



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS TO REFRESH THE RECORD REGARDING “CRAMMING”

CG Docket No. 11-116 and 09-158; CC Docket No. 98-170

Comment Date: [45 days after Publication in the Federal Register]

Reply Comment Date: [60 days after Publication in the Federal Register]

With this Public Notice, the Commission’s Consumer and Governmental Affairs Bureau (Bureau) seeks to refresh the record on cramming, the unlawful and fraudulent practice of placing unauthorized charges on telephone bills. As explained below, in light of developments and additional evidence related to cramming for both wireline and Commercial Mobile Radio Service (CMRS) consumers, the Bureau seeks to update the record in response to the Commission’s April 2012 Further Notice of Proposed Rulemaking.

On April 27, 2012, the Commission adopted rules to help wireline consumers prevent and detect cramming.¹ Those rules require wireline providers that currently offer blocking of third-party charges to notify consumers of this option on their bills, carrier websites, and other points of sale. The rules also require all 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.² These rules took effect on November 13, 2012³ and December 26, 2012,⁴ respectively.

At the same time it adopted the new rules, the Commission sought comment in a Further Notice of Proposed Rulemaking (*Further Notice*) on whether the Commission should take additional steps to prevent wireline cramming, including requiring carriers to obtain a consumer’s affirmative consent before placing third-party charges on bills (*i.e.*, “opt-in”), and on possible regulatory and non-regulatory measures to address cramming that involves CMRS consumers.⁵ Comments were due by June 25, 2012, and reply comments were due by July 20, 2012.⁶

¹ 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, CC Docket 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436 (2012) (*Cramming Order and Further Notice*).

² See *id.*

³ See 47 C.F.R. § 64.2401(f) (disclosure of blocking option).

⁴ See *id.* § 64.2401(a)(3) (third-party charges in a separate bill section).

⁵ See *Cramming Order and Further Notice*, 27 FCC Rcd at 4485.

⁶ See *Consumer and Governmental Affairs Bureau Announces Comment Deadline for “Cramming” Further Notice of Proposed Rulemaking*, 27 FCC Rcd 5794 (CGB 2012); *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, CG

Since the Commission's new rules took effect and the *Further Notice's* comment cycle closed, a number of noteworthy developments have taken place. Specifically, after adoption of the new cramming rules, major wireline carriers made voluntary commitments to cease including most third-party charges on telephone bills and have now had time to implement those commitments.⁷ In addition, in May 2013, forty state and territorial attorneys general wrote the Federal Trade Commission (FTC) to express concerns about the growth of cramming on CMRS bills.⁸ Further, workshops held in April and May by the FCC and the FTC, respectively, brought to light additional information on the extent of the cramming problem; industry efforts to combat cramming; and possible ways to verify consumer consent to third-party charges.⁹ For example, recently published state studies indicate that half of all CMRS bills contain unauthorized charges and contend that the number of consumer complaints may substantially understate the magnitude of the CMRS cramming problem.¹⁰

The record in this proceeding does not fully address the developments, studies, and the information that has come to light since the *Further Notice* comments and reply comments were filed, including questions as to the extent to which consumers may continue to be unaware that third-party charges can appear on their wireline and CMRS bills and about their ability to successfully resolve disputes regarding unauthorized third-party charges. We therefore seek to refresh the record in this proceeding. We seek comment on the recent developments discussed above. We also seek comment on all issues raised in the *Further Notice*, including but not limited to the current extent of cramming for consumers of wireline and CMRS services, the need for an opt-in requirement and the mechanics of an opt-in process for wireline and/or CMRS services, and the other specific issues discussed below. We seek comment on the specific details of how wireline carriers have implemented voluntary commitments to cease including most third-party charges on telephone bills and on the efficacy of those efforts; the efficacy of CMRS industry efforts to combat cramming, such as the double opt-in process; and on the details and efficacy of any other industry efforts to combat wireline and CMRS cramming. We also seek comment on the extent to which wireline cramming remains a problem for subscribers of carriers that have not voluntarily ceased including most third-party charges on their bills, and whether different measures to combat cramming are appropriate for small and rural wireline carriers. Similarly, we seek comment on whether different measures

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Docket Nos. 11-116 and 09-158, CC Docket 98-170, Order, 27 FCC Rcd 7336 (CGB 2012) (extending reply comments deadline).

⁷ See 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 Aug. 2, 2013).

⁸ See Letter from the Attorneys General of Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Washington, and Wyoming to the Federal Trade Commission (June 24, 2013), <http://ftc.gov/os/comments/mobilecramming/564482-00015-86106.pdf> (last visited Aug. 2, 2013) (stating, among other things, that “[t]he Attorneys General view the elimination of cramming in the mobile telephone industry to be a consumer protection priority”).

⁹ See *Transcript of Federal Communications Commission's Consumer and Governmental Affairs Bureau Workshop on Bill Shock and Cramming*, <http://www.fcc.gov/events/workshop-bill-shock-and-cramming> (last visited Aug. 2, 2013), and *Transcript of Federal Trade Commission Mobile Cramming Roundtable*, <http://www.ftc.gov/bcp/workshops/mobilecramming/30508mob.pdf> (last visited Aug. 2, 2013).

¹⁰ See, e.g., *Mobile Phone Third Party Charge Authorization Study*, Jane Kolodinsky, PhD, Center for Rural Studies at the University of Vermont (May 5, 2013), <http://www.atg.state.vt.us/assets/files/Mobile Phone Third-Party Charge Authorization Study.pdf> (last visited Aug. 2, 2013).

might be more appropriate for small and rural CMRS carriers than for other CMRS carriers. We generally seek comment on whether additional measures to combat wireline cramming are necessary and whether any new measures to combat CMRS cramming are appropriate, as well as what those measures might be. We ask commenters to address the costs and benefits of any proposal.

The proceedings for which this Public Notice seeks additional comment shall be treated as “permit-but-disclose” proceedings in accordance with the Commission’s *ex parte* rules.¹¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Pursuant to sections 1.415 and 1.419 of the Commission’s rules,¹² interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

¹¹ 47 C.F.R. §§ 1.1200 *et seq.*

¹² 47 C.F.R. §§ 1.415, 1.419.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FOR FURTHER INFORMATION CONTACT: B. Lynn Follansbee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202-418-1514, and lynn.follansbee@fcc.gov.

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