

**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

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS

As the comments demonstrate, voluntary industry measures are the best means to address concerns about protecting customers from unauthorized third-party charges. To combat cramming, wireline providers have adopted measures that go far beyond the Commission's requirements in § 64.2401, including unilateral decisions by the largest wireline providers to stop the third-party billing that raised the most significant cramming concerns.¹ Wireless providers have similarly taken action. As CTIA points out, wireless providers have developed robust industry best practices to which they voluntarily adhere, and most providers have practices that meet or exceed those envisioned in the *Further Notice*,² including offering free blocks, complaint monitoring, and promoting customer awareness.³ Due to these existing protections and the industry's voluntary efforts to address cramming, the Commission should reject suggestions that it enact further regulation that would apply to wireless providers or to the small subset of wireline third-

¹ See AT&T Comments at 2; CenturyLink Comments at 5; ITTA Comments at 3-4.

² See *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Report and Order and Further Notice of Prepared Rulemaking, 27 FCC Rcd 4436 (2012) ("*Further Notice*").

³ See CTIA Comments at 4-6; AT&T Comments at 2.

party services that providers such as Verizon will continue to bill (i.e., bundled services and message telephone services, which use Verizon’s network).⁴

1. The Commission should not prohibit or otherwise restrict wireless providers from offering third-party billing services.⁵ Such drastic action would harm the substantial number of customers who prefer the ease and convenience of reviewing and paying a single bill each month and who have not experienced any unauthorized charges. Moreover, it could deny third-party providers a cost-effective way to get to market. Third-party billing is a particularly valuable service for emerging companies that have little spare capital to develop a billing platform and infrastructure, but are responsible for much of the tremendous, consumer-benefitting innovation in apps and other services in the wireless space.

As the Commission stated in the *Further Notice*, “the record does not demonstrate a need for rules to address cramming for CMRS or VoIP customers at this time.”⁶ Nearly three months later, the record is still bare. In comments filed in the previous round of this proceeding, CTIA demonstrated the infrequent nature of wireless cramming complaints, by using the Commission’s own data to calculate a ratio of one complaint per 646,974 wireless subscriber units per year from 2008-10.⁷ Even if wireless cramming complaints increased by a significant amount in 2011 – which would be at odds with Verizon’s

⁴ See NARUC Comments at 4; Center for Media Justice *et al.* Comments at 7, 15-22.

⁵ As numerous commenters make clear, the Commission’s authority with respect to third-party billing is narrowly limited. See, e.g., CenturyLink Comments at 11-15 (arguing that the Commission’s view of its authority in the *Further Notice* was too expansive); CTIA Comments at 8-16.

⁶ *Further Notice*, ¶ 47.

⁷ See CTIA Comments at 5 (filed Oct. 24, 2011); see also AT&T Comments at 4.

records⁸ – the ratio of cramming complaints to wireless subscribers would continue to be miniscule.

While the Center for Media Justice *et al.* relate isolated anecdotes of cramming and describe a recent enforcement action in Texas,⁹ these provide no basis on which the Commission could justify regulation. Anecdotes and enforcement actions do not provide evidence that wireless cramming is a substantial and growing problem as NARUC speculates.¹⁰ To the contrary, CTIA correctly points out that cramming complaints have fallen below the Commission’s thresholds for reporting complaints and thus have not been reported publicly since 2002.¹¹ Moreover, the enforcement action cited by the Center for Media Justice *et al.* does not prove the need for regulation. Rather, it demonstrates how well the government and industry can work together today to eradicate bad actors from this space, without any additional regulation. Not only did Verizon provide information to assist the prosecution of the third-party provider by the Texas Attorney General, but Verizon also sued the provider and obtained a preliminary injunction to prevent the provider from accessing Verizon’s network.¹²

2. For the same reasons, the Commission should reject the proposals from various commenters to further regulate wireless third-party billing. For example, the Commission should not *mandate* that wireless carriers adopt specific anti-cramming

⁸ Verizon’s billing adjustment percentages have remained relatively constant. *See* Verizon Comments at 10.

⁹ *See* Center for Media Justice *et al.* Comments at 10-11, 14-15.

¹⁰ *See* NARUC Comments at 6-7.

¹¹ *See* CTIA Comments at 3-4. Instead of the Commission’s disproportionate focus on cramming, CTIA suggests that the Commission turn its attention to the main source of wireless customer complaints – i.e., Telephone Consumer Protection Act violations. *Id.*

¹² *See Cellco v. Jason Hope, et al.*, No. 11-00432, 2011 U.S. Dist. LEXIS 53713 (Ariz. May 11, 2011).

measures, but instead preserve the industry’s flexibility to adopt the practices that best protect consumers as the marketplace continues to evolve. Verizon and many other wireless carriers, which serve more than 90% of the United States’ wireless subscribers, fully support the double opt-in and other aspects of the Mobile Marketing Association Best Practices¹³ and voluntarily adhere to them.¹⁴ Therefore, mandating these best practices is unnecessary. Moreover, regulatory mandates should be avoided because they do not allow for flexibility. Technology and the associated threats from unscrupulous third parties can develop too fast to address through a formal regulatory process. And regulation could deter wireless providers’ development of innovative solutions to unauthorized third-party billing.

Likewise, the Commission should not require a new customer opt-in to any third-party billing, a default third-party bill block, or variations on that approach, such as a “white list” of certain third parties from which purchases would be permitted, suggested in the comments.¹⁵ These measures make little sense in light of Verizon’s requirement and the Mobile Marketing Association’s *Best Practice Guidelines* 2.6.1 that third-party providers obtain the customer’s authorization for each specific transaction through a double opt-in or equivalent process.¹⁶ This transaction-by-transaction approval process provides wireless consumers with far more protection than a global opt-in.

¹³ See Mobile Marketing Association, “U.S. Consumer Best Practices Version 6.1” (effective April 1, 2011), http://mmaglobal.com/Consumer_Best%20Practices_6.1%20Update-02May2011FINAL_MMA.pdf (“*Best Practices Guidelines*”).

¹⁴ See AT&T Comments at 2; CTIA Comments at 4-5.

¹⁵ See, e.g., Massachusetts Department of Telecommunications and Cable (“Mass. DTC”) Comments at 9-10.

¹⁶ See Verizon Comments at 4-5.

Any incremental protection that may derive from the further measures proposed in the comments would be outweighed by the inconvenience and other costs to consumers. Despite already completing a double opt-in or equivalent process with the third-party provider (or billing aggregator), customers would often have to take a *third* step – i.e., contacting their provider to lift a default block or reverse a negative response to a hypothetical question about third-party billing made when signing up for service – to complete a purchase. This additional step would be inconvenient for customers and could deter them from participating in the burgeoning mobile marketplace. Finally, the proposed measures would impose significant customer service costs on wireless providers.¹⁷

For the same reasons, the Commission should reject the proposal to create a registry of phone numbers that would not permit third-party billing similar to the Do Not Call Registry.¹⁸ The telemarketing sought to be stopped via the Do Not Call Registry is not analogous to third-party billing. There, no party exists between the telemarketer and the prospective customer. By contrast, wireless providers have direct relationships with both the customers and the billing aggregators for the third-parties. As such, wireless providers have incentives to ensure that their customers are well-protected from unauthorized charges from third parties.

Furthermore, wireless providers offer the same protection that a registry would provide. Verizon and other wireless providers, including U.S. Cellular, Sprint Nextel, and T-Mobile, already offer blocks for third-party charges.¹⁹ Verizon customers can set

¹⁷ See AT&T Comments at 7 (estimating that each call would cost \$10).

¹⁸ See, e.g., Mass. DTC Comments at 9.

¹⁹ See Verizon Comments at 6; CTIA Comments at 5.

these blocks via Verizon's website or by calling customer service. Because this is a simple process, there is no need to impose the costs of another mechanism like a registry that performs the exact same function. Given the widespread availability of blocks, customers that switch providers can easily set up a new block with the new provider.

In the same way, a Commission-mandated dispute resolution process for customers is unneeded.²⁰ The industry already has customer-friendly processes in place, and there is no evidence that these processes are not working for the vast majority of customers that experience issues. In its comments, Verizon describes its policy to resolve any issue that arises relating to third-party billing on the customer's initial call to Verizon, which often entails providing a credit and stopping the billing.²¹ Other wireless providers have previously described similar policies.²² A mandated process would eliminate the flexibility wireless providers have to react to customer concerns.

Finally, the Commission should not impose a complaint reporting requirement on providers as proposed by the Center for Media Justice *et al.* Imposing burdensome reporting requirements on wireless providers could divert resources from efforts to eliminate cramming to preparing accurate reports. The Commission already receives and tracks complaints received directly from consumers, which, as noted above, do not indicate a problem, and the Commission has processes to obtain that information from providers should an investigation be warranted by the available evidence. In a different proceeding, the Commission is considering eliminating unnecessary, legacy reporting

²⁰ See Center for Media Justice *et al.* Comments at 21; Michigan Public Service Commission Comments at 5; Virginia State Corporation Commission Comments at 3.

²¹ See Verizon Comments at 6.

²² See, e.g., AT&T Comments at Attachment A (filed Oct. 24, 2011); Sprint Comments at 6 (filed Oct. 24, 2011); T-Mobile Comments at 6 (filed Oct. 24, 2011).

requirements.²³ It should not add new, open-ended reporting obligations here without a reasonable basis that a significant problem in fact exists.

3. As commenters consistently point out, the Commission should recognize the difference between wireline third-party billing for message telephone services (i.e., those that use providers' networks, such as collect calls, dial-around long distance, etc.) and miscellaneous or enhanced services.²⁴ Due to Verizon's, AT&T's, and CenturyLink's recent business decisions,²⁵ the bulk of wireline billing for miscellaneous or enhanced services – i.e., those services where cramming complaints were focused – will soon cease. The Commission should ensure that any regulation does not impact the remaining wireline services, which provide significant value for many consumers. Notably, both consumer advocates and state law enforcers recognize the importance of these third-party services.²⁶ For example, the Utah Attorney General views an additional consent requirement for long distance and collect calls as “unworkable” and costly for consumers.²⁷

²³ See Public Notice, *Commission Seeks Comment on Preliminary Plan for Retrospective Analysis of Existing Rules*, 26 FCC Rcd 16503 (2011).

²⁴ See AT&T Comments at 3; CenturyLink Comments at 5; Verizon Comments at 1, 15-17.

²⁵ *Id.*

²⁶ See Center for Media Justice *et al.* Comments at 17 (advocating that Commission allow carriers to continue third-party billing for these services); Shelley Exeter (for Mark. L. Shurtleff, Utah Attorney General) Comments at 1.

²⁷ *Id.*

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