

**Before the  
Federal Communications Commission (FCC)**

Comment on the matter of:

*Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges* (“Cramming”); *Consumer Information and Disclosure; Truth-in-Billing Format* (CG Docket Nos. 11–116 and 09–158; CC Docket No. 98–170)

**I. Overview**

In its *FNPRM*, dated May 24, 2012, the FCC sought comment regarding proposed rules regulating “cramming,” or the placement of unauthorized third-party charges on consumers’ telephone bills. This comment assumes that the “opt-in” requirement is necessary for consumers to be adequately protected against unauthorized charges, as mere disclosures are not sufficient in this regard.<sup>1</sup> This comment, however, is submitted to discuss a discrete issue on which the FCC sought further input: the opt-in requirement should be applied to *all* consumers, not only new consumers, and consumers should be put on notice of the requirement at both the point-of-sale and on recurring pay-statements.

**II. The Opt-In Requirement Should Be Applied to All Consumers**

**A. The Scope of the Cramming Problem Requires That All Consumers Be Protected by an Opt-In Requirement**

The proposed opt-in requirement should be applied to all consumers, as applying the requirement to only new consumers would not effectively deal with the extent of the cramming problem. Cramming is a problem affecting a large segment of the population; in fact, the FCC has estimated that over 20 million households are affected by cramming annually, resulting in about \$2 billion in charges.<sup>2</sup> Given that the majority of households are likely already enrolled or otherwise contractually obligated to particular carriers, applying the requirement to new consumers would be highly limited in scope and fail to address most incidents of cramming.

**B. Consumers Should Be Made Aware of the Opt-In Requirement at the Point-of-Sale and on a Recurring Basis**

Furthermore, applying the requirement would not be practically difficult. Notice of the opt-in requirement can be introduced to consumers at numerous points, thus allowing for new *and* existing consumers to be made aware of the opt-in requirement without significant cost. For instance, new consumers can be informed about the opt-in requirement at the point-of-sale, providing them the opportunity to allow or reject third-party billing at the outset of their contract. Existing consumers, alternatively, can be informed about the opt-in requirement in their recurring pay-statements, where existing third-party charges can be highlighted and affirmative action by the consumer would be requested to allow further charges. The FCC may additionally want to consider whether – even in cases where the consumer has *generally* consented to third-

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<sup>1</sup> See *generally* Federal Trade Commission, Comment Before the Federal Communications Commission Concerning Placement of Unauthorized Charges on Wireless Bills, Otherwise Known as “Cramming,” CG Docket Nos. 11-116, 09-158 and 98-170 (July 2012), *available at* <http://www.ftc.gov/os/2011/12/111227crammingcomment.pdf>.

<sup>2</sup> See David Lazarus, *FCC needs to stop ‘cramming’ on cellphones*, L.A. TIMES (Mar. 28, 2013), <http://articles.latimes.com/2013/mar/28/business/la-fi-lazarus-20130329>.

party fees – third-party services must continue to obtain affirmative consent before any recurring (i.e., monthly) charge may be assessed. Moreover, instituting the opt-in requirement for both new and existing consumers would save carriers the significant costs that would be required were they to maintain two different systems of notice and billing procedures.

### **III. Legal Authority**

The FCC is statutorily authorized to ensure that “[a]ll charges, practices . . . for and in connection with such communication service, shall be *just and reasonable*.”<sup>3</sup> As cramming by third-party services is certainly a practice “in connection” with a communication service, the FCC has jurisdiction to limit such practices in order to protect consumers from receiving unauthorized or deceptive charges.

Sincerely,  
Neil K. Sawhney

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<sup>3</sup> 47 U.S.C. § 201(b) (emphasis added).