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 and Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF CTIA—THE WIRELESS ASSOCIATION®

I. INTRODUCTION

CTIA—The Wireless Association® ("CTIA")[1] respectfully submits these reply comments in response to the Public Notice released on August 27, 2013 by the Federal Communications Commission's (the "Commission") Consumer and Governmental Affairs Bureau in the above-captioned proceedings.[2] CTIA and its members are strongly committed to the protection of wireless consumers, and they share the concerns raised by the Commission and commenters about unauthorized third-party charges. As discussed below, each of the four national U.S. carriers have announced their intention to end commercial premium SMS billing

[1] CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products. More information about CTIA is available on the Association's website at http://www.ctia.org/about-us/.

[2] *See Consumer and Governmental Affairs Bureau Seeks to Refresh the Record Regarding "Cramming,"* CG Docket No. 11-116, CG Docket No 09-158, & CC Docket No. 98-170, Public Notice, DA 13-1807 (rel. Aug. 27, 2013) ("Public Notice").

programs, addressing the concerns that have been raised about unauthorized charges by third parties on wireless bills. In light of these recent actions, there is no need or basis in the record for the Commission to adopt any new requirements for third-party wireless services.

II. THE FOUR NATIONAL U.S. WIRELESS CARRIERS HAVE ANNOUNCED THAT THEY WILL END COMMERCIAL PREMIUM SMS BILLING SERVICES

CTIA shares the Commission's and commenters' concerns about unauthorized third-party charges on wireless bills. For example, wireless carriers have worked with federal and state consumer protection authorities to identify and prosecute third-parties that violate the law by attempting to place unauthorized charges on subscribers' bills. Additionally, as CTIA explained in its comments, the wireless industry has taken numerous steps and committed significant resources to help protect consumers from third-party bad actors, including establishing a unified standard of compliance, auditing premium SMS services, and implementing consumer-friendly refund policies.[3] In November 2013, each of the four national U.S. wireless carriers announced its intention to soon end commercial premium SMS billing programs for its subscribers.[4]

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[3] Comments of CTIA–The Wireless Association®, CG Docket No. 11-116, CG Docket No. 09-158, & CC Docket No. 98-170, at 8-9 (filed Nov. 18, 2013) ("CTIA Comments").

[4] Ina Fried, "AT&T, Sprint, T-Mobile, Verizon Dropping Most Premium Text Service Billing in Effort to Combat Fraud," ALL THINGS D (Nov. 21, 2013), *available at* http://allthingsd.com/20131121/att-sprint-t-mobile-verizon-all-dropping-most-premium-text-service-billing-in-effort-to-combat-fraud/#ina-ethics (last accessed Dec. 11, 2013); "Vt. attorney general says 3 cellphone carriers agree to stop charging for premium texting," Minn. StarTribune (Nov. 21, 2013), *available at* http://www.startribune.com/business/232940881.html (last accessed Dec. 12, 2013); Press Release, The State of Vermont, Office of the Attorney General, AT&T Mobility, Sprint and T-Mobile Will Stop Billing Problematic Third-Party Charges (Nov. 21, 2013), *available at* http://www.atg.state.vt.us/news/att-mobility-sprint-and-t-mobile-will-stop-billing-problematic-third-party-charges.php ("Vermont Press Release").

As the Commission is aware, the vast majority of wireless cramming concerns have been focused on commercial premium SMS billing by third parties.[5] While carriers have worked to protect their customers from bad actors and quickly resolve any consumer complaints that arise, the popularity of premium SMS services has waned as more and more consumers access the Internet through their smartphones and other wireless devices, where they can access websites and apps that replace many subscription SMS services. The carriers' decision to soon end commercial premium SMS billing programs recognizes these changing consumer priorities.[6]

Some wireless carriers may continue to offer carrier billing for charitable giving and political donations. Unlike commercial premium SMS services, these services have not been the source of consumer complaints. Many organizations, including the Red Cross and the U.S. State Department, have successfully implemented two-party authentication systems that protect consumers while still making charitable giving fast and easy.[7] Moreover, as CTIA noted in its comments, charitable giving increasingly relies on third-party billing and SMS-based donations, which have raised millions of dollars for a variety of causes.[8] Some public interest commenters and consumer advocates also support subscribers' continued access to these valuable programs.[9]

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[5] *See, e.g.*, CTIA Comments at 9; Vermont Press Release ("[Premium] SMS accounts for the majority of third-party charges on cell phones and for the overwhelming majority of cramming complaints.").

[6] *See, e.g.*, "Premium Messaging FAQs," Verizon, http://support.verizonwireless.com/support/faqs/Premium_TXT_and_MMS/faq_premium_txt_and_mms.html (last accessed Dec. 11, 2013) ("Since Premium Messaging was first introduced, technology advances and smartphone adoption have dramatically changed the way consumers access information. These changes, as well as allegations that a vendor engaged in improper conduct in providing Premium Messaging services to some of our customers, led us to the decision to no longer provide billing for these programs.").

[7] *See* CTIA Comments at 3-4; *see also* "What is the Red Cross Text 2HELP Campaign?," AT&T, http://www.att.com/esupport/article.jsp?sid=KB95760&cv=820#fbid=-CjZGNy2on7 (last accessed Dec. 11, 2013) (describing the double opt-in process for donating to the American Red Cross via text).

[8] *See* CTIA Comments at 3-4.

[9] Comments of Center for Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center-On Behalf of its Low-income Clients, and National

III. THERE IS NO NEED OR BASIS IN THE RECORD TO ADOPT NEW REQUIREMENTS ON WIRELESS PROVIDERS

In the Report and Order and Further Notice of Proposed Rulemaking in which the Commission adopted new billing requirements to address wireline cramming, it sought comment on potential regulatory and non-regulatory measures to address unauthorized charges on wireless bills, and on the costs of such measures.[10] In the Public Notice, the Commission asked parties to refresh the record on "whether any new measures to combat CMRS cramming are appropriate, as well as what those measures might be," and sought comment on "the efficacy of CMRS industry efforts to combat cramming."[11] The comments submitted in this proceeding do not provide the Commission with a basis for new regulations or restrictions on the remaining beneficial uses of carrier billing. Otherwise, the Commission risks stifling the development of innovative new services that consumers demand.

Proponents of new regulations have not submitted any new data into the record that supports a need for additional requirements on wireless providers (especially in light of the carriers' announcements that they will end direct commercial premium SMS services). In addition, despite generalized concerns from a few commenters about unauthorized third-party charges on wireless bills, no commenters explained how extending the new wireline cramming rules to wireless bills would resolve their concerns.[12] They also did not explain whether (or

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Consumer League, CG Docket No. 11-116, CG Docket No. 09-158, & CC Docket No. 98-170, 18-19 (filed June 25, 2012) ("Center for Media Justice *et al*. Comments").

[10] *See Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, CG Docket No. 11-116, CG Docket No. 09-158, & CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436 ¶ 146 (2012).

[11] Public Notice at 2-3.

[12] *See, e.g.*, Supplemental Comments of the California Public Utilities Commission and the People of the State of California, CG Docket No 11-116, CG Docket No. 09-158, & CC Docket No. 98-170, at 6, 29-31 (Nov. 18, 2013) ("CPUC Comments") (recommending that the Commission extend the new cramming

how) additional notifications or disclosures in wireless customer bills, on carrier websites, and at other points of sale would help address any potential billing concerns.

The limited empirical information that commenters submitted was not new. Nor was it disaggregated sufficiently to allow the Commission to identify whether it encompassed any of the continuing third-party services (i.e., non-commercial premium SMS). For example, several commenters referenced a 2011 Federal Trade Commission study that estimated more than 400,000 incidents of fraud for "Games or Other Programs Delivered to a Cell Phone or Other Mobile Device."[13] "Fraud" can encompass many different actions than unauthorized billing, and this aggregate fraud number could be the result of a host of other factors.

Similarly, the California Public Utilities Commission noted that it does not collect information on wireless cramming complaints but instead submitted 2011-2012 overall refund data from wireless carriers.[14] Refund amounts and refund rates are flawed metrics for assessing instances of unauthorized charges on wireless bills. Carriers have consumer-friendly refund policies that cover a variety of situations and transactions – much more than just unauthorized third-party charges. Nonetheless, even when looking at refund data, as the CPUC acknowledges, there has been a "favorable trend" of a more than 50 percent decline in total refunds and refund rates over the past two years.[15] Going forward, the decline is expected to be more pronounced once carriers stop permitting commercial PSMS programs.

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regulations to wireless services but failing to identify shortcomings with existing disclosures or to explain how such an extension would resolve wireless cramming complaints); Comments of Gabriel Schlabach, CG Docket No. 11-116 (Nov. 9, 2013) (urging the Commission to extend the new wireline regulations to wireless but failing to identify how this policy would resolve her concerns).

[13] *See* Center for Media Justice *et al*. Comments at 5; Comments of Morgan Weiland, CG Docket No. 11-116, at 2 (Nov. 12, 2013).

[14] *See* CPUC Comments at 19-20.

[15] *Id.* at 19.

As CTIA explained in its comments, the charitable, government, and commercial direct carrier billing infrastructure is still evolving, and major U.S. and international companies and charities increasingly rely on carrier billing.[16] Innovative new approaches to third-party billing are still emerging, and the wireless industry's practices and requirements are also evolving to meet consumers' expectations for a trustworthy billing environment that will support these services.[17] In this context, any new regulations or restrictions on third-party billing services would stifle innovative new services and hinder the adoption of valuable services that consumers demand. Moreover, should cramming occur, existing federal and state enforcement mechanisms are available to help protect consumers and punish bad actors.[18]

IV. CONCLUSION

CTIA and its members are committed to protecting wireless customers and share the unauthorized billing concerns raised by the Commission and commenters. The four national U.S. carriers each recently announced their intention to end their commercial premium SMS billing programs, thereby addressing the predominant concerns that commenters raised about unauthorized third-party charges on wireless bills. In light of these recent announcements, there is no need for or basis in the record to extend the new wireline cramming requirements to wireless services or to impose any additional billing regulations on wireless services.

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[16] *See* CTIA Comments at 2-5.

[17] *See id.*

[18] *See id.* at 9-10 (noting the Federal Trade Commission's enforcement actions against Wise Media for alleged unauthorized charges on consumers' wireless bills related to premium text messages as well as the Texas Attorney General's recent action for cramming against four text-messaging content providers and their billing aggregator).

Respectfully submitted,

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