-call dialing (collect calls and dial-around long distance) or 1+ long distance competitive alternatives or both, as well as a need for third-party billing in conjunction with same.⁵⁰ Many of these commenters argue there is

⁴⁸ Verizon and Verizon Wireless (June 25, 2012), p. 12.

⁴⁹ Verizon had been facing (i) the conclusion of the Senate Commerce Committee that third-party billing, with some exceptions, appeared to be primarily used by con artists and unscrupulous companies to scam telephone customers, and (ii) a nationwide class action lawsuit alleging that an associated-in-fact enterprise consisting of Verizon, billing aggregators and third-party providers had violated the Racketeer Influenced Corrupt Organization Act (RICO) by deliberately billing and collecting for millions of dollars of charges they knew were unauthorized and for fraudulently exploiting a billing and collection system they knew lacked sufficient checks and safeguards to prevent unauthorized charges from being added to customer phone bills. S. Hrg. 112-171, “Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose,” 112th Cong., 1st Sess., Committee on Commerce, Science and Transportation, United States Senate (July 13, 2011), p 4; *Moore v. Verizon Communications, Inc.*, No. CV 09-1823, 2010 WL 3619877 (N.D. Cal. 2010) (denying motion to dismiss RICO claim).

⁵⁰ See, for example, Representative Kevan Abrahams (June 22, 2012) (referencing more than one million calls last year between the U.S. and locations throughout Africa and the Caribbean); Asociacion

already an opt-in mechanism in place for pay-per call dialing⁵¹ and for PIC changes⁵² and that overlaying an additional opt-in mechanism would be unworkable.⁵³ Many of these commenters claim that an inability to use third-party billing would be costly.⁵⁴

These expressed concerns, at least insofar as specifics are provided, are limited to telecommunications services. In the main, they ratify what the Commission has already determined, namely, that such services serve legitimate and beneficial purposes.⁵⁵

Indeed, as explained above, there is widespread agreement, both among consumer groups and within the wireline segment of the industry by its actions, that such services should be excepted from a prohibition on wireline third-party billing. A prohibition on third-party billing with an exception for telecommunications services would accordingly

Interamericana de Hombres de Empresa (June 25, 2012) (referencing more than 11 million calls last year between the U.S. and locations throughout Mexico and Latin America; also referencing a number of Hispanic-owned wireline telecommunications businesses that offer collect calling or long distance services); Billing Concepts, Inc. (June 25, 2012), p. 2 (“Americatel advertises rates as low as 1.9¢ per minute to Mexico using its 10-10 dial-around service, and DAR Communications offers rates as low as 3¢ per minute to Brazil”).

⁵¹ See, for example, Anquos Cosby, Frontline Evangelistic Ministries (June 22, 2012) (wireline carriers “inherently provide opt-in through the affirmative process of placing a collect or long distance call”).

⁵² Coalition for a Competitive Telecommunications Market (June 25, 2012), p. 3 (“providers of competitive 1+ services are already subject to . . . FCC carrier change rules which were implemented to address ‘slamming’”).

⁵³ See, for example, Attorney General Mark L. Shurtleff (June 27, 2012) (“implementing an additional consent process is unworkable for the wireline industry”); Lawrence Kaggwa, Ph.D., Howard University (June 22, 2012) (“In the event a collect call is made from a friend or loved one, which could very well be urgent in nature, he or she would be precluded from receiving the call unless the recipient has previously opted in”); 1 800 Collect (June 26, 2012), p. 7 (“Forcing consumers to make a single advance decision with respect to collect calls upends the value and utility of the collect calling service model”).

⁵⁴ See, for example, United States Hispanic Chamber of Commerce (June 22, 2012) (“Third-party billing for wireline telecommunications services allows businesses to consolidate multiple services onto a single bill, thereby eliminating overhead and administrative costs”); Miranda Law Group (June 18, 2012) (“Many competitive telecommunications providers rely upon third-party billing as the only cost-effective means of invoicing”).

⁵⁵ FNPRM ¶¶ 41, 86, 90.

address the concerns being expressed by these commenters, to the extent the concerns are legitimate.

Senator Rockefeller's bill, S. 3291, the Fair Telephone Billing Act of 2012, would extend the wireline prohibition on third-party billing to interconnected VoIP services, based on findings that consumers "often use the service as the primary telephone line for their residences and businesses" and "should be protected from the same vulnerabilities that affected third-party billing through wireline telephone numbers." As the nation transitions to a broadband network, the National Association of Regulatory Utility Commissioners ("NARUC") further urges the Commission to "structure its cramming rules to provide protections to broadband service customers as well as voice service customers."⁵⁶ NASUCA agrees with the senator and with NARUC.⁵⁷

V. With respect to all modes of telecommunications service, there is added support for a rule explicitly prohibiting cramming. There is little or no persuasive opposition to such a rule.

As more fully explained in NASUCA's initial comments in response to further notice of proposed rulemaking, a prohibition on wireline third-party billing, with exceptions including an exception for telecommunications services, will do nothing to address the cramming of unauthorized charges for telecommunications onto consumer phone bills, nothing to address the cramming of a company's own unauthorized charges onto consumer phone bills, and nothing to address the cramming of unauthorized charges

⁵⁶ National Association of Regulatory Utility Commissioners (June 25, 2012), p. 4.

⁵⁷ CenturyLink argues that most third-party billings are not "inextricably intertwined" with the billing carrier's service and that the Commission therefore lacks authority under 47 U.S.C. § 201(b) to prohibit them. CenturyLink (June 25, 2012), p. 13. NASUCA has previously replied to the argument. NASUCA 12-5-11 Comments, p. 33.

onto wireless phone bills.⁵⁸ Such a prohibition will similarly do nothing to prompt the industry to replace supposed forms of verification or authentication that do not verify or authenticate with forms of verification or authentication that do so.⁵⁹ Such a prohibition will thus not by itself accomplish the change within the industry that needs to be accomplished, particularly looking forward.

As more fully explained in NASUCA's initial comments in response to further notice of proposed rulemaking, the most direct solution to the problem is a rule prohibiting the billing of unauthorized charges on phone bills.⁶⁰ One early reply commenter, the Mississippi Public Service Commission, supports this solution, calling it the "best solution."⁶¹ No commenter takes the non-starter position that companies should be free to bill consumers for unauthorized charges.

Representative Abrahams urges the Commission to reject policies that can needlessly hinder business growth and job creation, including minority business growth and job creation.⁶² NASUCA's proposal does not do so. It promotes legitimate business growth and legitimate job creation, minority and otherwise, targeting only charges that are unauthorized, only activity that is illegitimate.

Verizon argues that companies should be free to develop innovative solutions that prevent unauthorized billing and thus to protect consumers.⁶³ NASUCA's proposal does

⁵⁸ NASUCA 6-22-12 Comments, pp. 5-11.

⁵⁹ NASUCA 6-22-12 Comments, pp. 11-17.

⁶⁰ NASUCA 6-22-12 Comments, pp. 17-22.

⁶¹ Mississippi Public Service Commission, Reply Comments (July 9, 2012), p. 2.

⁶² Representative Kevan Abrahams (June 22, 2012).

⁶³ Verizon and Verizon Wireless (June 25, 2012), pp. 3, 12.

not impinge upon such freedom. It simply provides a public accountability that will hold the industry and each company responsible for the effectiveness of the policies and practices it implements and hence for the manner in which the freedom is exercised.

CenturyLink argues that not all cramming is the result of bad intent.⁶⁴ Attorney General Shurtleff observes that when someone steals from a convenience store, the store is not shut down, and instead, the thief is pursued.⁶⁵ No one contends a company should be held responsible for conduct beyond its control. As NASUCA previously observed, however, companies that bill for unauthorized services are commonly not innocent bystanders. They know or should know that defective methods of authentication are often and fraudulently used to victimize consumers. Yet they continue to rely upon such faulty methods to approve the resulting charges. They profit from the system and from the defects. Under well established authority,⁶⁶ they properly bear responsibility for the integrity of the system and in particular for the legitimacy of the authentication processes.

The Joint Consumer Commenters observe that existing methods of verification and authentication in the Mobile Marketing Association guidelines need to be strengthened,⁶⁷ as NASUCA has urged and supported as respects both wireline and wireless services.⁶⁸ NASUCA's proposal would give the industry and each company a

⁶⁴ CenturyLink (June 25, 2012), p. 2 n. 3.

⁶⁵ Attorney General Shurtleff of Utah (June 27, 2012).

⁶⁶ NASUCA 6-22-12 Comments, p. 20 n. 68.

⁶⁷ Center for Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center on behalf of its low-income clients and National Consumer League (June 25, 2012), p. 19.

⁶⁸ NASUCA 6-22-12 Comments, pp. 11-17.

needed incentive, continuing over time, as market changes occur, to see that the methods it employs are and remain effective.

The adoption of a regulation prohibiting cramming is long overdue. Such a regulation would establish a needed expectation of the industry. It would provide needed protection to consumers. See note 7 above.

Conclusion

With respect to wireline services, the Commission should propose and adopt a rule prohibiting third-party billing, with exceptions. With respect to all modes of telecommunications service, the Commission should propose and adopt a rule prohibiting the placement of unauthorized charges on phone bills.⁶⁹

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⁶⁹ When and as resources permit, the Commission should consider proposing and adopting a rule to the effect that misrepresentations or deceptive conduct in the course of marketing a communications service, or a product or service to be included on a communications bill, is unlawful. When and as resources permit, the Commission should consider the FTC's recommendations regarding advertising disclosures. See NASUCA 10-24-11 Comments, pp. 27-28, 29.