

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Empowering Consumers to Prevent and Detect)	CG Docket Nos. 11-116 and
Billing for Unauthorized Charges (“Cramming”);)	09-158;
)	
Consumer Information and Disclosure; Truth-in-Billing)	CC Docket No. 98-170;
)	
and Billing Format)	FCC 11-106
)	

To: The Commission

COMMENTS OF ILLINOIS, NEVADA, AND VERMONT

The Attorneys General of Illinois, Nevada, and Vermont (the “Attorneys General”) appreciate the opportunity to comment on the Federal Communication’s proposed amendments to the Truth-in-Billing rules. In its notice of proposed rulemaking, the FCC poses several questions concerning telephone bill cramming and proposes rule changes to address telephone bill cramming.

Summary of Comments

The Attorneys General, as officials charged with enforcing laws designed to protect consumers from unfair and deceptive business practices, have had significant experience with telephone bill cramming over the years, through consumer complaints and law enforcement investigations and actions. For years now the Attorneys General have observed vendors engaging in deceptive sales pitches that manage to evade billing aggregator and local phone company screening, resulting in consumers being charged for services or products they don’t want, don’t use, and didn’t agree to be billed for on their telephone bills.

Victims include residential phone subscribers, businesses of all sizes, churches, and non-profit organizations. It is estimated that at least \$2 billion worth of third party telephone charges are placed on telephone bills each year, and that a large percentage of those charges are unauthorized cramming charges.¹

In a recent Federal Trade Commission enforcement action alleging phone bill cramming by a third party vendor, the court found, based on a survey of the defendants' customers, that about 97 percent of the defendants' customers had not agreed to purchase the products for which the defendants billed them, and that just 5 percent of those customers were aware that the defendants' charges had appeared on their telephone bills.² 95.9 percent of the defendants' customers surveyed indicated they did not use the product for which they were billed. The states' investigations of third party vendors also reveal similarly high percentages of unauthorized charges, low levels of consumer awareness of the charges, and low levels of product usage.

In Vermont, for example, of 562 survey respondents, fully 503 (89.5%) stated that they had not agreed to be charged for the third-party services that appeared on their telephone bill. Indeed, a number of these consumers indicated that they had no reason to order the services for which they were charged; the respondents gave such explanations as, "[I] have an answering machine [and so] would never use this service," "I had voicemail from the phone company [and] did not need [another service]," and "[I] can't imagine agreeing to voicemail since we have

¹ Sen. Comm. on Commerce, Science, and Transportation, Office of Oversight and Investigations Majority Staff, Staff Report for Chairman Rockefeller, *Unauthorized Charges on Telephone Bills*, 112th Cong. (Staff Report for Chairman Rockefeller, ii, 11, 20 - 21 (July 12, 2011)).

² Federal Trade Commission v. Inc 21.COM Corporation, 745 F.Supp.2d 975, 1000-01 (N.D. Cal. 2010)

always had a personal voice recorder.” Moreover, only an estimated 27.4% noticed the charge within the first three months of its appearance on their telephone bill.³

Because of their collective experience with addressing telephone bill cramming, the Attorneys General respectfully submit that a ban on third party charges on telephone bills, with certain exceptions for otherwise regulated services, is appropriate and necessary to protect telephone customers from unwanted, unauthorized charges.⁴

Summary of Deceptive Sales Pitches

Sales solicitations take a variety of forms in various media, but the consistent theme the Attorneys General observe is failure to obtain affirmative and knowing subscriber authorization for a purchase to be billed on his or her telephone bill. When telephone bill cramming first emerged as a problem in the 1990s, sales pitches commonly occurred via telemarketing solicitations.

Although telemarketing solicitations to residential phone subscribers have been reduced as a result of the national do not call registry, which makes most cold telemarketing calls placed to residential subscribers whose numbers appear on the registry illegal, telemarketing solicitations to small businesses, churches, and charitable organizations continue.

Examples of deceptive telemarketing solicitations to small businesses, churches, and charitable organizations include free trial offers. The vendor often indicates the offer is for a free trial, or that the phone subscriber is only being asked to agree to receive written information. At the end of the free trial or after the written information is received, the subscriber is under the

³ A total of 234 (41.6%) responding consumers indicated on the survey that they noticed a third-party charge on their local telephone bill. It was then possible to identify the billing records of 205 of these consumers; and of that number, 135 (65.9%) were charged for fewer than four months. The resulting percentage of consumers who noticed the charge, but only within the first three months, was 41.6% x 65.9%, or 27.4%.

⁴ Please see Sen. Comm. on Commerce, Science, and Transportation, *Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose*, 112th Cong. (Written testimony of Illinois Attorney General Lisa Madigan) (July 13, 2011).

impression that he must take some affirmative action to sign up for the service. Instead, if the subscriber does not take some affirmative act to cancel, the vendor considers this a sale and submits it for billing on the subscriber's telephone bill.

In other cases, consumers report telemarketing calls from online directory listings who claim they are calling to confirm the consumer's information such as their such as name, address, and telephone number for a free online directory listing or to renew an existing listing. Actually, there is no free listing or current listing, and after collecting the consumer's personal information, the vendor submits the charges to the subscriber's telephone bill. The vendor then later uses this deceptively gathered information as proof the consumer consented to have the unwanted charges placed on their telephone bill. For example, a company called eBridge, Inc. used a script that began, "The reason I'm calling today is to make sure your information is listed correctly." In fact, the reason for the call was to sign up the business consumer for a \$49.95-per month service.

Due in part to telemarketing laws restricting calls to residential customers, many vendors now solicit customers online but use similarly deceptive methods to obtain a consumer's information in order to put unwanted charges on that consumer's telephone bill. A commonly used solicitation technique is referred to as co-registration. Co-registration can happen when a consumer is online and is presented with a pop up box asking him to enter a drawing to win a flat screen television or iPad, or to receive free recipes or coupons. In order to enter the drawing or receive the free recipes or coupons, the consumer must enter some personal information, such as name, address, and telephone number. By providing the requested personal information, the consumer also is agreeing, unknowingly, to purchase a product or service to be billed on his telephone bill.

In some cases, consumers are tricked by deceptive solicitations into signing up for a vendor's services. In other cases, we have seen evidence that the sales were completely falsified, such as falsified recordings of telemarketing calls that never happened, or someone completing an online sign up with someone else's personal information.

Bottom Line

Our investigations routinely reveal that many consumers have no idea they are being billed for these third party products and services. If they do learn they are being billed, they cancel and request a refund, because they did not want the products and services, did not use them, and did not agree to purchase them, or to be billed for them on their telephone bills. Moreover, in Illinois, none of the cramming investigation targets has produced any proof that the Illinois customers it billed actually used the product or service for which they were billed.

Efforts to Address Phone Bill Cramming Have Not Eliminated the Problem

In the 1990s, when consumer groups, law enforcement agencies, regulators, and the industry began to focus sharp attention on the exploding problem of telephone bill cramming, the billing aggregators and the local telephone companies each announced they had developed some best practices to address telephone bill cramming. Such practices differed in some aspects, but generally involved pre-screening vendors who seek to access the telephone billing platform, scrutinizing their marketing materials, prohibiting certain known problem types of solicitations, compliance monitoring, requiring and maintaining proof of consumer authorization for telephone billed purchases, clear telephone bills, customer satisfaction, and disclosure of information to law enforcement agencies upon request.

In addition, local phone companies began making changes to their bill formats to separate third party charges from other charges on the telephone bill and include a toll-free telephone

number their subscribers could use to contact the third party to inquire about or dispute that company's charges, much of which was also addressed by the Commission's truth-in-billing rules.

In Vermont, landline cramming has continued on a large scale despite the passage of a law requiring vendors to send written notice to consumers in conjunction with placing a charge on their telephone bill. Vermont's through-the-mail notice requirement, enacted in 2000 to address the problem of cramming, has not worked. First of all, vendors simply ignored the law. Of 562 consumer survey respondents, only 8 (1.4%) recalled having received any separate written notice of their charges (although the merchants claimed to have provided notice, either online or through the mail). In sum, for a decade, consumers have not received, seen or understood notifications that merchants claim to have provided; most of them have not readily noticed the merchants' charges on their telephone bills; and very few of them recall ever having agreed to be billed. In short, despite the notice requirement, consumers have continued to be crammed, a fact that is not surprising in light of the low level of public awareness that non-telephone charges can appear on one's telephone bill (any more than that third-party charges can be passed through to a person's electric bill, fuel bill, or monthly mortgage account statement).

Similarly, in 2009, the Illinois General Assembly passed anti-cramming legislation (815 ILCS 505/2HHH). This law requires third party vendors to disclose clearly and conspicuously all material terms and conditions of the offer, including, but not limited to, all charges, and the fact that the charges for the product or service will appear on the consumer's telephone bill. The bill also requires third party vendors to obtain a consumer's express consent to purchase the product or service offered and to have the charges appear on the consumer's telephone bill. It also requires third party vendors to take effective steps to determine that the consumer who

purportedly accepted the offer is authorized to incur charges for the telephone number to be billed. Despite the passage of this legislation, phone bill cramming continues in Illinois. Illinois consumers continue to report unauthorized charges on their telephone bill for products and services they did not want and do not use. Cramming investigations conducted by the Office of the Illinois Attorney General indicate that the vast majority of Illinois phone bill cramming victims are not only unaware that they are being charged on their telephone bills for these unwanted products and services, but also are unaware that it is possible to be billed on their telephone bills for these products and services.

In addition to industry best practices and state legislation aimed at stopping cramming, state attorneys general, state public utilities commissions, and the Federal Trade Commission filed numerous law enforcement actions against numerous vendors and some billing aggregators. Despite these efforts by the legislatures, the industry, and law enforcement entities, phone bill cramming continues on an alarming scale.

Proposals Contained in Instant NPRM

Third Party Bill Blocking- Disclosure of Blocking of Third Party Charges, Requiring Wireline Telephone Companies to Offer Blocking, and Requiring Subscribers to Opt Out of Third Party Bill Blocking

The Commission proposes requiring different versions of a third party telephone bill blocking option, from requiring carriers to disclose options to block third party charges, to requiring carriers to provide third party blocking to their customers, to require carriers to offer third party blocking on an opt out basis. These proposals are insufficient to address phone bill cramming.

First, it is not clear that third party billing blocks are effective at blocking third party billing. The U.S. Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, Majority Staff issued a report on July 12, 2011 entitled *Unauthorized Charges on Telephone Bills*. That report indicates that phone companies may be relying on billing aggregators, rather than the phone companies' own billing mechanisms, for bill blocking⁵. The report also indicates that third party bill blocking may not be effective at preventing all third party charges from reaching phone bills, as evidenced by several consumer complaints about unwanted third party charges despite a bill block being in place⁶.

Second, major carriers currently offer third party bill blocking and claim to offer the service to its customers, but recent consumer complaints do not indicate that the carriers offered this service to them, even after they complained about phone bill cramming. It simply is not in the carriers' financial interest to ensure that third party bill blocking is offered and implemented.

Finally, offering third party bill blocking services presupposes that some consumers want to be billed on their telephone bills for third party products and services, or even expect that they can be billed for third party products and services this way. On the contrary, the states' numerous investigations of third party vendors routinely reveal deceptive sales pitches and low consumer awareness that they are being billed for the vendor's product or service. If consumers discover they are being billed, they try to cancel the product or service, because they did not want or use the product or service, and they did not knowingly agree to be billed for the product or service on their phone bills. Consumers who don't expect to be billed for third party products and services on their landline telephone bills will not seek out blocking options.

⁵ *Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose*, 112th Cong. at 33- 34.

⁶ *Id.* at 33 – 34; Appendix A.

Separate Bill Section for Third-Party Charges

Telephone carriers currently place third party charges in a separate section of the telephone bill. This does not address the root problem of deceptive sales pitches for unwanted and unused products and services or the lack of consumer expectation that they may be billed for third party products and services on their telephone bills. At most, it merely makes it somewhat less likely that the phone bill cramming will go unnoticed for several months.

Consumers who have complained to the states about unauthorized charges on their telephone bills often report encountering difficulty with having the charges removed from their bill, such as difficulty reaching a customer service representative, being placed on hold for long periods of time, or being told they needed to call someone else to address the problem.

Disclosure of Commission Contact Information and Third Party Contact Information

Although this is always helpful information, providing contact information does not address the root problems of deceptive sales pitches for products and services that no one wants or uses, or the lack of consumer expectation that they may be billed for third party products and services on their telephone bills. Also, it does not guarantee that a consumer complaint will be addressed or rectified, nor does it make it more likely the consumer will discover the unwanted charge in the first place.

Due Diligence

For several years now, both carriers and billing aggregators say they have been conducting due diligence examinations before allowing vendors onto the billing platform. However, phone bill cramming continues at great cost to consumers, both in unauthorized charges on their telephone bills and in time and energy expended to remove the charges from their telephone bills. Auditing companies that specialize in telephone bill audits to help their

clients discover unauthorized charges report that 65% to 100% of their clients have experienced telephone bill cramming.⁷

It does not appear that any amount of due diligence, blocking, and law enforcement actions will eliminate or have any significant impact on phone bill cramming of charges for services and products that phone subscribers do not use or want.

Ban on All Third Party Charges With Some Exceptions

Because phone bill cramming continues after years of enforcement proceedings, best practices, and telephone bill disclosures, the Attorneys General respectfully submit that the only way to protect consumers from being billed on their telephone bills for products and services that they don't want, don't use, and didn't agree to purchase is to ban third party charges from telephone bills.

Some limited exceptions for certain regulated services, such as long distance calls, operator-assisted calls, and dial-around services, may be appropriate. To that end, a new Vermont law is instructive. In January 2011, the Vermont Attorney General's Office presented legislation prohibiting most third-party charges on local telephone bills for introduction in the Vermont Legislature. With the support of the local telephone companies, this anti-cramming measure passed both the Vermont House and Senate by voice vote, and on May 27, 2011, it was signed into law by Governor Peter Shumlin and became effective immediately.

The new law, which amends the earlier notice requirement, 9 V.S.A. § 2466, contains a general prohibition on third-party charges to local telephone bills, with the following limited exceptions:

- Billing for goods or services marketed or sold by a company subject to the jurisdiction of the Vermont Public Service Board;

⁷ *Id.* at 20-21.

- Billing for direct dial or dial-around services initiated from the consumer's telephone; and
- Operator-assisted telephone calls, collect calls, and telephone services that facilitate communication to or from correctional center inmates.

Vermont's statutory approach takes account of actual consumer expectations—*i.e.*, that consumers do *not* anticipate that they will be charged on their local telephone bills for third-party services. It is straightforward to enforce. It does not interfere with other methods of receiving payment for services provided, such as credit cards, debit cards, personal checks, and electronic funds transfers. And it is viewed as a solution to the problem of cramming in Vermont. To date, the Vermont Attorney General's Office has received no negative feedback about the law, which appears to be working well.

Wireless Cramming

The Attorneys General recognize that the Commission has also requested feedback as to whether the same measures appropriate in a landline context would be equally effective and appropriate in preventing wireless cramming.

Wireless cramming is a serious problem. While wireless customers file only 16% of all cramming complaints,⁸ this proportion will inevitably become larger and larger as the wireless industry continues to expand, and as consumers continue to switch from landline to wireless service. Moreover, wireless customers are increasingly using their wireless devices to make donations to charities,⁹ participate in interactive media events, and purchase phone-related, and non-phone related goods and services, resulting in additional charges to their wireless telephone

⁸ Cramming NPRM, ¶¶ 19, 29.

⁹ For example, the American Red Cross and other organizations raised substantial sums by enabling wireless customers to make donations by text messaging.

accounts. It is important, therefore, that the Commission establish effective consumer protections for wireless customers, before wireless cramming becomes the larger problem.

However, at this time, more investigation is needed before making specific recommendations as to how to curb wireless cramming. The Attorneys General respectfully submit that the Commission ban landline cramming as swiftly as possible, and promptly turn its attention to the burgeoning wireless cramming problem.