

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 Format)	CG Docket No. 98-170
To: The Commission		

REPLY COMMENTS

T-Mobile USA, Inc. (“T-Mobile”) hereby replies to comments submitted in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Although a small number of parties urge the Commission to extend its cramming regulations to Commercial Mobile Radio Services (“CMRS”),² the record fails to demonstrate that cramming is a significant problem for the CMRS industry. To the contrary, given the relatively small number of cramming complaints involving CMRS carriers, the record demonstrates that competitive market

¹ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”),* CG Docket No. 11-116, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-42 (rel. Apr. 27, 2012) (hereinafter “*R&O*” or “*FNPRM*”).

² See Massachusetts Department of Telecommunications and Cable Comments at 5-7 (“MDTC”); Comments of Center for Media Justice, Consumer Action, Consumer Federation of America, National Consumer Law Center, and National Consumer League at 8-11 (“Joint Consumer Group”); Michigan Public Service Commission Comments at 3-4 (“MI PSC”); National Association of Regulatory Utility Commissioners Comments at 6-7 (“NARUC”); National Association of State Utility Consumer Advocates Comments at 9-10 (“NASUCA”); Soren Campbell Comments at 4.

forces and continuing voluntary industry efforts are sufficient to prevent widespread cramming problems.

Furthermore, as T-Mobile previously demonstrated, the burdens associated with implementing any CMRS cramming regulations would far outweigh any perceived benefits. Adoption of such regulations also would be inconsistent with various Executive Orders requiring agencies to “propose or adopt regulations only upon a reasoned determination that the benefits of the intended regulation justify its costs.”³

DISCUSSION

I. THERE IS NO EVIDENCE THAT CRAMMING IS A SIGNIFICANT PROBLEM FOR THE CMRS INDUSTRY

Just last year, the Commission initiated a proceeding to determine whether cramming regulations were necessary and, if so, whether such regulations should be extended to the CMRS industry.⁴ In April 2012, the Commission concluded that “the record does not demonstrate a need for rules to address cramming for CMRS . . . at this time.”⁵ Nevertheless, the Commission sought comment to refresh the record on the state of wireless cramming. The record developed in this proceeding continues to support the conclusion that cramming regulations are not necessary for the CMRS industry.

³ See T-Mobile Comments at 7-9 (Oct. 24, 2011) (“T-Mobile 2011 Comments”) (quoting Exec. Order 12866, §1(b)(6) (Sept. 30, 1993)).

⁴ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges* (“Cramming”), CG Docket No. 11-116, *Notice of Proposed Rulemaking*, 26 FCC Rcd 10021 (2011).

⁵ *R&O* at ¶ 47.

Commenters urging the Commission to extend cramming regulations to the CMRS industry do not provide sufficient data to justify the need for regulations.⁶ And to the extent data is supplied, it generally is data the Commission already considered and found insufficient to justify regulation.⁷ Indeed, one commenter supporting CMRS regulation acknowledges that it is merely seeking to register its disagreement with the Commission’s recent determination in the *R&O*:

The MDTC respectfully disagrees with the wireless finding [of insufficient evidence to justify regulation] in particular, as the record does, in fact, establish adequate evidence of wireless cramming to support the need for cramming rules applicable to wireless providers.⁸

However, in contrast to the largely unsupported claims of the proponents of CMRS cramming regulations, new evidence in the record not previously before the Commission instead indicates that cramming on CMRS bills is in fact becoming *less* of an issue. For example, the Federal Trade Commission’s (“FTC”) most recent report summarizing complaint data demonstrates that the number of complaints filed with the FCC in 2011 alleging cramming on

⁶ See MDTC at 5-7 (“MDTC”) (citing to only one recent “decision” as evidence that unlawful cramming is prevalent in the wireless industry. That decision – *Texas v. Eye Level Holdings, LLC d/b/a JAWA* – involved a settlement and no finding of wrongdoing.); Joint Consumer Group Comments at 8-11 (with the exception of three consumer complaints about cramming, the remainder of the “evidence” of wireless cramming was already presented to the Commission prior to its determination that the record evidence was insufficient to justify wireless cramming regulations); MI PSC Comments at 3-4 (supporting wireless cramming regulation but providing no evidence of a wireless cramming problem); NARUC Comments at 6-7 (citing evidence the Commission previously considered and determined insufficient to justify wireless cramming regulations); NASUCA Comments at 9-10 (with the exception of a reference to a company known as “Love Genie Tips,” no new evidence is provided to demonstrate cramming is a significant problem for the wireless industry); Soren Campbell Comments at 4 (providing no evidence that cramming is a significant problem for the wireless industry).

⁷ See *R&O* at ¶¶ 20-21, 28-29, 36, 40, 47.

⁸ MDTC Comments at 5.

wireless bills *decreased by nearly 25%* to a mere 599.⁹ To put this in context, there were more than 331 million wireless subscriber connections by the end of 2011,¹⁰ but only 599 FTC cramming complaints. Moreover, wireless cramming complaints comprised a mere 0.03% of complaints filed with the FTC, and less than 1% of such complaints involving “Telephone and Mobile Services.”¹¹

Further, the Commission’s Consumer and Governmental Affairs Bureau (“CGB”) tracks the number of consumer inquiries and informal complaints received and processed each year and issues reports identifying the top issues for consumer inquiries and complaints. Despite claims by proponents of regulation that CMRS cramming is a significant problem, the most recent CGB complaint report –summarizing complaints received during the first quarter of 2012 – fails to list cramming as a major source of consumer inquiries or complaints for the CMRS industry.¹² Instead, and as CTIA noted in its comments, third-party telemarketing in violation of the Telephone Consumer Protection Act (“TCPA”), not cramming, should be the focus of FCC concern due to the growing number of TCPA complaints:

Wireless cramming is not a significant consumer concern, and the Commission’s resources would be better spent resolving the growing number of TCPA complaints. . . . A detailed analysis of the Commission’s Quarterly Reports on Informal Consumer

⁹ Federal Trade Commission, Consumer Sentinel Network Data Book for January – December 2011, at 85 (Feb. 2012), Appendix B3: Consumer Sentinel Network Complaint Category Details, *available at* <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2011.pdf> (“2012 Sentinel Report”).

¹⁰ CTIA, Wireless Quick Facts, *available at* <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>.

¹¹ 2012 Sentinel Report at 85.

¹² See “Quarterly Report of Consumer Inquiries and Informal Complaints for First Quarter of Calendar Year 2012 Released,” News Release (June 1, 2012), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-314414A1.pdf.

Inquiries and Complaints reveals the severity of the third-party telemarketing problem. Most notably, the Commission reported 234,422 wireless TCPA related complaints during 2008-2011. In comparison, during the same period, the Commission did not report any wireless cramming complaints because they fell below the threshold requirement to be placed on the quarterly report. In fact, the number of cramming complaints has not been reported by the Commission since 2002.¹³

Simply put, the record compiled in response to the *FNPRM* supports the Commission's conclusion that CMRS cramming regulations are unnecessary.

II. THE CMRS INDUSTRY ALREADY TAKES SIGNIFICANT STEPS TO PROTECT CONSUMERS FROM CRAMMING

The dearth of wireless cramming complaints is likely due to the continuing proactive steps taken by the CMRS industry to prevent unauthorized charges. T-Mobile and other CMRS carriers have invested considerable time and resources in creating policies and practices to protect their customers from unauthorized third-party charges and they have all incentives to continue to do so. The record, including T-Mobile's prior comments in this docket, demonstrates that the CMRS industry has implemented extensive best practices to detect and deter unscrupulous actors and limit billing to authorized charges.¹⁴ For example, T-Mobile requires third-party providers to comply with the national Mobile Marketing Association's ("MMA") Best Practices which require, among other things, a double opt-in before charges can be added to a subscriber's bill.¹⁵

T-Mobile imposes contractual obligations requiring aggregators and content providers to abide by T-Mobile's guidelines and the MMA requirements. T-Mobile expects aggregators to

¹³ CTIA Comments at 3-4.

¹⁴ See T-Mobile 2011 Comments at 3-7; CTIA Comments at 4-6; Verizon Comments at 2-8; see also Verizon Ex Parte at 1 (Apr. 19, 2012).

¹⁵ See T-Mobile 2011 Comments at 3-7.

fulfill their contractual obligations and to monitor and enforce compliance by content providers they represent. If T-Mobile determines that a content provider or campaign is not in compliance with T-Mobile requirements or MMA guidelines, T-Mobile has the right and will act to suspend or terminate the campaign or the provider's ability to place charges on bills generated by T-Mobile's systems. T-Mobile also provides incentives to aggregators and content providers to control and reduce refund rates.¹⁶

In addition, T-Mobile participates in a cross-carrier program developed by CTIA to monitor content provider marketing. Under this program, a third-party auditor identifies content providers' programs that appear to deviate from MMA guidelines, and provides notice to aggregators and carriers such as T-Mobile. If content providers do not resolve or appropriately address the issues identified, aggregators and/or T-Mobile will take steps to suspend or terminate the mobile content campaign.¹⁷

These industry-wide and carrier-specific efforts have successfully prevented significant cramming problems in the CMRS industry. Because these efforts are continually under review and are modified to address new issues and trends, T-Mobile submits that they better address the issues and consumer needs and are preferable to inflexible Commission rules. Accordingly, Commission intervention is unnecessary at this time.

¹⁶ T-Mobile has implemented a program to monitor and reduce content provider refund rates. Under this program, T-Mobile monitors refund rates for all premium short-code messaging ("PSMS") programs each month. T-Mobile identifies programs with refund rates of concern and notifies the applicable aggregators that those programs have been placed on a watch list. If refund rates for the programs do not improve sufficiently, the programs are first suspended and ultimately terminated. The program is designed to encourage and incentivize aggregators to work with content providers to improve customer satisfaction and reduce higher refund rates. *Accord* CTIA Comments at 5-6.

¹⁷ For more information on this monitoring program, *see* http://www.ctia.org/business_resources/wic/index.cfm/AID/10334.

III. CMRS CRAMMING REGULATION WOULD IMPOSE SIGNIFICANT COSTS WITH LITTLE BENEFIT

As discussed in T-Mobile's earlier comments,¹⁸ the Commission must comply with long-standing mandates set forth in various Executive Orders requiring an assessment of the costs of potential regulations *before* rules are proposed, and certainly before any regulations are adopted. Pursuant to Executive Order 12866, agencies must "assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating" before adopting new regulations.¹⁹ In particular, agencies must "propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."²⁰

President Obama reaffirmed these requirements through adoption of Executive Order 13563 which states that agencies must evaluate potential regulations "based on the best available science" and "identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends."²¹ This Executive Order was specifically extended to Independent Agencies in July 2011.²²

¹⁸ T-Mobile 2011 Comments at 7-9.

¹⁹ Exec. Order 12866, §1(a).

²⁰ *Id.* at § 1(b)(6).

²¹ Exec. Order No. 13563, § 1 (Jan. 18, 2011); *see also* "Executive Order 13563, 'Improving Regulation and Regulatory Review,'" OMB Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies (Feb. 2, 2011).

²² Exec. Order No. 13579, § 1 (July 11, 2011) (stating that regulatory decisions "should be made only after consideration of their costs and benefits").

Extending cramming regulations to the CMRS industry would be burdensome with little corresponding benefit given the relative dearth of complaints.²³ Thus, adoption of such regulations would be inconsistent with these Executive Orders.

CONCLUSION

For the foregoing reasons, the Commission should refrain from adopting any cramming regulations that would apply to the CMRS industry.

Respectfully submitted,

T-MOBILE USA, INC.

/s/ Kathleen O'Brien Ham
Kathleen O'Brien Ham
Luisa L. Lancetti
Indra Sehdev Chalk
601 Pennsylvania Avenue, NW
North Building - Suite 800
Washington, DC 20004
(202) 654-5900

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²³ See T-Mobile 2011 Comments at 7-9; AT&T Comments at 5-7.