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**

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits its comments in response to the August 27, 2013 *Public Notice* issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[1]

I. INTRODUCTION

In the *Public Notice*, the Commission seeks to refresh the record on "cramming" (*i.e.*, the placement of unauthorized charges on consumer telephone bills) in light of developments and additional evidence related to such practices by wireline and wireless providers.[2] More specifically, the Commission acknowledges the voluntary efforts made by wireline carriers to

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

[2] *See Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, ¶ 14 (2000) (concluding that the placement of unauthorized charges for or in connection with telephone service constitutes an unjust and unreasonable practice in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b)).

cease including most third-party charges on their telephone bills,[3] and seeks input on whether adopting an opt-in requirement is warranted in light of such developments.[4] Mandatory opt-in, on which the Commission initially sought comment in connection with its April 2012 *Cramming Order and FNPRM*, would require carriers to obtain a consumer's affirmative consent before placing third-party charges on bills.[5]

As ITTA previously advocated, additional anti-cramming measures, such as an opt-in requirement, are unnecessary in light of voluntary wireline industry initiatives to address cramming – chiefly, by eliminating most third-party charges on consumer telephone bills.[6] Such initiatives, on top of existing anti-cramming regulations the Commission has in place, are more than sufficient to address unlawful and fraudulent cramming practices.

As indicated above, the Commission adopted rules to empower consumers to address unauthorized charges on their telephone bills in its April 2012 *Cramming Order and FNPRM*. Those rules require wireline providers that offer blocking of third-party charges to notify consumers of this option on their bills, websites, and at points of sale. The rules also require

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[3] *See, e.g.,* Letter from Timothy McKone, Executive Vice President, Federal Relations, AT&T Services, Inc., to The Honorable John D. Rockefeller, Chairman, Committee on Commerce, Science & Transportation, United States Senate (Mar. 28, 2012) attaching letter from Mark A. Kerber, General Attorney, AT&T Services, Inc., to All AT&T Billing Solutions Services Customers (Mar. 28, 2012); Letter from Ian Dillner, Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC (Mar. 23, 2012); News Release, *Klobuchar; CenturyLink Joins AT&T and Verizon in Putting a Stop to Cramming on Phone Bills* (Apr. 3, 2012), *available at*: http://klobuchar.senate.gov/inthenews_detail.cfm?id=336476& (last visited Nov. 12, 2013).

[4] *Public Notice* at 2.

[5] *See Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, ¶¶ 136-49 (2012) ("*Cramming Order and FNPRM*").

[6] *See, e.g.*, Comments of the Independent Telephone & Telecommunications Alliance, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170 (filed June 25, 2012).

wireline providers to place non-carrier third-party charges in a distinct bill section separate from all carrier charges, and to provide separate totals for carrier and non-carrier charges.[7] At that time, however, the Commission concluded that there was an insufficient record upon which to determine whether an opt-in requirement was necessary.

Although ITTA supported the bill formatting and transparency rules adopted in the *Cramming Order and FNPRM*, ITTA continues to believe that further regulation beyond those measures is unjustified, especially considering voluntary wireline industry initiatives to address cramming, the fact that the Commission has yet to assess the impact of the rules it adopted in the *Cramming Order and FNPRM*, and the potential burdens and costs associated with an opt-in requirement.

Should the Commission nonetheless determine to adopt an opt-in approach, the requirement should only be applied to non-telecommunications service charges to avoid interference with established and legitimate practices regarding telecommunications and related service charges, as described below. Further, the existing cramming rules and any new rules should be applied equally to all types of voice providers, including wireless and VoIP service providers.

II. THE COMMISSION SHOULD ASSESS THE IMPACT OF VOLUNTARY INDUSTRY MEASURES AND EXISTING ANTI-CRAMMING RULES BEFORE CONSIDERING ADDITIONAL REQUIREMENTS

In general, the Commission should rely on industry self-regulation to address cramming issues. Such initiatives, coupled with the anti-cramming rules the Commission already has in place, empower consumers to prevent and detect the placement of unauthorized charges on their telephone bills.

[7] These requirements took effect on November 13, 2012 and December 26, 2012, respectively.

Wireline industry advocates overwhelmingly agreed with this approach in the comments filed in response to the *Cramming Order and FNPRM*. Verizon and AT&T pointed out the voluntary measures they have implemented to address cramming, which include eliminating most third-party charges and establishing other protections for consumers, including a third-party application and review process, a cramming complaint threshold, and complaint resolution procedures.[8] CenturyLink detailed similar policies, noting that the Commission's existing anti-cramming measures "combined with the private decision of the largest carriers in the country to further limit the scope of third-party billing, will go far to eliminate what the Commission has determined to be the 'root cause' of intentional cramming."[9]

Given the tremendously competitive marketplace with respect to the provision of voice, data, and video services, ITTA members and other wireline providers have every incentive to protect subscribers from unauthorized charges. ITTA members have embraced the trend set by the largest carriers in ceasing to include most third-party charges on customer bills. A survey of ITTA's membership revealed that most have terminated billing for services unrelated to telecommunications, which are typically the source of customer cramming complaints. Although ITTA members continue to include some third-party charges on customer bills, such

[8] *See* Comments of Verizon Communications, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170 (filed June 25, 2012); Comments of AT&T, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170 (filed Oct. 24, 2011).

[9] Comments of CenturyLink, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170, at 2 (filed June 25, 2012) (internal citations omitted). *See also* Comments of the Coalition for a Competitive Telecommunications Market, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170 (filed June 25, 2012) (arguing that the FCC should reject an opt-in approach for presubscribed 1+ telecommunications services); Comments of 1 800 COLLECT, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170 (filed June 25, 2012) (opposing an opt-in approach for third-party charges because the costs of such a requirement would far outweigh any consumer benefits).

charges are largely limited to services billed on behalf of affiliates or established third parties, such as long-distance and multichannel video programming service providers.

In addition, ITTA members comply with the Commission's truth-in-billing guidelines,[10] offer customers blocking options for third-party charges, work with customers to ensure that erroneous third-party charges are removed from their bills, and actively monitor behavior of third-party vendors to eliminate bad actors. In an increasingly crowded communications marketplace, where consumers are free to choose among a variety of services from any number of entities, it is imperative that voice providers have such policies and practices in place to ensure continued customer satisfaction and loyalty. ITTA members also have been exploring other measures that would be useful to increase consumer awareness of cramming, for example, through information contained in subscriber bill inserts.

The Commission should acknowledge these industry efforts as a means to combat cramming, particularly given that it has not yet evaluated the impact of the measures it adopted in the *Cramming Order and FNPRM*. The sufficiency of those rules cannot be determined without first being observed. The Commission must determine whether those measures, along with service providers' voluntary practices, are sufficient to mitigate cramming before contemplating the imposition of any additional requirements on wireline providers. The Commission risks over-regulation if additional rules are considered when existing rules and practices may be adequate.

[10] *See* 47 C.F.R. § 64.2401 (requiring that customer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new provider that did not appear on the customer's bill during the previous billing cycle; (2) contain full and non-misleading descriptions of the charges appearing on the bill; and (3) contain clear and conspicuous disclosure of any information that the consumer may need to inquire about or dispute charges on the bill).

Should the Commission nonetheless decide to adopt the opt-in approach proposed in the *Cramming order and FNPRM* – which it should not – the rule should only be applied to non-telecommunications service charges to avoid interference with legitimate, established practices regarding telecommunications-related service charges. Furthermore, competitive considerations dictate that any requirements the Commission adopts in this proceeding be applied equally to all voice service providers, including wireless and interconnected VoIP providers. The uniform application of such requirements furthers the principles of regulatory parity by assigning various providers of similar services similar regulatory obligations. Moreover, parity would ensure that all consumers have access to the same processes that may be required by the Commission as a result of this proceeding regardless of the underlying technology employed by their voice service provider.

III. ADDITIONAL REQUIREMENTS, SUCH AS AN OPT-IN RULE, WOULD BE UNREASONABLY BURDENSOME AND COSTLY

Wireline providers have undertaken significant voluntary anti-cramming initiatives in addition to implementing regulations the Commission currently has in place. Such efforts involve managing significant expenses associated with issuing subscriber bills and administering customer relationships. As ITTA previously has expressed, any additional rules that require disclosure of certain information to subscribers and dictate the manner in which such information is disclosed would necessarily require further substantial changes to wireline providers' business practices and operations.[11] Such changes could have far-reaching and costly impacts on the day-to-day commercial activities of wireline providers and their interactions with customers.

[11] Comments of the Independent Telephone & Telecommunications Alliance, CG Docket Nos. 11-116 and 09-158, and CC Docket 98-170, at 3 (filed Oct. 24, 2011).

Should the Commission adopt a mandatory opt-in process, specific additional expenses related to the training of in-house customer service personnel and the processing of customer information, the hiring of third-party verification companies to contact embedded customer bases, and/or the preparation, mailing, and processing of customers' letters of authorization likely would need to be incurred by service providers. Additionally, the need to educate existing customers could be extensive and additional customer service representatives might need to be hired and/or trained regarding how to instruct subscribers on the opt-in process.

In short, before the Commission adopts a mandatory opt-in requirement (which ITTA opposes), the direct and indirect costs to service providers of implementation and administration need to be carefully considered. A full and fair examination of the extensive initial and ongoing costs to service providers of a mandatory opt-in rule, particularly in light of the lack of record evidence that the Commission's current cramming rules, along with voluntary industry initiatives, are not sufficient to curb cramming, dictate that the Commission refrain from adopting an opt-in requirement at this time.

Should the Commission nevertheless move forward with an opt-in requirement, it must ensure that service providers have the flexibility to continue to participate in established third-party arrangements for the billing of legitimate charges such as directory assistance, collect calls, inmate facilities calls, and other services like those described above. In each of these cases, customer acceptance of the charge is a condition precedent to incurring any costs. The Commission should not limit voice providers' ability to respond to consumers and the market flexibly and efficiently through the adoption of regulations which severely impact providers' ability to enter into valid and socially-beneficial business relationships.

IV. CONCLUSION

The Commission should refrain from unnecessary and overreaching regulation when it appears that cramming concerns are adequately addressed through existing Commission rules coupled with voluntary industry action. However, to the extent that the Commission determines to adopt additional anti-cramming measures, it must ensure that such requirements are applied in a competitively neutral manner so as to promote regulatory parity and the broadest consumer impact.

Respectfully submitted,

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