Comment addressing the FCC's proposed rule, Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges; etc.
CG Docket No. 11-116

This comment supports the FCC's authority to promulgate a rule regulating the practice of cramming.

Section 201 (b) of the Communications Act of 1934 grants the FCC authority to promulgate rules and regulations "necessary in the public interest to carry out the provisions of this chapter." This statutory language provides a legitimate basis for the FCC to regulate CMRS and VOIP cramming.

First, VOIP and CMRS services fall into the definition of common carriers that 47 USC Chapter 5 covers. Section 153 provides that common carriers are "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio".[1] VOIP and CMRS providers clearly fall within this definition as both offer consumer communication services and conduct communications via wire or radio.[2] Therefore, the Commission has the authority to regulate VOIP and CMRS providers.

The purpose of the chapter must next be considered in determining the extent of the FCC's regulatory authority. Chapter 5 regulates communication services for the express purpose, in part, of providing fair and reasonable communication services to the public.[3] Section 201 identifies charges as a component of communication that must be "just and reasonable".[4] Cramming affects the charges that appear on a consumer's bill, and therefore, the Commission can regulate cramming for the purpose of ensuring the public receives fair and reasonable communication services.

Finally, cramming is an unreasonable practice and regulating it is in the public interest. Section 201(b) requires that all charges and practices must be just and

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[1] 47 U.S.C. § 153.11.
[2] Section 20.9 defines which commercial mobile radio services should be treated like common carriers. Private mobile carriers are considered common carriers under this Chapter. *See* 47 U.S.C. § 20.9.
[3] 47 U.S.C. § 151.
[4] 47 U.S.C. § 201 (a).

reasonable.[5] Cramming is neither. Cramming forces consumers to pay for services that they do not authorize and do not want.

Cramming historically was a widespread problem for landline communication services. However, consumers are abandoning landlines for mobile and VOIP services.[6] There is significant public support to regulate cramming. Recognizing the scope of the problem, at least forty states have called on the Federal Trade Commission to take greater action against cramming on mobile communications.[7]

Consumers are not adequately protected from cramming and there are inadequate protections for consumers to obtain refunds if they are victims of cramming. The FTC found that only one in twenty cramming victims ever realizes that the cramming occurred.[8] Under current practices, consumers must be aware that cramming is a problem and be vigilant in patrolling their communications bills. Once a cramming charge appears, it is the consumer's responsibility to address it with the service provider. This assumes, first, that all consumers are aware that unauthorized charges can be on their bill, and, second, that service providers will act quickly and responsibly in removing the charges. There are currently no regulations to protect consumers seeking reimbursement for unauthorized charges.

As a result of the widespread practice of cramming and the growing reliance on wireless and VOIP service providers, it is in the public interest to regulate cramming. Regulating cramming supports the purpose of Chapter 5 of the Communications Act of 1934, so under the authority of section 201 (b), the

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[5] 47 U.S.C. § 201 (b).

[6] ACA International, *Wireless and Landline Phones, Statistics on Telephone Subscribership in the U.S.*, http://www.acainternational.org/products-wireless-and-landline-phones-6488.aspx (noting that 24.9% of adults live in homes without landlines and that wireless subscriptions have risen to 322.9 million as of June 2011).

[7] Letter from the National Association of Attorneys General, to the Federal Trade Commission (June 24, 2013), *available at* http://www.naag.org/assets/files/pdf/signons/Final%20FTC%20Comment%20Mobile%20Cramming.pdf.

[8] FCC, CRAMMING GUIDE, *available at* http://transition.fcc.gov/cgb/cramminggraphic.pdf (citing Expert Marylander study conducted for a Federal Trade Commission case).

Commission may promulgate rules to address cramming over both VOIP and CMRS.