

**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 AT&T, INC.

AT&T Inc. (AT&T), on behalf of its subsidiaries, respectfully submits this reply to the comments filed in this proceeding.

The FCC's Further Notice of Proposed Rulemaking ("FNPRM") seeks comment on several additional anti-cramming proposals; most notably, 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 bills to consumers ("opt-in").¹ These proposed rules would be in addition to the requirements that the FCC adopted in its April 27, 2012 Cramming

¹ *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, Report and Order and Further Notice of Proposed Rulemaking (released April 27, 2012) at ¶ 136 ("Cramming Order").

Order.² The Commission should reject these proposals because there is no need for additional anti-cramming measures at this time.

Several factors compel this conclusion. First, the evidence in the record of this proceeding shows that cramming complaints are few, especially when compared to the number of telephone bills rendered annually. Second, the new rules have just taken effect and the Commission lacks any empirical basis for concluding that they do not go far enough. Third, in addition to the rules adopted in April, several carriers, billing aggregators, and industry associations have taken voluntary measures to address cramming.³ The Commission likewise lacks a basis for finding these measures, particularly when coupled with the new rules, inadequate. Fourth, the cost of complying with these additional regulations, particularly a mandatory “opt-in” rule, is exceedingly high, as AT&T’s comments demonstrated.⁴ In light of these factors, it is simply premature for the Commission to adopt new rules. Rather, the most reasonable course is to give these measures a chance to work before considering additional, onerous regulations. If, in the future, the Commission concludes that existing measures are insufficient, it can consider any appropriate rule changes at that time.

Commenters urging passage of these new regulations are unable to marshal compelling evidence for their support.⁵ For example, the New England Conference of Public Utility Com-

² Cramming Order, Appendix A.

³ Comments of AT&T at 8-10; Comments of CTIA at 13-16; Comments of Verizon and Verizon Wireless at 3-8; Comments of CenturyLink at 3-4, 12-14; Comments of Frontier Communications at 4-5; Comments of T-Mobile at 3-6; Comments of ITTA at 2; Comments of Sprint at 11-13; Comments of Billing Concepts at 4-6; Comments of ILD at 2; Comments of Payment One at 15.

⁴ AT&T’s estimate was that such a program would cost the company about \$300 million in one-time charges and about \$40 million to \$50 million in on-going annual expense. Comments of AT&T, Docket No. 11-116 (June 25, 2012) at 6-7.

⁵ Several proponents of the additional rules simply assert that cramming is an issue in their states. *See*, Comments of Florida Attorney General, Docket 11-116 (October 25, 2011) at 1 (“There are

missioners submitted data showing not only that the number of wireline cramming complaints to New England public service commissions was quite low, but also that it was, in fact, declining.⁶ Furthermore, as shown in an analysis done by CenturyLink,⁷ even the FCC's own data show that all cramming complaints made to the Commission have declined by 89.7% from the third quarter of 2008 to the first quarter of 2012. CTIA put the ratio of wireless cramming complaints to the FCC at about one complaint per 646,974 wireless subscriber units per year from 2008-2010.⁸ Sprint's analysis of FTC data estimated the ratio for wireless cramming complaints at one complaint per every 422,832 wireless subscribers.⁹ In short, the actual evidence adduced by the parties seeking additional anti-cramming rules is insufficient to support their desire for new, expensive and burdensome regulations.

While some commenters to this proceeding see no merit to third party billing at all,¹⁰ others recognize that certain services, such as long distance dial around, directory assistance service,

certainly many deceitful third-party business entities and individuals cramming unauthorized charges for a myriad of products and services onto consumer telephone bills.”); Comments of Minnesota Attorney General, *id.* (October 25, 2011) at 2 (“Cramming is a significant problem in Minnesota that shows no signs of abating.”). The Iowa Utility Board (“IUB”), which continues to argue for more anti-cramming measures, submitted data showing that cramming complaints had *declined* from 99 in 2007 to just 4 in 2011. Comments of IUB, *id.* (October 25, 2011) at 4. The Indiana Utility Regulatory Commission (“IURC”), which also supports additional regulatory measures, *see*, Cramming Order n. 381, reported in 2011 that cramming accounted for just 93 of the 1,307 telecom complaints for that year. IURC 2011 Annual Report at 3 (available at [http://www.in.gov/iurc/files/Annual_Report_2011\(2\).pdf](http://www.in.gov/iurc/files/Annual_Report_2011(2).pdf)). The Virginia State Corporation Commission, while arguing these additional measures are necessary, does not even assert that cramming represents any sort of a problem in Virginia. Comments of Virginia State Corporation Commission Staff, *id.*, (October 25, 2011).

⁶ Joint Comments of the New England Conference of Public Utilities Commissioners (Maine, Massachusetts, New Hampshire, Rhode Island and Vermont reported a total of 503 cramming complaints in 2009, 443 in 2010, and 297 through August 2011), Docket 11-116 (October 24, 2011) at 15;

⁷ Comments of CenturyLink, Docket 11-116 (June 25, 2012), Appendix B.

⁸ Comments of CTIA, Docket No. 11-116 (October 25, 2011) at 2.

⁹ Comments of Sprint Nextel, Docket No. 11-116 (October 25, 2011) at 13.

¹⁰ Comments of FTC, Docket 11-116 (October 25, 2011) at 5 (Third party billing has become “a vehicle for defrauding consumers and businesses.”).

operator services, and inmate services, are valuable products that rely upon third-party billing.¹¹ Similarly, many wireless customers enjoy the convenience of purchasing applications, ringtones, games, and other products for their mobile devices and having those charges appear on their wireless bill. Making it more difficult for a customer to purchase and consume third party content not only risks cutting off customers from innovative products and from the convenience of their portable devices, it also potentially subjects a burgeoning industry of entrepreneurs and job creators to financial distress.

Because the industry as a whole sees the value in this delivery system, and recognizes that some unscrupulous persons have abused it, several important changes have recently occurred. AT&T, Verizon, and CenturyLink have decided to cease third-party wireline billing for most non-carrier charges.¹² AT&T expects this change to reduce further the already low incidence of cramming complaints. BSG, one of the largest billing aggregators, has implemented a number of additional, stringent requirements to identify unscrupulous actors and prevent cramming.¹³ And the Commission itself has introduced new rules to combat cramming.¹⁴ There is no good reason to expect that these changes will be ineffective. Consequently, AT&T believes that prudence and common sense dictate giving these changes a decent interval of time to determine their effectiveness before resorting to more onerous and expensive regulatory remedies. If, at

¹¹ *See, e.g.*, Comments of Center for Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center and National Consumer League, Docket No. 11-116 (June 25, 2012) at 17; FNPRM at ¶ 86 (“The record reveals that consumers can benefit from legitimate third-party billing.”).

¹² As described above, cramming complaints generally are low and declining lower. However, the largest component of cramming complaints is contested charges appearing on wireline bills and the named carriers have acted decisively to cure that issue. (Such complaints represent but 0.00105% of AT&T’s wireline subscriber base).

¹³ Comments of Billing Concepts, Inc. (d/b/a BSG Clearing Solutions), Docket No. 11-116 (October 25, 2011) at 4.

¹⁴ Cramming Order, Appendix A.

some point, these changes do prove ineffective, the Commission can then turn its attention to other solutions.

Caution is important here because the proposed changes – most especially the opt-in requirement – are extremely expensive. For AT&T showed that simply providing its customers with written notice of the need to opt in would cost almost \$90 million. Add to that the cost of changes to the billing, ordering, and customer services systems – about \$10 million – and the expected cost grows to \$100 million. To this must be added the increase in customer service call volumes that follows changes in which customers must undertake some affirmative act. AT&T estimates this increased customer service cost at nearly \$200 million.¹⁵ Such high costs are justifiable only if the harm to consumers far outweighs the cost of the remedy;¹⁶ however, no party to this proceeding has presented evidence of harm so great as to justify the enormous expense of the regulations proposed in the FNPRM.

All of these factors – the lack of evidence in the record to support these measures, the recent initiatives in the industry and at the Commission, and the enormous expense of these proposals – argue against precipitate regulatory action. Instead, the Commission should give its new regulations and the recent industry initiatives the opportunity to prove their worth before embarking on another round of expensive and onerous regulatory requirements.

For these reasons, AT&T urges the Commission to give its new rules time to go into effect. At the same time, the Commission can gauge the effect that AT&T, Verizon and CenturyLink’s abandonment of third-party billing will have on cramming. Only then can the

¹⁵ These costs were discussed in more detail in AT&T’s earlier filing in this matter. Comments of AT&T, Docket No. 11-116 (June 25, 2012) at 6-7.

¹⁶ The chairman of the FCC has embraced cost-benefit analysis of new regulations. “Shortly after the President’s initial Executive Order, I directed FCC staff to follow the spirit of the Order. We had already conducted retrospective reviews, and incorporated cost-benefit analysis into our decision making.” Statement from Chairman Julius Genachowski on the Executive Order on Regulatory Reform and Independent Agencies (July 11, 2011).

Commission determine if more steps are required. If, at that time, the FCC determines that an opt-in rule is indicated, that rule should exempt traditional, carrier-affiliated, and carrier-alliance third-party billed services and wireless billing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. Roughton, Jr.", written in a cursive style.

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