Before the
Federal Communications Commission
Washington, D.C. 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
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: April 27, 2012 **Released: April 27, 2012**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairman Genachowski and Commissioners McDowell and Clyburn issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 5
A. How Cramming Occurs 6
B. Current Voluntary Industry Practices 9
C. Truth-in-Billing 10
D. Consumer Information and Disclosure Notice of Inquiry 13
E. Notice of Proposed Rulemaking 18
III. EVIDENCE OF CRAMMING 20
A. Federal and State Agencies 20
1. Commission Inquiries and Complaints 20
2. Federal Trade Commission 24
3. State Government Complaints 26
B. Congressional Investigations, Inquiries, and Report 31
C. FCC Commenters 37
IV. DISCUSSION 41
A. The Need for Rules 41
B. New Rules to Protect Consumers 48
1. Rules to Prevent Cramming From Happening 51
2. Rules to Help Consumers Detect Cramming After it Happens 61
C. Other Proposals 79
1. Disclosure of Commission Complaint Contact Information 79
2. Prohibiting All Third-Party Charges on Wireline Telephone Bills 84
3. Requiring Wireline Carriers to Block Third-Party Charges Upon Request 91

4. Requiring Wireline Carriers to Disclose That They Do Not Offer Blocking of Third-Party Services 95
5. Disclosure of Third Party Contact Information 96
6. Due Diligence of Carriers to Ensure that Third-Party Charges are Legitimate 101
7. Accessibility 105
8. Definition of Service Provider or Service 106
9. Federal-State Coordination 107
D. Implementation 113
V. LEGAL ISSUES 114
A. Communications Act 114
B. First Amendment 126
VI. FURTHER NOTICE OF PROPOSED RULEMAKING 136
VII.PROCEDURAL MATTERS 150
A. Report and Order 150
1. Final Regulatory Flexibility Analysis 150
2. Final Paperwork Reduction Act Analysis 151
3. Congressional Review Act 152
B. FNPRM 153
1. Initial Regulatory Flexibility Act Analysis 153
2. Paperwork Reduction Act 154
3. Ex Parte Rules 155
4. Filing Requirements 156
VIII. ORDERING CLAUSES 160
A. Report and Order 160
B. FNPRM 165
APPENDIX A – Final Rules
APPENDIX B – Comments Filed
APPENDIX C – Final Regulatory Flexibility Analysis
APPENDIX D – Initial Regulatory Flexibility Analysis

I. INTRODUCTION

1. In this *Report and Order and Further Notice of Proposed Rulemaking*, we adopt and propose additional rules to help consumers[1] prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as "cramming." The record compiled in this proceeding to date, including a report prepared by the Majority Staff of the Senate Commerce Committee and the Commission's own complaint data, suggests that cramming is a significant and ongoing problem that has affected telecommunications consumers for over a decade, drawing the concern of Congress as well as multiple state and federal agencies.[2]

2. By some estimates, cramming affects between 15 and 20 million American households each year, and third-party billing – the practice that enables most cramming – is a $2 billion-a-year industry. The widespread nature of cramming and the fact that the number of wireline cramming

[1] "Consumers" as used herein refers to all users or purchasers – including residential or business – of communications. We use the term "third parties" to refer to all purchasers or users of billing-and-collection services provided by telecommunications carriers.

[2] *See infra* section III; *see also* United States Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, Majority Staff, Staff Report for Chairman Rockefeller, "Unauthorized Charges on Telephone Bills" (July 12, 2011) (*Senate Staff Report*).

complaints received by the Commission, the Federal Trade Commission ("FTC"), and state agencies, such as public service commissions and attorneys general, remains high are strong evidence that the current voluntary industry practices, while well intended, have been ineffective to prevent cramming and make clear the need for additional protection for consumers.

3. Compounding the need for additional rules, the record in this proceeding shows that crammers often use schemes designed to minimize the possibility of detection, such as charging small amounts or labeling the charges to appear to be associated with a telecommunications service,[3] making it difficult for consumers to detect and dispute unauthorized charges and resulting in a significant overall cost to consumers.[4]

4. The Commission previously has determined that cramming is an unjust and unreasonable practice prohibited by section 201(b) of the Act[5] and has adopted Truth-in-Billing rules in part to address cramming.[6] Yet, based on the record, the substantial volume of consumer complaints, and other evidence that cramming remains a persistent and widespread consumer problem, we adopt additional safeguards for wireline telephone consumers that build on existing industry efforts to prevent cramming and that are necessary to better enable consumers to prevent cramming before it occurs and detect it if it does happen to them. In the *Further Notice*, we seek comment on whether the Commission should take additional steps, including requiring carriers to obtain a consumer's affirmative consent before placing third-party charges on their own bills to consumers (*i.e.*, "opt-in"). We expect to evaluate the record in response to the *Further Notice* and take any appropriate next steps in a timely manner.

II. BACKGROUND

5. In the *NPRM*, the Commission provided detailed background information regarding cramming, including describing how cramming occurs and summarizing how the Commission previously

[3] Crammers often label charges "voicemail" or "web services," which can make the charges appear to be associated with services a carrier normally provides. *See* Press Release, Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands (Mar. 31, 2011) ("The services typically offered . . . include voicemail services, electronic fax services, webhosting, online gaming, and e-mail"), available at http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=165806cd-d931-4605-aa86-7fafc5fd3536&MonthDisplay=3&YearDisplay=2011.

[4] For example, a recent FTC investigation found that a single company had crammed unauthorized charges on the telephone bills of thousands of consumers and small businesses over a five-year period resulting in millions of dollars in charges for services they never agreed to buy. *See* FTC Halts Massive Cramming Operation That Illegally Billed Thousands, www.ftc.gov/opa/2010/03/inc21.shtm (Mar. 1, 2010); s*ee also FTC v. Inc21.com Corp.*, 688 F.Supp.2d 927 and 745 F.Supp.2d 975 (N.D. Cal. 2010), (together, "*Inc21.com*").

[5] *See, e.g.*, *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, ¶14 (2000) (imposing a forfeiture for a company's practices of cramming membership and other unauthorized fees on consumer telephone bills); *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (rel. Jun. 16, 2011) ($4.2 million proposed forfeiture); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (rel. Jun. 16, 2011) ($3 million proposed forfeiture); *Cheap2Dial Telephone*, *LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863 (rel. Jun. 16, 2011) ($3 million proposed forfeiture); *Norristown Telephone Company*, *LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844 (rel. Jun. 16, 2011) ($1.5 million proposed forfeiture) (collectively, excluding *Long Distance Direct*, the "June 2011 NALs"). As discussed in greater detail below, the cramming entity can be the customer's own telecommunications service provider or an unaffiliated third party that may or may not be a common carrier. These third-party charges can be for additional telephone services or unrelated products and services, such as chat lines, diet plans, and horoscopes.

[6] The Truth-in-Billing rules are codified at 47 C.F.R. §§ 64.2400-64.2401.

has addressed cramming.[7] For convenience and to provide complete context for the actions we take today, we reiterate some of that background along with information that emerged since the Commission issued the *NPRM*.

A. How Cramming Occurs

6. Last year, staff of the United States Senate Committee on Commerce, Science, and Transportation completed an investigation into cramming for consumers of wireline telephone service. The subsequent report explained that cramming occurs when telephone companies allow third parties to place charges on their consumers' telephone bills, enabling consumers' telephone numbers to operate similarly to a credit or debit card account number for vendors. Information obtained from investigations by the Commission's Enforcement Bureau shows that the crammers and billing aggregators that purchase billing-and-collection services from a carrier need only an active telephone number, which can be obtained from a telephone directory, to place unauthorized charges on the consumer's telephone bill. Cramming occurs when the consumer has not authorized the charge.[8]

7. The *Senate Staff Report* states that most cramming involves third parties who, rather than contract directly with the billing carrier, bill through an intermediary billing aggregator.[9] Billing aggregators contract directly with carriers for billing-and-collection services on behalf of the third parties they represent. The aggregators amass charges from numerous third parties and forward these charges to the billing carrier whose consumer allegedly purchased the third party's service. According to information obtained by the Enforcement Bureau, the billing aggregator typically, and by contract, supplies the billing carrier with the consumer's telephone number and the amount to be charged, and requests that the charge be placed on the consumer's telephone bill. The billing aggregator generally does not need the consumer's name or address for the cram to take place, and proof of authorization is not generally provided to or required by the billing carrier. The billing carrier may not require the aggregator to clearly identify the good, product, or service for which the consumer is being charged. The billing carrier then includes these charges in its own bill to its consumer, collects payment from the consumer, and remits payment to the billing aggregator, which in turn remits payment to the third party. Both the billing carrier and the billing aggregator receive compensation from the third party for their services.[10] The process works similarly if the vendor contracts directly with the carrier rather than using an intermediary billing aggregator.[11] Actually authorized third-party charges are processed in the same fashion.[12]

8. In addition to compensation for billing-and-collection services, the carrier may receive additional compensation from the billing aggregator or third party for each consumer cramming

[7] *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 No. 98-170, Notice of Proposed Rulemaking, 26 FCC Rcd 10021, 10025-29, ¶¶6-18 (2011) (*NPRM*). A complete list of commenters, including the full names associated with the abbreviations used herein, can be found *infra* at Appendix B.

[8] *See NPRM,* 26 FCC Rcd at 10025, ¶¶7-8; *Senate Staff Report* at 12-17.

[9] *See Senate Staff Report* at 8-9.

[10] *See id.* at 8-10.

[11] *See* June 2011 NALs; *see also Senate Staff Report* at 8-10.

[12] *See Senate Staff Report* at 12.

complaint or inquiry it handles. Similarly, the billing aggregator may be compensated by the third party for handling interactions with the consumer regarding the crammed charge.[13]

B. Current Voluntary Industry Practices

9. In 1998, the nation's wireline local exchange carriers ("LECs") and providers of billing-and-collection services adopted a voluntary code of "best practices" designed to prevent cramming.[14] According to these best practices: (1) bills should be comprehensible, complete, and include information the consumer may need to discuss, and if necessary, dispute billed charges with the carrier; (2) consumers should be provided with options to control whether a third party may include charges for its products and services on their telephone bills; (3) consumer authorization of services ordered should be appropriately verified; (4) LECs should screen products, services, and third-party service providers prior to allowing their charges on the telephone bills; (5) clearinghouses that aggregate billing for third-party providers and submit that billing to LECs should ensure that only charges that have been authorized by the consumer would be included; (6) LECs should continue to educate consumers as to their rights and the process for resolution of disputes; and (7) LECs should provide appropriate law enforcement and regulatory agencies, as well as other LECs, with various categories of data to assist in controlling carrier inclusion of unauthorized charges on a consumer's bill.[15] Despite these voluntary industry practices, there is strong evidence that they have been ineffective to prevent cramming, and that cramming is still a significant problem for consumers.[16]

C. Truth-in-Billing

10. In 1999, the Commission adopted the *First Truth-in-Billing Order* to address growing confusion related to billing for telecommunications services and an increase in practices such as "slamming"[17] and cramming.[18] The Commission concluded that Truth-in-Billing requirements were necessary to deter carriers from engaging in unjust and unreasonable practices, including cramming, in violation of section 201(b) of the Act. Citing its authority under sections 201(b) and 258(a) of the Act, the Commission chose to adopt a flexible approach by adopting "broad, binding principles" to promote

[13] *See* June 2011 NALs; *see also FTC v. Inc.21.com*, 745 F.Supp.2d at 994-995.

[14] *See* Anti-Cramming Best Practices Guidelines, available at http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html ("Best Practices Guidelines").

[15] Statement of William Kennard, Chairman, Federal Communications Commission on the Release of Local Exchange Company Best Practices to Combat "Cramming," 1998 WL 406058 (1998); *see also* Best Practices Guidelines.

[16] *See Senate Staff Report* at i; FTC NOI Reply Comments at 9; 25 State Attorneys General Joint NOI Comments at 9. *See generally infra* section III.

[17] "Slamming" is the unlawful practice of changing a subscriber's selection of a provider of telephone service without that subscriber's knowledge or permission. *See Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492, 7494, ¶3 (1999) ("*First Truth-in-Billing Order")*; *see also* 47 U.S.C. § 258 ("Illegal Changes In Subscriber Carrier Selections.").

[18] *See First Truth-in-Billing Order;* Order on Reconsideration, 15 FCC Rcd 6023 (2000) ("*Order on Reconsideration*"); Truth-in-Billing and Billing Format, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 20 FCC Rcd 6448 (2005) ("*Second Truth-in-Billing Order*") *vacated in part sub nom. Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006) (invalidating preemption of certain state requirements for CMRS bills).

Truth-in-Billing, rather than mandating more detailed rules to govern the details or format of carrier billing practices.[19]

11. The Truth-in-Billing principles are codified at sections 64.2400 and 64.2401 of the Commission's rules and, among other things, require that consumer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new provider (*i.e.*, one that did not bill the customer for service during the last billing cycle); (2) separate charges by service provider; (3) contain full and non-misleading descriptions of the charges that appear therein; and (4) contain clear and conspicuous disclosure of any information that the consumer may need to make inquiries about, or to contest charges on, the bill.[20]

12. In 2005, the Commission adopted the *Second Truth-in-Billing Order* which emphasized the prohibition against misleading information on telephone bills and provided examples of improper line-item charges and descriptions.[21] It also extended the requirements concerning charge descriptions to Commercial Mobile Radio Service ("CMRS") carriers.[22]

D. Consumer Information and Disclosure Notice of Inquiry

13. In 2009, the Commission adopted the *Consumer Information NOI* to consider other ways to empower consumer choice in the rapidly evolving marketplace for communications services and plans.[23] The Commission noted that telecommunications consumers continued to file complaints about the inclusion of unauthorized charges on their bills,[24] and questioned whether the Truth-in-Billing rules have been effective in protecting consumers and making telephone bills easier to understand.[25] Specifically, the Commission sought comment on the extent to which cramming remains a problem for consumers and why.[26]

14. In response to the *Consumer Information NOI*, several state and federal regulatory and law enforcement entities and consumer advocacy organizations stated that cramming continues to be a substantial problem for consumers.[27] For example, the FTC has indicated that it receives thousands of cramming complaints annually.[28] These commenters noted that consumers often have difficulty detecting unauthorized charges on their bills because consumers often do not realize that third parties can bill for

[19] *See First Truth-in-Billing Order*, 14 FCC Rcd at 7498, ¶9.

[20] 47 C.F.R. § 64.2401.

[21] *See Second Truth-in-Billing Order*, 20 FCC Rcd at 6460-6462, ¶¶25-29.

[22] *See id*. at 6456-6458, ¶¶16-20.

[23] *See Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP-Enabled Services,* Notice of Inquiry, 24 FCC Rcd 11380 (2009) ("*Consumer Information NOI*").

[24] *See id.* at 11393, ¶41.

[25] *See id*. at 11392, ¶36.

[26] *See id.* at 11393-94, ¶41.

[27] *See, e.g.,* CPUC NOI Comments at 2-5; Citizens Utility Board (CUB) NOI Comments at 5; Minnesota Attorney General NOI Comments at 1-2; NASUCA NOI Comments at 42-56; Utility Consumers' Action Network (UCAN) NOI Comments at 2, 9-11; FTC NOI Reply Comments at 9. These comments and the comments and replies cited herein that refer to the NOI were filed in response to the *Consumer Information NOI.* Unless otherwise noted, all comments and reply comments referenced herein refer to submissions in response to the Commission's *NRPM* in the instant proceeding.

[28] FTC NOI Reply Comments at 9 and *Senate Staff Report* at i.

their products and services on telephone bills, and that these line items can represent relatively small monthly costs.[29]

15. These and many others who commented in response to the *Consumer Information NOI* suggested a number of measures to address cramming. These measures included: (1) requiring the billing carrier to offer consumers the option to block third-party billing;[30] (2) requiring billing carriers to undertake due diligence measures to screen third-party service providers and billing aggregators before placing a third-party charge on the carrier's bill;[31] (3) enhancing cooperation among law enforcement entities including sharing of complaints among state and federal regulators;[32] (4) clarifying that consumers may find unauthorized charges not only on their LEC bills but also on bills for CMRS and Voice over Internet Protocol ("VoIP") service;[33] and (5) requiring that the bill identify and provide contact information for third-party billers.[34]

16. By contrast, the carriers contended that no regulatory mandates are necessary to address cramming.[35] They argued that all carriers have incentives to protect consumers from unauthorized charges and have already implemented adequate measures to do so.[36] These cited safeguards include compliance with all federal and state laws, taking corrective measures against third-party billers that exceed specified complaint levels, pre-screening and monitoring service providers, offering blocking options, and expeditiously resolving cramming complaints.[37]

17. During the first quarter of 2011, Commission staff met with several billing carriers and consumer advocacy groups to discuss cramming and other issues facing communications consumers.[38] The *NPRM* stemmed largely from information gathered from the *Consumer Information NOI* comments, these meetings, and review of the Commission's own complaint data.

E. Notice of Proposed Rulemaking

18. On July 12, 2011, the Commission adopted the *NPRM* in this docket.[39] In the *NPRM*, the Commission sought comment on concrete measures to address cramming. Specifically, the Commission proposed measures to assist consumers in detecting and preventing cramming before it occurs. These measures included requiring wireline carriers who already offer consumers the option to block third-party

[29] *See, e.g.*, 25 State AGs Joint NOI Comments at 9; Minnesota Attorney General NOI Comments at 6-7.

[30] *See, e.g.*, CPUC NOI Comments at 4-5; 25 State AGs Joint NOI Comments at 10; FTC NOI Reply Comments at 15.

[31] *See, e.g.*, UCAN NOI Comments at 9; FTC NOI Reply Comments at 12.

[32] FTC NOI Reply Comments at 12.

[33] NASUCA NOI Comments at 42.

[34] *See, e.g.,* BSG NOI Comments at 4; CPUC NOI Comments at 5.

[35] *See, e.g.*, Qwest NOI Comments at 32-34; Verizon NOI Comments at 54.

[36] *See, e.g.*, Verizon NOI Comments at 48; Qwest NOI Reply Comments at iii, 10.

[37] *See, e.g.*, AT&T NOI Comments at 16; Verizon NOI Comments at 42-48.

[38] *See, e.g.,* Letter from Olivia Wein, Staff Attorney, National Consumer Law Center, to Marlene Dortch, Secretary, FCC (February 3, 2011); Letter from Breck Blalock, Director, Government Affairs, Sprint Nextel, to Marlene Dortch, Secretary, FCC (February 9, 2011); Letter from Chris Riley, Policy Counsel, Free Press, to Marlene Dortch, Secretary, FCC (February 9, 2011).

[39] *See NPRM.*

charges to disclose that option to consumers, and requiring separate billing sections for third parties and other bill format modifications.[40] The Commission also asked for comment on whether to require wireline carriers to offer consumers the option to block third-party charges from their telephone bills and to conspicuously notify consumers of that option.[41] The Commission also sought comment on whether to include contact information for the Commission on bills to assist consumers in filing complaints.[42] The Commission asked whether it should require the carrier generating the telephone bill to provide clear and conspicuous contact information for the third party,[43] whether to require wireline carriers to disclose if they do not offer third-party blocking,[44] whether to prohibit all third-party charges or adopt an opt-in approach,[45] and whether to require carriers to screen vendors before contracting with them to provide billing-and-collection services that would result in third-party charges being placed on the carriers' own bills.[46] The *NPRM* also sought comment on whether these proposed rules should apply only to wireline telephone service or also to CMRS and VoIP services.[47]

19. In response to the *NPRM*, all commenters offer support for current or new measures to combat cramming.[48] Similar to their responses to the *Consumer Information NOI*, however, industry commenters state that there is little need for further regulation in this area and that voluntary measures have been successful in curbing cramming.[49] By contrast, consumer groups and state agencies or groups representing nearly every state argue that cramming has become an even greater problem for consumers, and that even more stringent measures are needed to stop it.[50]

III. EVIDENCE OF CRAMMING

A. Federal and State Agencies

1. Commission Inquiries and Complaints

20. In the *NPRM*, the Commission noted that its complaint records show that during the period from 2008 to 2010, the Commission received between 2,000 and 3,000 cramming complaints each year.[51] Furthermore, cramming consistently ranks among the top billing-related complaints received by

[40] *See id.* at 10039-41, ¶¶45-49, Appendix A.

[41] *See id.* at 10038-39, ¶¶40-44.

[42] *See id.* at 10041-42, ¶¶50-51.

[43] *See id.* at 10044-46, ¶¶55-58.

[44] *See id.* at 10046, ¶59.

[45] *See id.* at 10047, ¶62.

[46] *See id.* at 10047-49, ¶¶63-65.

[47] *See id.* at 10042-44, 10050, ¶¶52-54, 69.

[48] *See*, *e.g.*, American Roaming Network, Inc. Comments at 1; BSG Comments at Executive Summary; BDP Comments at 2; CTI Comments at 1-2; Public Interest Commenters Comments at 2-3; AT&T Comments at 14-16.

[49] *See*, *e.g.*, CenturyLink Comments at 3; BDP Comments at 2; CTI Comments at 2-3; BVO Reply Comments at 5-6; ISG Reply Comments at 5-6; PCP Reply Comments at 6; Securus Technologies, Inc. Comments at 3-6.

[50] *See, e.g.,* Public Interest Commenters Comments at 3; CPUC Comments at 4; Michigan Public Service Commission Comments at 2; NASUCA Comments at 15; 17 States Attorneys General Comments at 16.

[51] *See generally* FCC Quarterly Reports on Informal Consumer Inquiries and Complaints (2008-2010). The cramming complaint numbers were determined by Commission staff from the set of complaint data used to produce these reports. During the years of 2008, 2009 and 2010, the Commission received 2,157; 3,181; and 2,516 annual cramming-related complaints, respectively.

the Commission involving wireline telephone service.[52] Of the cramming complaints received from 2008 to 2010, 82 percent related to wireline telecommunications and 16 percent related to wireless telecommunications.[53]

21. Cramming remained among the top billing-related complaints during 2011; the Commission received nearly 1,700 complaints.[54] Of these, 63 percent related to wireline telecommunications and 30 percent related to wireless telecommunications,[55] which indicates that wireline cramming complaints still constitute approximately two-thirds of all cramming complaints. Apart from the volume of complaints, staff's analysis of the complaints reveals a consistent fact pattern: consumers detect an unauthorized charge on their telephone bill; receive, in their view, insufficient assistance from the carrier on whose bill the charges appear; are unable to obtain a full – and sometimes any – refund from the carrier or third party; and file a complaint with the Commission hoping for a full refund.[56]

22. The overwhelming evidence in the record shows that the volume of complaints received by the Commission understates the extent of consumer frustration with cramming. Consistent with observations made by several commenters and complaints discussed in the *NPRM*,[57] these complaints also suggest that it often takes consumers months or years to detect unauthorized charges on their bills – if they detect them at all – because of the way third parties describe the unauthorized charges or the way carriers present the unauthorized charges on their bills. Consumers are often unaware that such charges can even be placed on their bills and how to file complaints disputing such charges, and third parties try to avoid drawing attention to unauthorized charges.[58]

23. In response to consumer complaints to the Commission, on June 16, 2011, the Commission released four NALs proposing an aggregate of $11.7 million in forfeitures against a number of long distance resellers for apparent cramming violations. In general, the complaining parties stated that they did not sign up for the service in question, had no contact with the reseller prior to being billed for the service, and never used the service. In each case, the reseller billed for its services using a billing aggregator, which provided the consumer's telephone number to the local telephone company for billing. It was determined that the billing aggregator had submitted these unauthorized charges to carriers for

[52] *Id.*

[53] *Id.* The remaining two percent of complaints do not make clear whether the carrier at issue is wireline or CMRS.

[54] *See generally* FCC Quarterly Reports on Informal Consumer Inquiries and Complaints (2011). The cramming complaint numbers were determined by Commission staff from the set of complaint data used to produce these reports.

[55] *Id*. The remaining seven percent of complaints do not make clear whether the service at issue is wireline or CMRS.

[56] *Id*. *See*, *e.g.*, IC-11-C00270284-1.

[57] *NPRM*, 26 FCC Rcd at 10030, ¶19.

[58] S*ee, e.g.,* Minnesota Attorney General NOI Comments at 4-7; 25 State AGs Joint NOI Comments at 9; *see also FTC v. Inc21.com*, 745 F. Supp.2d at 994-95 (Court relied upon a survey of defendant crammer's customers showing that less than 5 percent of them were aware that the crammed charges were on their bills); *NPRM*, 26 FCC Rcd at 10030, ¶19, *citing* FCC complaints 10-C00196562-1("charges appear …as a line item that is not obvious unless a customer scrolls for such detail"); 10-C00203445-1 ("[t]hese are very small charges which can be easily overlooked"); 10-C00210315-1 (charges included in a bill for two years before consumer noticed and complained); 10-CO0185133-1 (consumer did not realize charge was from a third party because it appeared to be a valid "voice mail" charge).

placement on thousands of telephone bills. In each NAL, the Commission alleged that the long distance reseller apparently operated a constructively fraudulent enterprise, in which it billed consumers for services that they never ordered or authorized.[59]

2. Federal Trade Commission

24. As indicated in the *NPRM*, the FTC has investigated and brought suit against crammers. In response to the *Consumer Information NOI*, the FTC confirmed that cramming is a significant area of increasing consumer complaints.[60] At that time, the FTC stated that it had received more than 3,000 consumer complaints relating to unauthorized charges on telephone bills in the previous 12 months.[61] It commented that placing unauthorized charges on telephone bills harms consumers because they are likely to pay the charges simply because they appear on their telephone bills.[62] The FTC also noted that, even if an individual consumer incurs only a small dollar amount in unauthorized charges, the aggregate cost to all consumers can be substantial.[63] The FTC cited one case, *FTC v. Nationwide Connections, Inc.*, in which a company had used a billing aggregator to place more than $30 million of fabricated collect call charges on the phone bills of millions of consumers.[64] The FTC recently hosted a forum at which numerous state and federal officials and representatives of consumer groups highlighted the serious and ongoing nature of this problem for telecommunications consumers.[65]

25. As discussed in more detail below, the FTC describes continued abuse and fraud associated with telecommunications carriers' billing of third-party charges on their own bills to their consumers. It cites several state and federal enforcement actions against crammers, including *FTC v. Inc21.com*, in which a crammer for years successfully used a variety of schemes to prevent consumers from detecting its charges and to circumvent the voluntary industry safeguards.[66] In that case, only five percent of the consumers billed by the defendants were aware that the charges were on their telephone bills.[67] The court described in detail how the defendants used the ability to have carriers place unauthorized charges on telephone bills to defraud the carriers' consumers out of millions of dollars and how they circumvented carriers' anti-cramming safeguards.[68] It found that the billing carriers' practice of placing third-party charges on their own telephone bills to their consumers is what enables crammers like the defendants to defraud consumers, and that the billing carriers' practice attracts "fraudsters."[69]

[59] *See* June 2011 NALs.

[60] FTC NOI Reply Comments at 9.

[61] *Id.*

[62] As noted above, increasing numbers of consumers use automatic payment or debit mechanisms and may pay before noticing any unauthorized charges.

[63] FTC NOI Reply Comments at 9-10.

[64] *Id.* at 11 (citing *FTC v. Nationwide Connections, Inc.*, No. 06-80180).

[65] *See* News Release, FTC Will Record and Post for Viewing May 11 Cramming Workshop (May 11, 2011), available at http://www.ftc.gov/opa/2011/05/cramming_info.shtm (visited March 11, 2012).

[66] FTC NOI Comments at 3-5 and NOI Reply Comments generally; *see also FTC v. Inc21.com Corp.*, 688 F.Supp.2d 927 and 745 F.Supp.2d 975 (N.D. Cal. 2010).

[67] *FTC v. Inc21.com*, 745 F.Supp.2d at 996.

[68] *Id.* at 994-999; *see also FTC v. Inc21.com*, 688 F.Supp.2d at 929.

[69] *Id.*

3. State Government Complaints

26. State and local governments and government groups have indicated that they each have received a growing number of cramming complaints from telecommunications consumers. As the Commission noted in the *NPRM*, the 25 State Attorneys General stressed the extent and seriousness of the cramming problem.[70] They noted that, "despite both the success of state-federal regulatory cooperation in fighting cramming and Attorney General lawsuits against crammers for violations of consumer protection laws, cramming remains a problem. The profitability of cramming and the ease with which crammers can submit unauthorized charges continues to make it an attractive business model, and complaints are once again on the rise."[71] NASUCA has also reported "a steady stream of complaints of frauds and abuses as well as negligent practices, all resulting in unauthorized charges for such telephone services as long distance calls, directory assistance, 800 calls, 900 calls, calling card calls and repair services… voice mail services…[and] internet services of various types, including web hosting or web page services, e-mail services, and online yellow page services."[72]

27. Consistent with the FTC's *Inc.21.com* case and the Senate Commerce Committee's investigation, state investigations into cramming confirm that only small percentages of charges from non-carrier third parties are authorized and that consumers often are unaware that the unauthorized charges are on their telephone bills. One investigation by the Vermont Attorney General revealed that 89.5 percent of the third-party charges on Vermont consumers' telephone bills were unauthorized. In a different investigation by the New York Attorney General, none of the cramming victims contacted reported authorizing the subject charges, 2.5 percent reported being unsure, and 97.5 percent reported that they did not authorize the charges. The New York Attorney General reports that even one of the telephone companies that billed the crammed charges to its consumers had the same crammed charges billed to its own lines, but did not discover that it, like its consumers, was a victim of cramming until the Attorney General's investigation.[73]

28. In response to consumer complaints in its state, the California Public Utilities Commission ("CPUC") has adopted rules that require reports of cramming complaints from wireline carriers and billing aggregators.[74] Wireline carriers and billing aggregators reported to the CPUC that, in 2009, they had received 132,398 cramming complaints from consumers.[75] They reported that they had received 120,554 cramming complaints from consumers in 2010.[76] Additionally, the CPUC reported that, in 2009, it received 2,420 cramming complaints directly from consumers, consisting of 2,298 complaints regarding wireline bills, 116 regarding CMRS bills, and six complaints regarding VoIP bills.[77] In 2010,

[70] These include Attorneys General of Arizona, Arkansas, Connecticut, Delaware, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington, West Virginia, Wyoming, and American Samoa.

[71] *See* 25 State Attorneys General Joint NOI Comments at 9.

[72] *See* NASUCA NOI Comments at 44-45, 50, 52.

[73] 17 State Attorneys General Comments at 7-8.

[74] *See* Letter from Phillip Enis, Program Manager, California Public Utilities Commission, to Stephen Klitzman, Deputy Chief, Office of Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC (April 5, 2011) ("CPUC Letter").

[75] *See* CPUC Letter.

[76] *Id.*

[77] *Id*.

the CPUC received 2,782 cramming complaints directly from consumers: 2,630 regarding wireline bills, 126 regarding CMRS bills, and 26 regarding VoIP bills.[78]

29. Similarly, the Illinois Office of the Attorney General reported an increase "in cramming complaints every year from 2003 to 2008, with complaints remaining at an elevated level from 2008 to the present. These complaints primarily involved wireline consumers, but the Office has noticed cramming on CMRS telephone bills as well in recent years."[79] The State of Illinois has also filed 30 cramming-related lawsuits since 1996[80] "alleging that the defendants had billed Illinois consumers for products and services that the consumers did not request or agree to purchase."[81] The Attorney General also has described in detail the "deceptive" solicitations cramming entities direct at telephone consumers.[82]

30. In their comments to the *NPRM*, the Minnesota Office of the Attorney General and Virginia State Corporation Commission both indicated that cramming is a substantial problem for consumers[83] that has been occurring with increasing frequency.[84] Similarly, the Vermont Attorney

[78] *Id.* According to the CPUC, there are several reasons for the discrepancies between the number of cramming complaints the CPUC received directly from consumers and the much larger number of cramming complaints reported to the CPUC by wireline carriers and billing aggregators. These include: (1) a CPUC requirement that directs consumers to complain first to the carrier before filing a complaint with the CPUC; (2) a liberal refund policy of many carriers which obviates the need for consumers to complain to the CPUC; (3) consumers may be more familiar with the carriers than with the CPUC complaint process. *See* CPUC Letter (citing *Final Decision Adopting California Telephone Corporation Billing Rules*, Decision (D.) 10-10-034, adopted Oct. 28, 2010 at 40).

[79] Letter from Lisa Madigan, Illinois Attorney General, Elizabeth Blackston, Chief, Consumer Fraud Bureau, Southern Region, and Philip Heimlich, Assistant Attorney General, Consumer Fraud Bureau, to Stephen Klitzman, Deputy Chief, Office of Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC (May 20, 2011) ("Madigan Letter"). According to the Consumer Fraud Bureau of the Illinois Attorney General's Office, Illinois has "vigorously pursued enforcement actions against entities we allege have engaged in phone bill cramming. While we have had success prosecuting individual entities, a comprehensive regulatory solution would be helpful in ending this practice once and for all." *Id*.

[80] *See* 25 State Attorneys General Joint NOI Comments at 9.

[81] Madigan Letter.

[82] The letter states that

> [i]n our experience gained throughout the course of dozens of law enforcement investigations, the solicitations directed at consumers are deceptive. Material facts, such as the fact that the consumer is being asked to make a purchasing decision, and that he will be billed on his telephone bill, often are not disclosed clearly and conspicuously if at all. In some cases, telemarketing scripts lead consumers to believe they are agreeing to receive written information or a free trial and decide later whether to accept the offer. In reality, their silence will be construed as acceptance of the offer, and they will be billed on their telephone bills unless they take affirmative action to cancel the order. In other cases, consumers are duped into providing their information to claim a prize they allegedly won, or to obtain free recipes or coupons. This process, called co-registration, also is construed as authority to bill them on their telephone bills for products and services, but complaining consumers have no knowledge of such authorization.

Id.

[83] *See* Minnesota Attorney General NOI Comments at 1. In its Comments on the NOI, the Minnesota Attorney General's Office described in detail the nature and practices of both wireline and CMRS crammers. With regard to wireline cramming, the Office noted that complaints identified the billing agent as the sole culprit or a co-culprit responsible for the unauthorized charge in almost two-thirds of the complaints. It said:

(continued…)

General's Office concluded as a result of its investigation into cramming complaints involving wireline phone bills, that these "complaints appeared to be the very tip of the iceberg" and "that large numbers of consumers who have been charged on their phone bills are not aware of the charges, and that many third parties who bill this way may be engaging in deceptive soliciting."[85] This investigation prompted the Vermont State Legislature in May 2011 to enact legislation banning most third-party charges on wireline telephone bills.[86]

B. Congressional Investigations, Inquiries, and Report

31. In December 2010, the Majority Staff of the Senate Commerce Committee launched an investigation into cramming after a preliminarily finding that a significant percentage of companies placing third-party charges on telephone bills had been the subject of cramming complaints[87] and after sending letters to three carriers – AT&T, Verizon, and Qwest – requesting information about their awareness of cramming and the steps they had taken to address it.[88] The Majority Staff of the Committee, having learned that many of the services for which third parties charge are not legitimate, expanded its probe by sending letters on December 17, 2010 to three additional companies – daData, Inc., My Service and Support, and MORE International – that appeared to have relationships with multiple companies that were the subject of cramming complaints.[89] Letters also were sent to five more telephone carriers on

(Continued from previous page)

> When nearly two-thirds of cramming victims are unsure of the company responsible for third-party charges appearing in their telephone bill, this overwhelmingly indicates that more concrete standards are needed governing the formatting of telephone bills including a rule remedying the current practice of prominently listing the billing agent at the top of a bill instead of the actual service provider." "Moreover, consumer confusion in identifying the actual third-party service provider responsible for the unauthorized charge frequently results in the consumer naming the wrong company in any complaint filed with the relevant governmental enforcement agency. This misidentification, in turn, allows the actual crammer to escape detection for a longer period of time, and makes it more difficult for regulatory agencies to track the source of cramming complaints and focus their enforcement efforts accordingly.

Id. at 1-2.

[84] *See* Virginia State Corporation Commission Staff Comments at 4.

[85] *See* Letter from Sandra W. Everitt, Assistant Attorney General and Director, Consumer Assistance Program, Office of the Attorney General, Public Protection Division, State of Vermont, to Stephen Klitzman, FCC (May 24, 2011).

[86] Vermont's new anti-cramming legislation was signed into law as "Act 52" on May 27, 2011 as part of the 2011 Vermont jobs bill and became effective immediately. 9 V.S.A. § 2466 (as amended). The text of the law can be found at http://www.leg.state.vt.us/docs/2012/bills/Passed/H-287.pdf, starting on page 105. The three very limited exceptions to Vermont's outright prohibition of third-party billing are: "(A) billing for goods or services marketed or sold by persons [e.g., telecommunications carriers or companies] subject to the jurisdiction of the Vermont Public Service Board, (B) billing for direct-dial or dial-around services initiated from the consumer's telephone, or (C) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates." *See* 9 V.S.A. §2466(f)(1)-(A)-(C).

[87] *See* Press Release, Chairman Rockefeller Announces Investigation into Telephone "Mystery Charges" (December 17, 2010) available at http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=32ce91be-1841-4cd4-8fc4-1f8388df7942&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=4b968841-f3e8-49da-a529-7b18e32fd69d&MonthDisplay=12&YearDisplay=2010 (visited March 16, 2012).

[88] *See id*.

[89] *See id*.

March 31, 2011,[90] and stated that over 250 third-party billers that were the subject of cramming complaints had received a grade of "D" or "F" from the Better Business Bureau.[91] According to Senator John D. Rockefeller IV, the Chairman of the Committee, "Cramming is a widespread problem. It is likely harming millions of consumers . . . Telephone companies have allowed these unauthorized third-party charges to be placed on their customers' telephone bills for far too long."[92]

32. The Commission has also received correspondence from members of Congress, whose constituents either sought assistance or otherwise made their representatives aware of certain business practices of telecommunications providers. These constituents describe cramming on both wireline and CMRS carrier bills. The issues raised by the constituents include the difficulty of getting charges removed or credited; the failure of the billing carrier to assist consumers in resolving disputes;[93] and the difficulty consumers face in uncovering unauthorized charges from third parties when reviewing dense and voluminous phone bills.[94]

33. On July 12, 2011, Majority Staff of the Senate Commerce Committee released the *Senate Staff Report* with the results of its investigation into unauthorized charges on consumer telephone bills.[95] In that report, the Senate staff found that despite the Commission's existing Truth-in-Billing requirements, "thousands of consumers still regularly complain to the FTC and the FCC about cramming, while state and federal authorities continue to bring law enforcement actions against individuals and companies for cramming."[96] The report found that on a yearly basis, billing carriers place approximately 300 million third-party charges on their consumers' bills, which amount to more than $2 billion worth of third-party charges on telephone bills every year. The report noted that over the previous five years, telephone companies had placed more than $10 billion worth of third-party charges on their consumers' landline telephone bills.[97] The report also concluded that billing carriers are profiting from these third-

[90] *See* Press Release, Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands (Mar. 31, 2011), available at http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=991b1bfc-f160-48b6-883c-c38e2079ff9c&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=165806cd-d931-4605-aa86-7fafc5fd3536 (visited March 16, 2012) (the additional letters were sent to CenturyLink, Windstream, Frontier Communications, FairPoint Communications, and Cincinnati Bell).

[91] *See id*.

[92] *See* Majority Statement, Unauthorized Charges on Telephone Bills: Why Consumers Lose (July 13, 2011), available at http://commerce.senate.gov/public/index.cfm?p=HearingsandPressReleases&ContentRecord_id=66d7c82d-9a39-40df-99bf-ecb1b8da6185&Statement_id=5bf6519d-e1ea-4136-8581-8301d3c02d75&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=dcb92227-73d9-4ff2-a610-9f43df72faa5&MonthDisplay=7&YearDisplay=2011 (visited March 16, 2012).

[93] *See, e.g.*, Letter from Rep. Charlie Dent (PA) on behalf of constituent; Letter from Sen. Pat Roberts (KS) on behalf of constituent (carrier referred the consumer to the third party who referred the consumer back to the carrier).

[94] *See, e.g.*, Letter from Rep. Steve Israel (NY) on behalf of constituent (difficult to understand the consumer's bill; consumer had been charged for one year before he realized it); Letter from Sen. Patrick Leahy (VT) on behalf of constituent ("bills are confusing and dense"); Rep. Timothy Bishop (NY) on behalf of constituent (her bill is 11 pages); Letter from Sen. Bill Nelson (FL) on behalf of constituent (discovered charge buried in last pages of bill after 18 months).

[95] *See Senate Staff Report*.

[96] *Id.* at i.

[97] *Id.*at ii.

party charges and that over the past decade, billing carriers have generated well over $1 billion in revenue by placing third-party charges on their consumers' telephone bills.[98]

34. The investigation also determined that the "evidence obtained and analyzed by Committee staff suggests that third-party billing on landline telephones has largely failed to become a reliable method of payment that consumers and businesses use to conduct legitimate commerce."[99] Committee Majority Staff concluded that many third parties are illegitimate.[100] For example, Majority Staff reported that it called approximately 1,700 randomly selected "customers" of third parties and spoke to approximately 500 of them.[101] According to the report, "[n]ot a single individual or business owner reported that they had authorized the third-party vendors' charges on their telephone bills."[102] It also concluded, like the *Inc21.com* court, that many third parties are created solely to exploit the telephone company's practice of placing third-party charges on their own bills to their consumers. Committee investigators found third parties operating out of post office boxes, fake offices, and apartments, with "presidents" that know nothing about their "companies."[103]

35. The report concluded that the telephone companies' anti-cramming safeguards have largely failed.[104] According to the report, billing carriers have inaccurately used low complaint statistics to show cramming is not a problem and to prove that their consumers appreciate the convenience of third-party billing.[105] Also, according to the report, telephone companies are aware that cramming is a major problem on their third-party billing systems.[106] The report also noted that, over the past five years, more than 500,000 consumers have contacted Qwest, Verizon, and AT&T to complain about cramming, but consumers and businesses frequently reported that the billing carriers' customer service representatives provided little to no assistance when they called about unauthorized third-party charges.[107]

36. The *Senate Staff Report* focused on wireline cramming and indicated that the majority of complaints come from wireline consumers. It noted, however, that there is reason to believe that cramming could become a significant problem for CMRS users.[108] The *Senate Staff Report* did not directly address VoIP.

C. FCC Commenters

37. In general, all commenters on the *NPRM* support efforts to protect consumers from cramming, but differ on the types of measures necessary to combat the problem and whether Commission action is necessary. This divide among commenters generally falls along industry/non-industry lines. Carriers that provide third-party billing and billing aggregators support voluntary industry efforts and

[98] *Id.* at iii.

[99] *Id.* at ii.

[100] *Id.* at 22.

[101] *Id.* at 29.

[102] *Id.*

[103] *Id.* at iv.

[104] *Id.* at 33.

[105] *Id.* at iv.

[106] *Id.*

[107] *Id.*

[108] *Id.* at 6.

support government regulations so long as they do not impose what they view as undue burdens on carriers or other parties.[109] Consumer groups and state commenters support more stringent measures than those believed warranted by carriers and billing aggregators.

38. Several industry commenters assert that the evidence of cramming is overblown and exaggerated.[110] For example, Billing Concepts, Inc. d/b/a BSG Clearing Solutions argues that there is no evidence in the record that non-telecommunications services are more vulnerable to cramming.[111] Many of these same commenters aver that the current Truth-in-Billing rules in place to combat slamming, as well as the current voluntary measures taken by many carriers and billing aggregators, have been successful in thwarting cramming.[112] An additional concern raised by industry commenters is that third-party billing is a great benefit to businesses and consumers and that any measures that eliminate their ability to offer that billing option would inhibit their businesses' ability to remain competitive.[113]

39. In contrast, consumer groups and state agencies argue that the *Senate Staff Report* and recent consumer complaint numbers show that consumers are frequently unaware that third-party charges may appear on their bill.[114] These commenters support measures such as prohibiting all or most third-party charges from being placed on telephone bills or changing from the current opt-out approach to an opt-in approach,[115] requiring carriers to allow consumers to block third-party charges,[116] and requiring carriers to clearly and conspicuously notify consumers of their ability to block third-party charges.[117]

40. Consumer groups also argue that a requirement for consumer consent or an affirmative opt-in to receive third-party charges should apply to consumers' wireline, VoIP, and/or CMRS bills and that any requirement to separate third-party charges on the bills of those consumers who opt-in should apply across all platforms because many communications services are now bundled.[118] Commenters opposing additional cramming requirements for CMRS and VoIP services note that there are far fewer

[109] *See, e.g.,* American Roaming Network, Inc. Comments at 1; AT&T Comments at 13-14; BSG Comments at Executive Summary; CTI Comments at 1-2; Tim McAteer, Inmate Calling Solutions Comments at 1.

[110] *See, e.g.,* AT&T Comments at 5; SEP Reply Comments at 2-3; BSG Reply Comments at 1-7; BVO Comments at 3-5; OBA Reply Comments at 2-4; PCP Reply Comments at 2.

[111] BSG Reply Comments at 1-7.

[112] *See, e.g.,* AT&T Comments at 9-10; CenturyLink Comments at 3; BDP Comments at 2; CTI Comments at 2-3; BVO Reply Comments at 5-6; ISG Reply Comments at 5-6; PCP Reply Comments at 6; Securus Technologies, Inc. Comments at 3-6.

[113] *See, e.g.,* BSG Comments at 2-3; BOP Reply Comments at 2-5; ISO Comments at 2; OBA Reply Comments at 2-4.

[114] *See, e.g.,* FTC Comments at 4; Public Interest Commenters Reply Comments at 2-3; Iowa Utilities Board Comments at 9.

[115] *See, e.g.,* Public Interest Commenters Comments at 3; Michigan Public Service Commission Comments at 2; National Consumers League Comments at 7-8; Nebraska Public Service Commission Comments at 3; 17 State Attorneys General Comments at 16.

[116] *See, e.g.,* FTC Comments at 6; CPUC Comments at 4; NASCUA Comments at 15; National Consumers League Reply Comments at 3, 6-7; Nebraska Public Service Commission Comments at 3; 17 State Attorneys General Comments at 16; Florida AG Comments at 2; NEC Comments at 19.

[117] *See, e.g.,* CPUC Comments at 3; IURC Comments at 3-4; Michigan Public Service Commission Comments at 2; NEC Comments at 19-20; Tennessee Regulatory Authority Comments at 2; Wheat State Comments at 2.

[118] *See, e.g.,* Public Interest Commenters Comments at 3-6; ITTA Comments at 7; CPUC Comments at 9; Michigan Public Service Commission Comments at 3; NASCUA Comments at 16.

CMRS cramming complaints.[119] Other commenters acknowledge the fewer CMRS complaints, but view additional cramming safeguards for CMRS as preventative measures.[120] CMRS carriers, however, argue that there are fundamental operational differences between wireline and CMRS services that make additional regulations unnecessary for CMRS at this time.[121] For example, Verizon points out that because CMRS bills are generated based upon handset use, the itemized charges on a CMRS bill are fundamentally different from the types of charges on wireline bills and presumably there would be less opportunity for consumers to be billed for unauthorized charges.[122] Commenters also noted that the CMRS industry as a whole uses a different type of billing platform than wireline providers and also has a segment of its service providers that - unlike wireline - offer prepaid services and flat-rate services for unlimited use that do not generate a bill of the type common to wireline services.[123] Further, most CMRS providers assert that they already have a double opt-in process for consumers to agree to receive third-party charges and/or use a third-party compliance monitoring service to ensure consumer approval of each premium short message service.[124] In addition, commenters assert that as an industry, CMRS providers have implemented best practices guidelines that are more up-to-date than, and go beyond, those adopted by wireline carriers.[125] Several of these providers also argue that additional cramming regulations would stifle innovation in the CMRS marketplace as well as impose significant costs to CMRS billing and network systems without any additional benefit to consumers.[126]

IV. DISCUSSION

A. The Need for Rules

41. The record reflects that third-party billing can be a convenience for carriers, third parties, and consumers, and there are some legitimate uses for third-party billing by wireline telephone companies, such as billing charges for bundled services and for long distance service on consumers' local telephone bills.[127] Nevertheless, the record demonstrates that cramming, primarily of third-party charges, continues to be a significant problem on wireline telephone bills and that existing industry safeguards and Commission rules have proven inadequate to effectively combat it. The record also demonstrates that it is the wireline telephone companies' practice of placing third-party charges, primarily non-carrier third-

[119] *See, e.g.,* Sprint Nextel Corporation Comments at 13; National Consumers League Reply Comments at 8; Nebraska Public Service Commission Comments at 2-4; MetroPCS Communications, Inc. Comments at 3-5; Verizon Comments at 9-11; CTIA Comments at 3-4.

[120] *See, e.g.,* NASCUA Comments at 16; National Consumers League Comments at 8; NEC Comments at 18.

[121] *See, e.g.,* MetroPCS Communications, Inc. Comments at 19; Leap Wireless Comments at 3; Sprint Nextel Corporation Comments at 5; Verizon Comments at 9-11.

[122] Verizon Comments at 9-11.

[123] *See, e.g.,* MetroPCS Communications, Inc. Comments at 12, 19; Leap Wireless Comments at 2-5.

[124] *See* Mobile Marketing Association, U.S. Consumer Best Practices, Version 6.1 (May 2, 2011), available at http://mmaglobal.com/files/Consumer_Best%20Practices_6.1%20Update-02May2011FINAL_MMA.pdf (visited April 3, 2012) ("MMA Best Practices").

[125] *See, e.g.,* Verizon Comments at 6-7, 9-11; Leap Wireless Comments at 3-4; Sprint Nextel Corporation Comments at 6, 8-9; T-Mobile USA, Inc. Comments at 3-5.

[126] *See, e.g.,* MetroPCS Communications, Inc. Comments at 12; Leap Wireless Comments at 5; T-Mobile USA, Inc. Comments at 3-8; Verizon Comments at 9-11.

[127] *But see* June 2011 NALs (apparently unauthorized charges assessed by third-party carriers).

party charges, on their own bills to their consumers that is the "root cause"[128] of the problem, as this practice enables fraud in the form of cramming and attracts "fraudsters."[129]

42. Importantly, even industry commenters that are otherwise opposed to additional cramming rules and favor voluntary measures indicate that they would support additional educational or disclosure-type measures to combat cramming.[130] In fact, Verizon recently agreed to settle a class-action lawsuit about unauthorized charges on its wireline telephone bills by agreeing, for no more than two years after the effective date of the agreement, to, among other things, send current consumers bill inserts notifying them of blocking options and implement an opt-in process for new consumers such that at "sign up" Verizon will ask whether the consumer wants to block third-party charges on their bill. [131] In addition, according to the *Senate Staff Report*, AT&T has already "discontinued placing on its bills third-party charges for certain types of services that were causing cramming complaints, including voicemail services, email services, 'Web hosting,' and 'Internet-based directory assistance.'"[132]

43. Some wireline carriers have argued that they have financial incentives to prevent cramming, yet the record demonstrates that existing incentives are not sufficient to protect consumers. We recognize that third-party billing remains a significant source of revenue for wireline carriers: the *Senate Staff Report* states that in the last ten years wireline carriers have generated well over $1 billion in revenue by placing third-party charges on their consumers' telephone bills.[133] Wireline carriers may receive between $1 and $2 for each of the 300 million third-party charges they place on their bills to consumers annually.[134] The record reflects that many, if not the majority, of those charges are unauthorized,[135] and federal investigations have revealed that carriers may receive additional compensation from third parties for each consumer complaint or inquiry they handle regarding unauthorized charges.[136] Specifically, pursuant to a contract between them, the billing aggregator or vendor supplies the carrier with the consumer's telephone number and the amount to be charged, and requests that the charge be placed on the consumer's telephone bill, and proof of consumer authorization is not generally provided to or required by the carrier. In turn, the vendor compensates the billing aggregator and the carrier for their services, and the carrier is also compensated by the vendor or the billing aggregator for the billing-and-collection service it has provided.[137] Thus, carriers can receive

[128] Attorneys General of IL, NV and VT Comments at 9 (referring to the carrier practice of placing third-party charges on their own bills as the "root cause" of cramming).

[129] For a detailed discussion of how carriers' practice of placing third-party charges on their own bills enables cramming and attracts third parties who wish to utilize the carriers' practice as a mechanism to defraud the carriers' consumers, *see Inc21.com.*; *see also supra* section II.A.

[130] *See, e.g.,* American Roaming Network, Inc. Comments at 1; BSG Comments at Executive Summary; BDP Comments at 2; CTI Comments at 1-2; Public Interest Commenters Comments at 2-3.

[131] *Desiree Moore, et al. v. Verizon Communications Inc., et al.,United States District Court*, Northern District of California, Case No. CV 09-1823, Stipulation and Settlement Agreement at 13-16 (filed Feb. 1, 2012) ("Verizon Cramming Settlement").

[132] *See Senate Staff Report* at 30 (footnote omitted).

[133] *See id.* at iii.

[134] *See id.* at ii-iii.

[135] *See id.*

[136] *See* June 2011 NALs; *see also FTC v. Inc.21.com*, 745 F.Supp 2d at 994-995.

[137] *See NPRM*, 26 FCC Rcd at 10025-26, ¶¶8-9.

revenue both for placing unauthorized charges on their bills and for handling subsequent consumer disputes over those charges. The overwhelming evidence that cramming is a widespread problem for wireline consumers and evidence that wireline carriers benefit financially both from billing their consumers for unauthorized third-party charges and for handling the subsequent consumer disputes strongly suggests that neither the incentives nor industry efforts to prevent cramming have been sufficient to protect consumers. The record therefore overwhelmingly demonstrates the need for additional wireline cramming safeguards.

44. We find that the recent announcements by Verizon, AT&T, and CenturyLink regarding plans to cease billing for certain third-party services do not eliminate the need for the cramming safeguards we adopt in this *Report and Order*. Verizon has advised the Commission that it intends to cease placing on its wireline telephone bills third-party charges for "miscellaneous" or "enhanced" services, which it describes as "unrelated to the use of Verizon's network and include services such as web hosting, voicemail, and email."[138] AT&T subsequently announced that it too plans to cease placing on its wireline telephone bills third-party charges for "enhanced" services.[139] AT&T says it will use a phased approach to ceasing to bill for what it considers to be "enhanced" services, which it defines as, "any products or services… other than the following: (i) telecommunications services as defined in 47 U.S.C. Section 153(46); (ii) services or goods sold by any third party that has a direct contractual arrangement for the joint or cooperative sale of such services or goods with AT&T; and (iii) contributions to charitable organizations subject to 26 U.S.C. Section 501(c)(3)."[140] It appears that CenturyLink is undertaking a similar commitment.[141]

45. While these pro-consumer actions are encouraging, AT&T, Verizon, and CenturyLink intend to continue placing some non-carrier third-party charges on their own bills, which is the practice that the *Inc21.com* court and the *Senate Staff Report* found enables cramming. To the extent that cramming results largely from charges imposed by third parties,[142] we find that the inclusion of any such charges on telephone bills will continue to present a significant risk to consumers. Indeed, the fact that the *Senate Staff Report* found serious and significant problems with wireline cramming even after AT&T had "discontinued allowing certain types of services that were causing cramming complaints, including voicemail services, email services, 'Web hosting,' and 'Internet-based directory assistance,'"[143] indicates

[138] *See* Letter from Ian Dillner, Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC (March 23, 2012).

[139] *See* Letter from Timothy P. McKone, Executive Vice President, AT&T Services, Inc. to Sen. John D. Rockefeller, Chairman, United States Senate Committee on Commerce, Science, and Transportation (March 28, 2012) attaching letter from Mark A. Kerber, General Attorney, AT&T Services, Inc. to All AT&T Billing Solutions Services Customers (March 28, 2012); *also see*, News Release on the website of U.S. Senator Amy Klobuchar of CenturyLink's commitment to cease third-party billing at http://klobuchar.senate.gov/inthenews_detail.cfm?id=336476& (last checked April 5, 2012).

[140] *See* Letter from Timothy P. McKane, Executive Vice President, AT&T Services, Inc. to Sen. John D. Rockefeller, Chairman, United States Senate Committee on Commerce, Science, and Transportation (March 28, 2012) attaching letter from Mark A. Kerber, General Attorney, AT&T Services, Inc. to All AT&T Billing Solutions Services Customers (March 28, 2012).

[141] *See* News Release, Klobuchar: CenturyLink Joins AT&T and Verizon in Putting a Stop to Cramming on Phone Bills (April 3, 2012), available at http://klobuchar.senate.gov/inthenews_detail.cfm?id=336476& (visited April 5, 2012).

[142] *See Senate Staff Report* at 21 (finding that cramming resulted from "almost all of the third party charges" identified by bill auditors).

[143] *Id.* at 30 (footnote omitted).

that efforts to simply reduce the kinds of non-carrier third-party charges that carriers place on their bills are not likely to be fully effective in addressing the problem. In this regard, we note that AT&T, Verizon and CenturyLink have not asserted that the actions they plan to take will eliminate the need for the rules we are adopting. Moreover, the policies being implemented by these three carriers will not benefit the consumers of other wireline carriers. We find that consistent rules for all wireline carriers are necessary to protect consumers. We therefore find that additional measures by the Commission are necessary to ensure that cramming will not remain a significant problem on wireline telephone bills even after these carriers cease placing many third-party charges on their bills.

46. For these same reasons, we find that these carriers' new policies do not materially alter our analysis, discussed below, which concludes that the substantial consumer benefits of the rules we adopt in this *Report and Order* outweigh the implementation costs. We believe that consumers of these three carriers will benefit from the new rules we adopt today. Specifically, these consumers, like consumers of all wireline carriers, will be able to better identify non-carrier third-party charges – the most commonly crammed types of charges – on their bills. In addition, consumers will be clearly and conspicuously notified of available options to block third-party charges, thus enabling them to stop cramming before it happens. In sum, we conclude that the positive steps taken by these carriers should not disadvantage their consumers by denying them additional benefits that will result from the rules we adopt today.

47. Conversely, we find that the record does not demonstrate a need for rules to address cramming for CMRS or VoIP customers at this time. The record does however, indicate that there seems to be a growing cramming problem in the CMRS industry. The percentage of cramming complaints the Commission received relating to CMRS in 2011 (30 percent) appears to have nearly doubled from the aggregate percentage for the period 2008 to 2010 (16 percent).[144] Therefore, although we do not see the need to apply rules at this point, we will continue to monitor both services with regard to cramming.[145] Moreover, we seek comment in the *Further Notice* about possible solutions to CMRS cramming and request comment on any developments of cramming for VoIP customers, and will continue to monitor cramming in the CMRS, VoIP, and wireline industries to determine whether and when additional Commission action may be appropriate. We remind CMRS carriers that they remain subject to section 201(b), those Truth-in-Billing rules that already apply to them, and to the Commission's enforcement authority.

B. New Rules to Protect Consumers

48. In this *Report and Order*, we adopt some of the rules we proposed in the *NPRM.* Specifically, we require wireline carriers that currently offer blocking of third-party charges to clearly and conspicuously notify consumers of this option on their bills, websites, and at the point of sale; 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. These rules reflect an important step beyond the

[144] *See supra* ¶¶20-21. *See also* Letter from Parul P. Desai, Policy Counsel, Consumers Union, (filed April 18, 2012) (discussing separate wireless cramming reviews by the California PUC, the Florida Attorney General's Office and legal action by the Texas Attorney General).

[145] Commenters also note the significant adoption rate of cell phones by Americans, including low-income Americans, and the growing adoption rate of VoIP services. *See* Letter from Consumers Union, AARP, NCLC, The Center for Media Justice, TURN, NASUCA, IDEPSCA, Consumer Federation of America, and NCL (filed April 18, 2012). As many Americans already rely upon CMRS and VoIP services, we seek to ensure that our consumer protection efforts are sufficient to address these services, if necessary.

existing Truth-in-Billing rules by requiring additional clear and conspicuous disclosures and by requiring clearer and distinct separation of carrier and non-carrier charges.

49. While there is strong support in the record, including the *Senate Staff Report* and *Inc21.com*, for opt-in or stronger measures on which the Commission sought comment in the *NPRM*, the record contains few specifics regarding the appropriate structure and mechanics of an opt-in mechanism. Therefore, we seek comment in the *Further Notice* on additional potential measures to prevent cramming, including an "opt-in" requirement for wireline carriers, that the FTC, consumer groups, state commenters, and one wireline carrier urge us to adopt now. We expect to evaluate the record generated by the *Further Notice* and take any further necessary action in a timely manner.

50. The rules we adopt in this *Report and Order* provide additional protections to consumers and appropriately balance these competing views while we develop a more robust record regarding additional measures. We also look forward to seeing the effects of the measures announced by Verizon, AT&T, and CenturyLink.

1. Rules to Prevent Cramming From Happening

51. In the *NPRM*, we proposed to require wireline carriers that offer consumers the option to block non-carrier third-party charges from their telephone bills to clearly and conspicuously notify consumers of this option at the point of sale, on each bill, and on their websites to prevent cramming before it occurs.[146] We sought comment on our clear and conspicuous disclosure proposal and the kinds of disclosures on bills, on websites, and at the point of sale, that would constitute "clear and conspicuous" notice in this context and therefore satisfy this notification requirement.[147]

52. We adopt the proposal in the *NPRM* to require wireline carriers to clearly and conspicuously notify – at the point of sale, on each bill, and on their websites – consumers of blocking options they offer. We believe that requiring this disclosure will benefit consumers by making them aware that non-carrier third-party charges can be placed on their telephone bills and by educating consumers about the blocking options carriers already offer voluntarily under the current opt-out mechanism. Consumers will have the information necessary to take advantage of blocking options and thereby prevent cramming before it happens rather than having to dispute unauthorized charges after they have been crammed.

53. There is significant record support for this approach. State attorneys general, many state public utility commissions, and public interest commenters generally support more consumer disclosure and education, although they question whether disclosure requirements, standing alone, are the most effective means to combat cramming.[148] Some state public utility commissions support the proposed disclosure requirement regarding blocking as outlined by the Commission,[149] and several emphasize the importance of a point of sale disclosure.[150] The Iowa Utilities Board, for example, believes that a consumer would not typically request a block on third-party charges unless that consumer had some

[146] *NPRM*, 26 FCC Rcd at 10038, ¶¶40-41.

[147] *Id.* at 10038-39, ¶42.

[148] *See, e.g.,* National Consumers League Comments at 7; FTC Comments at 4-5; 17 State Attorneys General Comments at 23; Attorneys General of IL, NV, VT Comments at 9; Iowa Utilities Board Comments at 9.

[149] *See, e.g.,* IURC Comments at 3 (informing consumers of the ability to block third-party charges would be of significant benefit to Indiana consumers).

[150] *See, e.g.,* Tennessee Regulatory Authority Comments at 2 (supports the Commission's proposal to require carriers to inform consumers of third-party blocking services, but suggests that disclosure on the bill is unnecessary whereas disclosure at the point of sale is uniquely helpful to consumers).

experience with cramming,[151] and that if carriers were to actively promote the blocking capability, then cramming complaints would be "reduced substantially."[152] NARUC urges the Commission to require all carriers to disclose third-party blocking options to their consumers.[153] Some billing aggregators do not oppose proposals to improve disclosures and clarify the procedures for offering third-party blocking services,[154] provided that the proposed changes do not go beyond the format of the bills or increase the carriers' costs.[155]

54. We acknowledge that by and large, the state attorneys general, state public utility commissions, and public interest commenters contend that the requirement that carriers disclose the option of a blocking service to consumers will be less effective in preventing cramming than a complete prohibition of third-party billing or an opt-in approach. Some commenters express concern about the number of carriers who actually offer and implement blocking,[156] and, if blocking is optional as opposed to mandatory, the state attorneys general assert that "there is little likelihood that wireline telephone companies would consistently and reliably offer [the blocking option] to customers." [157] Carriers, on the other hand, urge us not to adopt any sort of disclosure requirement. These carriers claim that required methods of disclosure in terms of format or medium would interfere with bill formatting flexibility, be unnecessary, or be costly.[158] Others argue such disclosure would be potentially irrelevant to some consumers,[159] and would add to consumer confusion.[160]

55. At the outset, we do not believe that it is in carriers' interests to eliminate blocking options they may currently offer. We believe that carriers that offer blocking options can distinguish themselves in the marketplace as providing superior consumer service. Further, we believe that carriers that eliminate blocking options face potential loss of consumer good will and damage to their business reputations, and may invite further legislative or regulatory action. We will monitor industry developments to determine, if such backtracking happens, what appropriate measures we might take to ensure carriers are not taking steps to thwart consumer choice. We also seek comment on additional consumer protection measures beyond disclosure and bill changes in the accompanying *Further Notice.*

[151] Iowa Utilities Board Comments at 9.

[152] *Id.*

[153] NARUC Reply Comments at 4-5 (suggests that all voice service providers disclose blocking options on, at least, an annual basis, and that all required disclosures be clear and conspicuous).

[154] *See, e.g.,* BVO Comments at 1-2; PaymentOne Corporation Comments at 17.

[155] BVO Comments at 1-2.

[156] Attorneys General of IL, NV and VT Comments at 8.

[157] 17 State Attorneys General Comments at 16.

[158] *See, e.g.*, CenturyLink Comments at 6-9, n. 16 (estimates that the additional cost to fully describe third-party billing and disclose consumer's blocking option during a point of sale communication would cost the company over $3 million a year); AT&T Comments at 14 (would not oppose a disclosure requirement provided that AT&T would not have to change its existing processes and would have the flexibility to determine the format and manner in which the disclosure is made); BVO Comments at 1-2 (does not oppose improvement of information on bills and clarification of blocking options so long as it does not increase cost to the LEC or go beyond the format of the bills); NTCA Comments at 2.

[159] ITTA Comments at 4.

[160] *Id.*

56. We disagree with the carriers that generally oppose clear and conspicuous disclosure of existing blocking options. CenturyLink recommends that the Commission not mandate expensive disclosures such as the disclosure of blocking options at the point of sale or on each bill, but rather start with required disclosure of blocking options on the website and on bill inserts.[161] Similarly, ITTA contends that the Commission should not require disclosure on every bill or at the point of sale because only a small percentage of consumers are likely to need or use this information in any given month and disclosure runs counter to efforts to reduce billing costs.[162] NTCA cautions against mandatory changes to billing formats or consumer notification requirements for small rural carriers because they would be extremely expensive to implement and provide little benefit.[163] Despite these comments, no carrier has provided specific cost data that convinces us that it will be unduly burdensome or costly for carriers to implement this requirement – especially because we are granting carriers the implementation flexibility they requested.[164] It appears from the record that many or most carriers already offer blocking and, based upon the record, appear to notify consumers of blocking options when consumers dispute unauthorized charges. Thus, many carriers will be required only to expand their existing notification practices.

57. We note that one rural carrier, Wheat State, supports the Commission's proposed rule requiring notification at the point of sale, on each bill, and on their websites of the option to block third-party charges.[165] Frontier also supports the Commission's proposal that carriers clearly and conspicuously notify consumers of third-party blocking features.[166] Although Frontier cautions against the imposition of specific formats or media for such disclosures, Frontier states that disclosure of third-party blocking is an "important" consumer protection and consumer education is "paramount."[167]

58. We note in this regard that most ITTA member companies offer blocking,[168] some small carriers require written consumer approval before they will place third-party charges on their bills to consumers,[169] and all of the carriers that provided information to the Senate Commerce Committee indicated that they offer some sort of blocking upon consumer request.[170] We also note that publicly available information indicates that some carriers already post information about blocking options on their websites.[171] CenturyLink's estimate that making point-of-sale disclosures will cost it approximately $3 million annually in additional customer service labor costs does not account for the reduced labor costs associated with having the same customer service representatives handling fewer cramming calls from consumers and therefore may overstate net costs. CenturyLink does not indicate whether it is

[161] CenturyLink Comments at 6.

[162] ITTA Comments at 4.

[163] NTCA Comments at 2.

[164] *See infra* ¶59.

[165] Wheat State Comments at 2.

[166] Frontier Comments at 2.

[167] *Id.*

[168] ITTA Comments at 2.

[169] Iowa Utilities Board Comments at 9.

[170] *Senate Staff Report* at 33.

[171] *See*, *e.g.*, Blocking Options, Frontier Communications website, http://www.frontier.com/blockingoptions/ (visited March 8, 2012). We note this website only to demonstrate that some carriers already voluntarily provide some notification about blocking options, but we do not offer any opinion as to whether any current, specific type of disclosure would comply with the rules we adopt today.

compensated for handling consumer calls regarding unauthorized charges, so it is not clear what impact, if any, such compensation may have on its net costs. We find that it is conceivable that carriers could experience a net reduction in labor costs. Even AT&T, which is a strong proponent of flexibility, notes that commenters "generally support notifying consumers of third-party blocking options and separating their charges from third-party charges on the bill."[172]

59. Consistent with our existing Truth-in-Billing rules, we afford carriers the flexibility to implement this requirement in the manner that best accomplishes the goal of the rule within the context of each carrier's individual website, bill, and point-of-sale scripts.[173] This flexibility should enable carriers to avoid unnecessary costs while still providing effective disclosures to their consumers. Further, we note that blocking capabilities can vary among carriers. For example, CenturyLink advises that its legacy CenturyLink companies can selectively block non-carrier third-party charges without also blocking long distance charges from other carriers, while its legacy Qwest companies cannot.[174] Each carrier's disclosures must accurately reflect the capabilities of its blocking options. We believe that granting carriers flexibility will better enable them to customize their disclosures to their blocking capabilities while avoiding potential confusion or inaccuracies that could occur if we were to adopt more specific requirements. Of course, the Commission has the authority to take enforcement action and to act on complaints against carriers who fail to implement this requirement in a manner that provides clear, conspicuous, and accurate notice to consumers.

60. We recognize that some commenters assert that our rules unduly burden consumers, while others assert that they unduly burden carriers. We believe that the benefits of this requirement to consumers significantly outweigh the burdens of implementation. As discussed above, there is widespread recognition that cramming harms consumers, even among those that advocate voluntary measures as a solution.[175] The record also reveals that cramming has remained a significant problem, notwithstanding voluntary industry efforts, especially with respect to non-carrier third-party charges on wireline telephone bills.[176] The requirement we are adopting that wireline carriers notify consumers of blocking options they offer, appropriately balances consumer convenience and protection by enabling consumers to make informed choices about whether to utilize blocking options available to them. This rule ensures that consumers are aware of blocking options available to them and enables consumers to choose whether to utilize those options and thereby to choose whether to receive third-party charges on their telephone bills. Indeed, consumers frequently are unaware that non-carrier third-party charges can be placed on their bills at all,[177] and informing consumers of blocking options will also help make consumers aware of the potential for such charges even if they elect not to avail themselves of blocking. We believe that the incremental approach we are taking in the rules we adopt today will provide meaningful protections for consumers without creating undue burdens on anyone, and will build upon existing rules and practices in a way that we believe appropriately balances benefits and burdens.

[172] AT&T Reply Comments at 12.

[173] *See First Truth-in-Billing Order*.

[174] *See* Letter from Kathryn Marie Krause, Counsel for CenturyLink, to Marlene Dortch, Secretary, FCC (January 19, 2012) (CG Docket No. 11-116; CG Docket No. 09-158; CC Docket No. 98-170) at 2.

[175] *See supra* ¶42.

[176] *See generally supra* section IV.A.

[177] *See supra* ¶22.

2. Rules to Help Consumers Detect Cramming After it Happens

61. In the *NPRM*, we proposed that where charges for one or more service providers that are not carriers appear on a telephone bill, the charges must be placed in a distinct section of the bill separate from all carrier charges to enhance consumers' ability to review individual charges on their telephone bills and detect unauthorized or unwarranted charges.[178] We sought comment on whether more specific requirements are necessary to ensure that consumers can detect unauthorized charges, including whether charges from third parties should be separately totaled on the first page of the bill.[179] We noted our intention not to disrupt the Truth-in-Billing rules that permit a carrier offering a bundle[180] to treat the bundle as a single service offering even though the bundle may contain services provided by others.[181] Additionally, we requested comment on ways to minimize any burdens associated with alterations to existing billing systems to comply with this requirement.[182]

62. There is significant support for greater separation of bill charges. Although some carriers have stated in the record that they already separate non-carrier third-party charges in some fashion,[183] some public interest groups encourage the Commission to strengthen its rules regarding the separation of third-party charges on the bill, in addition to adopting an opt-in requirement.[184] Some state public utility commissions and state attorneys general go further in their support of a separation-of-charges requirement and recommend that third-party charges appear separately in the body of the bill and be separately identified on the first page of the consumer's bill.[185] The majority of the state attorneys general argue that third-party charges frequently appear after numerous pages detailing carrier charges and fees, "effectively obscuring the disclosure from notice by customers."[186] Thus, the state attorneys general recommend that the total amount of third-party charges be disclosed on the summary of charges appearing at the very beginning of the consumer's bill.[187]

63. As an initial matter, we partly agree with Verizon that the wording of our proposed rule requiring separation of carrier and non-carrier charges needs to be changed. As proposed, the text of the rule is:

[178] *NPRM*, 26 FCC Rcd at 10039-40, ¶45. We note that the Commission's Truth-in-Billing rules already require that charges for two or more *carriers* be listed separately on the bill, by service provider.

[179] *Id.* at 10040-41, ¶48.

[180] *See Order on Reconsideration*, 15 FCC Rcd at 6027, ¶9 ("Bundled services" are various types of services, such as telephone, cable, and Internet services, that are offered and billed by a single entity, even though they may be provisioned by multiple parties).

[181] *NPRM,* 26 FCC Rcd at 10040, ¶47.

[182] *Id*. at 10041, ¶49.

[183] *See, e.g.,* AT&T Comments at 8; BVO Reply Comments at 6; ITTA Comments at 5 (some ITTA members already do this voluntarily because it aids consumers in understanding their bill); 17 State Attorneys General Comments at 19 (many telephone companies currently place third-party charges on a separate page of the bill).

[184] Public Interest Commenters Reply Comments at 4-5.

[185] *See, e.g.*, Florida AG Comments at 2 (third-party charges should appear on the first page of the bill where the total charges are disclosed, and also on a separate page of the bill solely dedicated to third-party charges); Nebraska PSC Comments at 3.

[186] 17 State Attorneys General Comments at 19.

[187] *Id.*

> Where charges from one or more service providers that are not carriers appear on a telephone bill, the charges must be placed in a distinct section separate from all carrier charges.

Verizon asserts that this rule, as worded, will result in consumer confusion because it requires third-party charges from carriers and non-carriers represented by the same billing aggregator to be placed in different parts of the bill. Thus, charges listed in the name of a single billing aggregator may be shown in both the carrier and non-carrier sections of the bill, depending upon whether the specific charge is for a telecommunications service.[188] We do not agree that this is a problem. Rather than confusing consumers, the rule alerts consumers that the charges are not all for telecommunications services and that further inquiry may be appropriate. Further, carriers may reduce the need for further inquiry by identifying the service provider for each charge rather than a billing aggregator. While the Truth-in-Billing rules permit carriers to list the billing aggregator instead of the service provider, as long as the billing aggregator can answer questions about the charge and resolve disputes about the charge,[189] carriers are not required to do so.

64. To reduce the potential for misinterpretation or confusion about where carriers must place charges listed in the name of a billing aggregator, we adopt a revised version of the proposed rule to focus on whether the charge is for a telecommunications service instead of whether the charge is from a carrier. In addition, we believe that the rule could be worded to better reflect that it does not affect the billing carriers' own charges, especially bundled services. As discussed throughout this *Report and Order*, the record indicates that the most commonly crammed charges are non-carrier third-party charges (*i.e.* charges for non-telecommunications services provided by third parties), and we are addressing the problem by adopting incremental rules focused on the carrier practices that enable cramming while requiring no changes in other carrier practices, including how carriers bill for bundled services.[190]

65. For these reasons, we find that the relevant portion of the proposed rule should be reworded as follows:

> Carriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from carrier charges.[191]

We believe that this wording produces exactly the same result as the prior wording with respect to how carriers display non-carrier third-party charges on their bills, while reducing the potential for misinterpretation.

66. We also require carriers to clearly and conspicuously identify and disclose separate subtotals for charges from carriers and charges from non-carrier third-parties on the payment page of their bills. For consumers who do not receive a paper bill, these subtotals must be clearly and conspicuously displayed in an equivalent location and in any bill total that is provided to the consumer before the consumer has opportunity to access an electronic version of the bill, such as in a transmittal email message, on a payment portal, or on a webpage. The new rule reads as follows:

[188] Verizon Comments at 11-13.

[189] Our rules permit carriers to provide the name and toll-free telephone number of the service provider or a billing aggregator as long as whoever is listed can answer questions about the charge and resolve disputes about the charge. 47 C.F.R. § 64.2401.

[190] In the *NPRM*, the Commission stated that no change was intended with respect to billing for bundled services. *See* NPRM, 26 FCC Rcd at 10040, ¶47.

[191] This language will become the first sentence of the new 47 C.F.R. § 64.2401(a)(3). *See* Appendix A.

> Carriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from all carrier charges. Charges in each distinct section of the bill must be separately subtotaled. These separate subtotals for carrier and non-carrier charges also must be clearly and conspicuously displayed along with the bill total on the payment page of a paper bill or equivalent location on an electronic bill. For purposes of this subparagraph "equivalent location on an electronic bill" shall mean any location on an electronic bill where the bill total is displayed and any location where the bill total is displayed before the bill recipient accesses the complete electronic bill, such as in an electronic mail message notifying the bill recipient of the bill and an electronic link or notice on a website or electronic payment portal.[192]

67. We believe that these requirements are critical to enabling consumers to detect the most common types of unauthorized charges on their telephone bills. The *Senate Staff Report* concluded that most cramming involves non-carrier third-party charges. In light of that finding, and the numerous cases discussed in the record involving state and federal agencies suing non-carrier third-party crammers under consumer protection laws, we believe it is especially necessary to adopt a rule requiring carriers that choose to place non-carrier third-party charges on their own bills to their consumers to put such charges in a distinct section of the bill separate from charges assessed by carriers that provide telecommunications services to the consumer. The Truth-in-Billing rules already require charges from different carriers to be separated and displayed by carrier, but do not require that charges from each carrier or type of carrier, *e.g.* local or long distance, be placed in distinct sections of the bill. Although, as we discuss below, carriers are free to separate carrier charges into different sections on their bills,[193] we find nothing in the record that convinces us to require carriers to do so at this time. The record indicates that cramming is more prevalent with non-carrier third parties. Further, the Commission has the authority to take enforcement action against carriers who engage in cramming, and will do so.[194]

68. These new measures should ensure that carriers' choice of bill format does not, even unwittingly, contribute to consumer confusion about whether a third-party charge is from a carrier or from a third party that does not provide telecommunications services to them. It also should make it much easier for consumers to identify the charges on their bill that the record suggests are most likely to be crammed.

69. The comments reveal diverse support for a requirement that non-carrier third-party charges be placed in a distinct bill section separate from carrier charges.[195] Some commenters, however, argue that requiring carriers to place third-party charges in a separate section of the bill, by itself, will not effectively reduce cramming.[196]

70. We disagree. While we acknowledge that additional rules might provide additional protections against cramming – and we seek comment on such additional rules in the *Further Notice* – the requirements we adopt today should make it easier for consumers to detect cramming of charges that are

[192] *See* Appendix A.

[193] *See infra* ¶70.

[194] *See* June 2011 NALs.

[195] *See, e.g.*, BSG Comments at 8; ITTA Comments at 9; NASUCA Comments at 28-29; Michigan Public Service Commission Comments at 2; Wheat State Comments at 2.

[196] *See, e.g.,* Attorneys General of IL, NV and VT Comments at 9; 17 State Attorneys General Comments at 19; FTC Comments at 4-5 (arguing that recent enforcement experience demonstrates that separation of charges does not work because consumers have no reason to scrutinize a bill for charges that they did not authorize).

described so as to appear to be for a telecommunications service. For example, we believe it would be much easier for a consumer to detect unauthorized charges described as being for voicemail if that charge appears in a section of the bill designated solely for non-carrier third-party charges, as this will make it more obvious that the charge is not from their telephone company or any other carrier. Consumers should benefit from this requirement even if their carrier already displays such a charge with the name of the third party and a notice that the charge is billed on behalf of that vendor. As long as a carrier places such charges on its bill so that they are comingled, the record clearly suggests that the carrier runs the risk of confusing or misleading its consumers. This requirement also should help consumers to be aware that their telephone bills may contain non-carrier charges, including charges for services that are not provided by their presubscribed telecommunications carrier or carriers.

71. The record supports our conclusion that the distinct separation of carrier and non-carrier third-party charges is likely to be an effective means of combating cramming. As noted, both the *Senate Staff Report* and the *Inc21.com* court identified carriers' practice of placing non-carrier third-party charges on their own bills to consumers instead of on a separate bill as the key that enables cramming and even attracts "fraudsters."[197] Separately, the South Dakota Public Utilities Commission describes a situation in which charges that easily could have been viewed as being associated with a telecommunications service were quickly identified as unauthorized charges when they were billed on separate bills instead of being placed on carriers' telephone bills.[198] Commenters who have been cramming victims similarly state that they easily could have detected the crammed charges had they been on a separate bill instead of being on their telephone bills.[199] We believe that requiring distinct separation as described above, along with separate subtotals, will benefit consumers while responding to record concerns about preserving flexibility, efficiency, and the convenience associated with a single bill.

72. We stress that the rule does not prohibit carriers from using the same basic format for all third-party charges, provided the format otherwise complies with our rules. This rule does, however, require that non-carrier third-party charges be completely separated from carrier charges by placing them in their own distinct section of the bill so that it is clear and conspicuous to the consumer that all non-carrier third-party charges are in one part of the bill and that all carrier charges are elsewhere on the bill. Although a carrier's compliance with this rule will be determined on a case-by-case basis, a carrier might seek to comply by, for example, designating "Part A" of its bill for carrier charges and "Part B" for non-carrier charges. Similarly, a carrier may prefer "Part A" for its own charges, "Part B" for third-party carrier charges, and "Part C" for non-carrier third-party charges. With clear and conspicuous labeling of each section of the bill, such formats likely would comply with the requirement we adopt today. We do not mandate any specific format, however, and carriers have flexibility to develop their own solutions that comply with the rule.

73. We also clarify, as we noted in the *NPRM*, that this rule does not change anything with respect to carrier billing for bundled services. Therefore, a carrier that offers a triple-play bundle that consists of its own telecommunications services, Internet services provided by a non-carrier affiliate, and satellite television provided by an unaffiliated third-party, may continue to place the bundle charge in the section of the bill containing carrier charges. The record contains little or nothing to indicate that cramming is a significant problem for bundles. Further, we find that it likely would be extremely confusing to consumers, and make it difficult for them to verify whether they are being billed the correct

[197] *See FTC v. Inc21.com*, 745 F.Supp.2d at 994-999 and *FTC v. Inc21.com*, 688 F.Supp.2d at 929; *Senate Staff Report* at iv.

[198] Letter from Chris Nelson, Chairman, South Dakota Public Utilities Commission, to FCC (Feb. 15, 2012) at 1-2.

[199] *See, e.g.*, FCC Complaint 11-C00271946-1 (consumer would have realized the charges were fraudulent if the third party companies were billing the consumer directly).

price, if they were billed for a bundle as if they were buying each service ala carte. For purposes of this rule, the facts that the bundle is marketed by the carrier as its product, is marketed as a single product at a single price, and includes telecommunications services provided by the carrier, is sufficient for the bundle to be treated as a carrier charge.

74. *Sub-totals.* We also require wireline carriers to provide separate subtotals for carrier charges and for non-carrier third-party charges on the bill payment page or the equivalent location in electronic bills. The record is clear that one of the reasons consumers have difficulty detecting unauthorized charges is that these charges often are at or near the end of bills that may run many pages.[200] Further, as we noted in the *NPRM*, the *Inc21.com* court stated that having third-party charges included in the total amount due on a bill without any differentiation between those charges and carrier charges made it difficult for consumers to detect unauthorized charges.[201] Several commenters share this concern.[202] By requiring separate subtotals on the payment page, which usually is the first page of a paper bill, we address these concerns and guard against the unintended consequence that the requirement to place non-carrier third-party charges in a distinct section of the bill could be implemented in a way that exacerbates problems associated with such charges being near the end of a bill. Requiring separate subtotals on the payment page also helps to alert consumers that their bill contains non-carrier third-party charges and that these charges are detailed in a distinct section of the bill. We note that the majority of state Attorneys General support this requirement.[203]

75. In adopting this and the other rules we adopt today, we are mindful of the need to be consistent with the additional measures we may potentially adopt as a result of comments received in response to the *Further Notice*. Many commenters who urge us to adopt an opt-in requirement support this "separate section" rule as part of an opt-in requirement such that this rule would apply to carriers' billing of consumers who opt-in to receiving non-carrier third-party charges on their bills. Thus, the record indicates that our adoption of this rule now would not limit our flexibility to adopt measures from the *Further Notice* nor would it subject carriers to inconsistent or rapidly changing requirements. Further, we believe that all consumers of carriers that place non-carrier third-party charges on their own bills will benefit from this rule, which will help make consumers aware that their telephone bills may contain non-carrier charges and enable them to more effectively monitor for any unauthorized charges. Our adoption of this rule, however, should not be taken as prejudging the merits of matters on which we seek additional comment.

76. Despite widespread support for a separation requirement, some carriers express their opposition to Commission rules regarding separate bill sections for carrier and third-party charges because of potential costs involved in bill formatting changes.[204] For example, AT&T does not oppose a requirement that carriers separate their charges from unaffiliated third-party charges on the bill, provided that their bills would not have to be reformatted in order to be in compliance.[205] ITTA opposes the adoption of specific content or formatting requirements, emphasizing that carriers are in the best position to convey information to their consumers in a clear and accurate manner.[206] Should the Commission

[200] *See, e.g.,* 17 State Attorneys General Comments at 19.

[201] *NPRM*, 26 FCC Rcd at 10040, ¶48 (citing *FTC v. Inc21.com*, 745 F.Supp.2d at 994-995, 1000-01).

[202] *See, e.g.,* Florida AG Comments at 2; Nebraska Public Service Commission Comments at 3.

[203] 17 State Attorneys General Comments at 19.

[204] *See, e.g.,* CenturyLink Comments at 3.

[205] AT&T Comments at 16.

[206] ITTA Comments at 5.

decide to implement a separation of charges requirement for wireline carriers, Verizon proposes a modification to the proposed rule language in order to minimize consumer confusion that may result from seeing billing aggregators' names appear multiple times on the bill, while still allowing consumers to distinguish between carrier charges and third-party charges.[207]

77. We are mindful of carrier concerns that bill formatting changes resulting from a bill separation requirement will be expensive. It is impossible to assess such claims because the carriers provide no estimates of what the costs might be despite our request in the *NPRM* for specific cost information.[208] Further, we note that many carriers already separate third-party charges from carrier charges on their bills to some degree and that we are requiring only incremental changes affecting the degree and clarity of how charges are separated. Thus, we can only conclude that the burden of compliance will not be prohibitive, especially given that annual savings to consumers could approach $2 billion[209] and that carriers have received over a billion dollars in revenue from their placement of third-party charges, a significant percentage of which are unauthorized, on their bills.[210]

78. Overall, we believe that this rule strikes an appropriate balance among the competing views reflected in the record, including those of commenters that may oppose the rule for different reasons. The rule received support from a diverse range of commenters, including some billing aggregators.[211] AT&T notes that the record generally supports the separation rule.[212] It is an incremental step forward from the status quo where many carriers already separate carrier and non-carrier charges on their bills, but may not place the non-carrier third-party charges in a distinct bill section or otherwise clearly and conspicuously differentiate between carrier and non-carrier charges.

C. Other Proposals

1. Disclosure of Commission Complaint Contact Information

79. To address concerns in a Government Accountability Office report about consumers' lack of knowledge about how to file complaints, we proposed in the *NPRM* a requirement that wireline billing carriers include on their bills, as well as the customer service section of their websites, a clear and conspicuous statement indicating that the consumer may submit inquiries and complaints to the Commission.[213] More specifically, we suggested that the statement include the Commission's telephone

[207] Verizon Comments at 11-13; *see also supra* ¶61.

[208] *NPRM*, 26 FCC Rcd at 10041, ¶49.

[209] The *Senate Staff Report* states that a significant percentage of the $2 billion in annual third-party charges are fraudulent. *Senate Staff Report* at ii.

[210] The Senate Staff Report states that carriers have earned $10 billion in revenue over the last five years from third-party billing, and that carriers may receive between $1 and $2 for each of the 300 million third-party charges they place on their bills each year. *Senate Staff Report* at ii-iii. Thus, carriers may receive between $300 million and $600 million annually for placing third-party charges, a significant number of which are fraudulent, on their bills.

[211] *See, e.g.*, BSG Comments at 8; ITTA Comments at 9; Michigan Public Service Commission Comments at 2; NASUCA Comments at 28-29; PaymentOne Comments at 18; Wheat State Comments at 2.

[212] AT&T Reply Comments at 12.

[213] *NPRM*, 26 FCC Rcd at 10041-42, ¶51. *See* FCC Needs to Improve Oversight of Wireless Phone Service, GAO Report 10-34 to Congressional Requesters at 18 (Nov. 2009), *found at* http://www.gao.gov/new.items/d1034.pdf ("many consumers that experience problems with their wireless phone service may not know to contact FCC for assistance or may not know at all whom they could contact for help").

number for complaints, website address for filing complaints and, on the carrier's website, a direct link to the Commission's webpage for filing such complaints.[214]

80. In the *NPRM*, we sought comment on whether any of the proposed rules for wireline carriers should also be applied to CMRS carriers.[215] Although we are not extending any of the proposed rules to CMRS carriers at this time, we note that the CMRS carriers strongly oppose the required disclosure of Commission contact information on telephone bills. CTIA claims that the proposed requirement to include Commission complaint contact information would not be useful in preventing cramming from occurring in the first place.[216] Sprint argues that the requirement would delay or thwart resolution of consumer concerns and, further, would overwhelm the Commission with ordinary billing or operational inquiries.[217] Specifically, Sprint estimates that it would take a minimum of twelve (12) months to implement this change to Sprint's CMRS invoice.[218] T-Mobile agrees that the requirement to include Commission contact information would lead to consumer confusion and unnecessary frustration.[219]

81. The vast majority of commenters urge the Commission not to mandate disclosure on telephone bills and carrier websites of the Commission's complaint contact information. We agree with the state public utility commissions who warn against the possibility of consumer confusion and frustration regarding which entity consumers should contact for complaint resolution.[220] NASUCA warns against adopting the disclosure requirement because it could have the unintended consequence of overwhelming the Commission with complaints, or worse, directing state complaints away from state public utility commissions and state attorney general offices, thereby thwarting their efforts.[221] Most of the state attorneys general suggest that if the consumer is directed or encouraged to contact the Commission, the consumer may be left with the mistaken impression that the Commission will mediate the complaint or even direct removal of the charge.[222] Most carriers also oppose the required disclosure of the Commission's complaint contact information on consumers' bills on a variety of grounds, including cost and effect.[223]

82. Based on the record, we decline to adopt our proposal. We are concerned this requirement ultimately would disserve consumers because of the potential for confusing them about where complaints should be filed given the contours of state and federal jurisdiction. Among other things, filing a complaint in the wrong jurisdiction could delay resolution of a consumer's complaint. Moreover, we understand the importance to the consumer of responsiveness to complaints and timeliness in the resolution of complaints. We acknowledge the significant roles of the state public utility

[214] *Id.*

[215] *Id.* at 10042, ¶52.

[216] CTIA Comments at 27.

[217] Sprint Nextel Corporation Comments at 2-3.

[218] *Id.* at 4.

[219] T-Mobile USA, Inc. Comments at 7.

[220] *See, e.g.,* NEC Comments at 22-23.

[221] NASUCA Comments at 30.

[222] 17 State Attorneys General Comments at 20.

[223] *See, e.g*., AT&T Comments at 16; ILD Teleservices Comments at 4; Frontier Comments at 61; ITTA Comments at 4.

commissions and state attorneys general in protecting their citizens, and the interests of consumers and carriers in expeditiously resolving complaints.

83. In light of the GAO's concerns regarding consumers' lack of knowledge about how to file cramming complaints and in light of the handful of commenters who support the *NPRM*'s proposal,[224] we encourage states to consider alternative methods of educating and assisting consumers with regard to complaint processes.[225] The Commission has itself made it easier for consumers to file complaints about cramming and other matters. Specifically, consumers may file complaints via the Internet, email or phone. An FCC complaint specialist will generally serve the complaint on the billing carrier and direct it to respond in writing to the FCC with a copy to the consumer.[226]

2. Prohibiting All Third-Party Charges on Wireline Telephone Bills

84. In the *NPRM*, we asked whether the Commission should prohibit wireline carriers from including charges from third parties on their bills.[227] We also solicited comment on the impact that such a ban, possibly including an opt-in feature, may have on wireline carriers, consumers, and third parties.[228] As we noted, the state of Vermont has banned almost all third-party charges on wireline telephone bills.[229]

85. We decline to prohibit carriers from placing third-party charges on their bills. We also decline to adopt an opt-in requirement for third-party billing at this time. Instead, we seek comment in the *Further Notice* about opt-in and adopt disclosure and formatting requirements that will empower consumers to detect and prevent cramming. We believe that this approach will materially reduce cramming while we develop a fuller record regarding how the specific implementation of the further measures supported by many commenters would work, thereby avoiding potentially unnecessary and burdensome costs that a piecemeal approach poses.

86. The record reveals that consumers can benefit from legitimate third-party billing. Several commenters, including billing aggregators and carriers, highlight the consumer benefits of legitimate third-party billing and oppose a complete ban on third-party billing. For example, some parties discuss the convenience to consumers of having a single bill and access to a diverse array of products and services at low cost.[230] Some of these commenters challenge the *Senate Staff Report*'s conclusions

[224] *See, e.g.,* Public Interest Commenters Comments at 3-4, Reply Comments at 5; Michigan Public Service Commission Comments at 3.

[225] For example, where they have the authority and wish to do so, states can require carriers to provide our contact information to consumers.

[226] Consumers can file complaints at http://www.fcc.gov/complaints. Consumers can access from this page FCC Form 2000B for cramming complaints, along with instructions on how to complete and electronically file the form. Once a consumer has completed and submitted the form, the Commission issues a complaint number and assigns it to a consumer specialist. Consumers may also file a complaint by calling the Commission's toll-free number 888-CALL-FCC (888/225-5322).

[227] *NPRM*, 26 FCC Rcd at 10047, ¶62.

[228] *Id*.

[229] *Id.* at 10035, ¶33 and n.78.

[230] *See, e.g.,* BSG Comments at 2-3 (third-party billing provides for a convenient way for people to donate to charities); BOP Comments at 2 and Reply Comments at 2-5 (there are benefits such as one-stop shopping for services).

because of its method of data collection or claim that most third-party billing charges are legitimate.[231] Some advocates of third-party billing also emphasize that third-party billing is a convenient method for small businesses that often do not have dedicated accounts receivable departments and employees.[232] One commenter believes that third-party billing is important for commerce in general and is actually increasing because telephones are being used for e-commerce and other business – all of which are important to encourage overall economic growth.[233]

87. Carriers oppose a complete ban on third-party billing, pointing to their experience with billing legitimate third-party charges as being valuable to consumers. For example, AT&T argues that the alleged widespread prevalence of cramming is based largely on speculation, and that a ban unnecessarily would punish the majority of entities that submit legitimate, consumer-authorized charges.[234] CenturyLink claims that third-party billing remains a legitimate enterprise, benefits commercial entities as well as consumers and, thus, should not be prohibited entirely.[235] Frontier suggests that a ban would be an overbroad response that deprives consumers of convenient payment options.[236]

88. A number of parties express concern that a ban on third-party billing would include a ban on the billing of 1+ long distance service or other telecommunications services provided by other carriers, such as calling card services, dial-around services, collect calls, and directory assistance calls.[237] Included in this group concerned about the reach of a ban are inmate service providers that express concern about increased costs to their business and potentially irreparable damage to business growth.[238] There is concern expressed in the record that if these types of telecommunications services are included in a ban on third-party billing, the result would be devastating to the companies providing the calls.[239] One carrier, Central Telecom Long Distance, Inc., predicts that as a result of a ban most, if not all, resellers of long distance services would be put out of business, decreasing competition and increasing costs to consumers.[240]

89. The FTC urges the Commission to ban some or all third-party billing, acknowledging that the ban could provide exceptions as needed.[241] NASUCA argues for a ban, suggesting that a "disclosure-focused approach is far too timid"[242] and that a prohibition would more effectively eliminate cramming

[231] *See, e.g.,* BSG Reply Comments at 1-7 (stating that its own data and industry data show that cramming is far less prevalent than the *Senate Staff Report* suggests); ISO Reply Comments at 3-4 (arguing that the scope of the cramming problem is not as broad as the *NPRM* indicates).

[232] *See, e.g.*, ISG Comments at 2-3 (convenient billing method for small businesses).

[233] PaymentOne Corporation Comments at 4-5.

[234] AT&T Comments at 5-7.

[235] CenturyLink Comments at 11-12.

[236] Frontier Comments at 7.

[237] *See, e.g.*, BDP Comments at 2-3.

[238] *See, e.g.,* Securus Technologies, Inc. Comments at 3-6.

[239] *See, e.g.*, PayTel Communications, Inc. Comments at 1.

[240] Central Telecom Long Distance, Inc. Comments at 5.

[241] FTC Comments at 5-6 & n. 19 (citing Vermont's state cramming law which bans third-party billing except for three categories of third-party billing).

[242] NASUCA Comments at 13.

than would disclosure-based alternatives or a required blocking option.[243] Most of the state attorneys general also argue that a ban, with certain limited exceptions, would be the most effective means to combat cramming.[244] Many consumer groups also support a total prohibition on third-party billing for wireline telephone bills. The National Consumers League, for example, supports a prohibition, with limited exceptions, as the most effective way to reduce cramming, claiming that a ban would not be burdensome to the industry.[245]

90. While we agree with these parties that cramming is a significant consumer problem that requires regulatory action to help consumers, we disagree that third-party billing offers no, or so few, consumer benefits that it is appropriate to ban it altogether. We recognize the importance of consumer choice and benefits of legitimate third-party billing for consumers, carriers, and third parties. At this time, we believe there remain less restrictive measures available to address cramming. Indeed, the record is clear that some third-party charges are very beneficial. Notably, the Vermont legislation that many commenters find exemplary does not prohibit all third-party charges.[246] Based on the record, however, we remain concerned about carrier practices associated with cramming and understand that voluntary industry practices have not been sufficient to solve the cramming problem. Therefore, while today we adopt additional requirements rooted in the existing Truth-in-Billing rules and carrier practices, we also seek comment in the *FNPRM* on the structure and mechanics of an opt-in approach to third-party billing, as well as additional comment on the benefits and burdens of such an approach.[247]

3. Requiring Wireline Carriers to Block Third-Party Charges Upon Request

91. We sought comment in the *NPRM* on whether wireline carriers should be required to block all third-party charges upon request.[248] We noted that the fact that many wireline carriers already offer blocking options at no charge suggests that there are no significant barriers to making such options available to consumers.[249]

92. Although many carriers currently offer blocking of third-party charges to their consumers and generally oppose government mandates regarding blocking,[250] AT&T states that it would not oppose a requirement that carriers offer third-party blocking.[251] One billing aggregator suggests that service

[243] *Id.* at 14-15.

[244] *See, e.g.,* Attorneys General of IL, NV and VT Comments at 3, 10; 17 State Attorneys General Comments at 23.

[245] National Consumer League Comments at 7-8, Reply at 6-7.

[246] The three very limited exceptions to Vermont's outright prohibition of third-party billing are: "(A) billing for goods or services marketed or sold by persons [e.g., telecommunications carriers or companies] subject to the jurisdiction of the Vermont Public Service Board, (B) billing for direct-dial or dial-around services initiated from the consumer's telephone, or (C) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates." *See* 9 V.S.A. §2466(f)(1)-(A)-(C).

[247] *See Further Notice of Proposed Rulemaking infra*. We are free to proceed in an incremental fashion. *See*, *e.g.*, *FCC v. Fox Television Stations, Inc*., 129 S. Ct. 1800, 1815 (2009) ("Nothing prohibits federal agencies from moving in an incremental manner").

[248] *NPRM*, 26 FCC Rcd at 10046-47, ¶60.

[249] *Id.*

[250] *See, e.g.,* CenturyLink Comments at 9.

[251] AT&T Comments at 14.

providers should be required to provide blocking services.[252] As noted above, the FTC encourages the Commission to adopt a ban of third-party billing or, alternatively, an opt-in approach.[253]

93. The FTC claims that a blocking requirement is unlikely to reduce cramming because consumers are often unaware of the ability of third parties to place charges on their telephone bills in the first place; thus, consumers fail to notice or understand the meaning of the disclosed information about the blocking option.[254] Recent FTC enforcement actions show that giving consumers the option to block third-party charges did not help consumers receiving unlawful third-party charges in the first place.[255] Most of the state attorneys general also recommend a ban on third-party billing or, alternatively, an opt-in approach.[256] In contrast, other commenters predict that requiring all wireline carriers to block third-party charges upon consumer request would have an appreciable benefit.[257]

94. In this action, we adopt a rule requiring disclosure of blocking options. At the same time, we believe it premature to mandate specific blocking requirements or to decide what those requirements should be. The record indicates that many wireline carriers already offer blocking options, although their capabilities may vary,[258] suggesting that the offering of blocking alone is not a sufficient fix for the problem and that consumer awareness of blocking options is critical to consumer choice.[259] We seek comment in the *Further Notice* on the possibility of requiring opt-in, which may subsume a requirement for carriers to block those third-party charges for which opt-in approval is required but not received. We do not prejudge the structure or mechanics of any future opt-in approach by adopting specific blocking requirements now.

4. Requiring Wireline Carriers to Disclose That They Do Not Offer Blocking of Third-Party Services

95. In the *NPRM*, we sought comment on whether wireline carriers that do not offer blocking should be required to disclose that fact to consumers.[260] The record reflects minimal support for a requirement that carriers disclose that they do not offer blocking of third-party services.[261] One state public utility commission notes that to the extent the Commission does not require carriers to provide blocking services, carriers should be required to disclose that they do not offer blocking services.[262] One billing company supports a requirement that carriers disclose whether they offer opt-out procedures.[263]

[252] ILD Teleservices Comments at 5 (notes that the costs of providing blocking services are not debilitating).

[253] FTC Comments at 5-6.

[254] *Id.* at 4.

[255] *Id.* at 5.

[256] 17 State Attorneys General Comments at 25.

[257] *See, e.g.,* Iowa Utilities Board Comments at 9 (also predicting that if carriers were required to offer blocking, it is likely that cramming complaints would decrease).

[258] *See, e.g.*, Verizon Comments at 5; Frontier Comments at 5, n.9; AT&T Comments at 14, n.27; *CenturyLink ex parte.*

[259] *Cf*. Virginia State Corporation Commission Comments at 5.

[260] *NPRM*, 26 FCC Rcd at 10046-47, ¶59.

[261] *See, e.g.,* 1800 Collect, Inc. Comments at 5-6.

[262] Michigan Public Service Commission Comments at 2.

[263] BSG Comments at 8.

Based on the record, we do not at this time adopt a requirement that carriers disclose that they do not offer a blocking option. Although the few commenters who addressed this proposal offer some support for it, we do not believe that it would significantly benefit – and may confuse – consumers to be advised that their carrier does not offer a service. We also are cognizant that this disclosure requirement would require carriers that do not offer blocking options to expend resources that could be better expended developing and implementing blocking options.

5. Disclosure of Third Party Contact Information

96. In the *NPRM*, we sought comment on a requirement that carriers clearly and conspicuously provide the contact information for each third party in association with that vendor's charges on the telephone bill.[264] Even though our Truth-in-Billing rules already require that bills contain information to help consumers contest charges on a bill or make inquiries, consumers remain confused about how to resolve problems associated with third-party billing.[265] Given this confusion, we sought comment not only on whether third party contact information should be required, but also what specific information should be disclosed.[266]

97. As a general matter, the carriers that commented on this issue are not opposed to the disclosure of third party contact information.[267] For example, CenturyLink does not oppose the disclosure requirement in principle, but notes that there would be programming time and costs involved.[268] While Sprint is not "categorically opposed" to the requirement, Sprint is not in favor of a government mandate to disclose this information and believes that disclosure is unnecessary.[269] As explained above, the majority of state attorneys general argue that this type of vendor disclosure requirement has not been effective in protecting consumers from cramming.[270] However, if the Commission decides to adopt a vendor contact information requirement, most of the state attorneys general suggest that the Commission require the vendor to disclose its full legal name, the physical address where its business is conducted, its local landline telephone number, a complete description of the product or service purchased and the date the product or service was purchased by the consumer.[271]

98. Other parties, including state public utility commissions, support a disclosure requirement concerning vendor contact information,[272] but vary with respect to what specific information should be included in the disclosure. The California Public Utility Commission suggests required disclosure of the vendor's toll-free telephone number and address;[273] CCTM supports disclosure limited to the vendor's

[264] *NPRM*, 26 FCC Rcd at 10044-45, ¶55.

[265] *Id.* at 10045-46, ¶57.

[266] *Id.* at 10044-45, ¶55.

[267] *See, e.g.,* ITTA Comments at 5 (supports disclosure of vendor information provided that carriers have discretion as to what information is most relevant to provide).

[268] CenturyLink Comments at 15.

[269] Sprint Nextel Corporation Comments at 4-5.

[270] 17 State Attorneys General Comments at 18.

[271] *Id.* The attorneys general also suggest that the Commission should specify that the use of post office boxes, private mailboxes, virtual office addresses, UPS mail drops or VoIP telephone numbers and other devices used to conceal a vendor's true identity or physical location is a rule violation. *Id.* at 18-19.

[272] *See, e.g.,* IURC Comments 3 (requiring vendor contact information would be of significant benefit to Indiana consumers); BSG Comments at 8.

[273] CPUC Comments at 7.

name and toll-free telephone number;[274] the Michigan Public Service Commission supports disclosure of the third party's full legal name and toll-free telephone number as well as any billing company's full legal name and telephone number along with an explanation of the relationship between the biller and the third party.[275] Other parties in support of a vendor contact information disclosure requirement comment on the preferred location of that information.[276]

99. We are not convinced, on the record before us, that consumers would benefit sufficiently from this requirement to require carriers to bear the costs of providing contact information. We note evidence in the record that consumers have experienced difficulty contacting third parties who are listed on their bills or have found that the third party lacks either the information or the authority to assist them. The record also indicates that consumers often encounter similar problems when their carrier refers them to a third party after declining to directly assist the consumer. As such, referral to a third party may often be an ineffective way to resolve the consumer's problem. Given these problems, we see little benefit to requiring carriers to provide contact information for third parties.

100. We remain concerned, however, that consumers appear often to have serious problems contacting someone who can and will answer their questions and resolve disputes. Existing Truth-in-Billing rules already require carriers to provide a "toll-free telephone number or numbers by which consumers may inquire or dispute any charges on the bill."[277] Our rules give carriers the option to provide a toll-free number for a billing agent, clearinghouse, or other third party, provided that such person or entity can answer questions about the consumer's account and is authorized to resolve consumer complaints.[278] Thus, the rules already require the carrier to answer questions and resolve disputes unless it elects to use a third party who can and will do so. We remind carriers of their obligations under the Truth-in-Billing rules and that they are subject to enforcement actions for violations.

6. Due Diligence of Carriers to Ensure that Third-Party Charges are Legitimate

101. Despite carrier efforts to ensure that third parties and the charges they submit are legitimate, there is evidence that current voluntary measures are insufficient to protect consumers from cramming.[279] Thus, we asked in the *NPRM* whether carriers should be required to screen vendors to ensure that they have operated and will continue to operate in compliance with relevant state and federal law.[280]

102. The Michigan Public Service Commission proposes that the Commission establish complaint thresholds at which third parties are put on notice or prohibited from billing.[281] The Virginia

[274] CCTM Comments at 16.

[275] Michigan Public Service Commission Comments at 4-5.

[276] The Florida AG recommends the information be required on a separate page of the bill and include the vendor's name, street address and telephone number. *See* Florida AG Comments at 2. The Michigan PSC recommends the information be placed "prominently" on the bill. *See* Michigan Public Service Commission Comments at 4. The Nebraska PSC recommends the information be listed on the first page of the bill along with the charges. *See* Nebraska Public Service Commission Comments at 3.

[277] 47 C.F.R. § 64.2401(d).

[278] *Id.*

[279] *NPRM*, 26 FCC Rcd at 10047-48, ¶63.

[280] *Id.* at 10048, ¶64.

[281] Michigan Public Service Commission Comments at 5.

Corporation Commission Staff's position is that the Commission should require independent third-party verification of a consumer's authorization to bill charges before a carrier can enter into a billing agreement with a third party or billing agent.[282] There is otherwise minimal support in the record for a due diligence requirement.[283] Most of the parties that comment on the due diligence issue question the need for a due diligence requirement.[284] Several parties comment at great length about the ways in which they currently handle due diligence of third parties and guard against questionable vendors. Verizon and CenturyLink both discuss the screening processes that they already have in place.[285] CCTM views the disclosure requirement as unnecessary because carriers already employ a strict screening and monitoring process for third parties.[286] ITTA contends that existing industry practice of monitoring third-party behavior and taking corrective action as necessary is sufficient to address any unlawful activity.[287] Moreover, ITTA argues, Commission requirements with respect to forced due diligence would limit carriers' flexibility in responding to consumers and market concerns.[288] Other parties outline the safeguards and processes that are already in place to protect consumers from unauthorized charges.[289] The majority of state attorneys general also argue against the imposition of a vendor due diligence requirement. They explain that requiring carriers to perform due diligence will be ineffective because the carriers deal primarily with billing aggregators and not the third parties and rely on the due diligence efforts of the billing aggregators.[290] The state attorneys general also explain that third parties have found ways to circumvent the complaint thresholds put into place by telephone companies.[291]

103. In light of these substantial concerns and a lack of evidence in the record to support a conclusion that our proposed due diligence requirements would materially benefit consumers, we decline to adopt such a requirement. We are not convinced that requiring carriers to perform due diligence reviews of third parties will be effective at reducing cramming. Many carriers already perform some level of due diligence, but cramming remains problematic. Further, the *Senate Staff Report* and the *Inc21.com* court have demonstrated how third parties that engage in cramming evade detection and due diligence efforts by several methods, such as changing names, using multiple front companies, and listing the names of different people as officers or directors, even though the same people ultimately are behind each of the companies.[292] Thus, for example, checking for the history or background of a specific company appears unlikely to be effective at identifying crammers; even if it did identify a crammer, the

[282] Virginia State Corporation Commission Staff Comments at 6.

[283] *See, e.g.,* CPUC Comments at 12-14 (the Commission should adopt rules placing an affirmative obligation on the carriers to screen third parties prior to contracting with them to ensure that they have and will comply with relevant consumer protection laws).

[284] A few parties that oppose a due diligence requirement question whether our due diligence proposal raises constitutional concerns in that it would require carrier adjudication of vendor legal compliance in violation of due process. *See, e.g.,* BVO Comments at 8-9; ISG Comments at 8-9.

[285] Verizon Comments at 3, 6; CenturyLink Comments at 12-13.

[286] CCTM Comments at 15.

[287] ITTA Comments at 6-7.

[288] *Id*. at 6.

[289] BSG Comments at 5; PaymentOne Corporation Comments at 10-11.

[290] 17 State Attorneys General Comments at 21-22.

[291] *Id.*

[292] *See Inc21.com; Senate Staff Report* at 22.

crammer easily could change its name or create another front company before going back to the carrier. We therefore conclude that the benefits of a due diligence requirement are likely to be minimal and insufficient to justify imposing such a requirement on carriers.

104. We again remind carriers of their existing obligations under the Truth-in-Billing rules to provide on their bills a toll-free telephone number, either for themselves or a third party, so that consumers can reach someone who can answer questions and resolve disputes about their bills, and that a carrier that fails to provide this information may be subject to enforcement action.

7. Accessibility

105. The *NPRM* raised the question of how our proposed rules will affect, or could be improved to better assist, people with disabilities, people living in Native Nations on Tribal lands and in Native communities, and people with limited English proficiency.[293] Only the California Public Utility Commission makes a specific recommendation regarding accessibility.[294] We decline at this time to mandate additional requirements beyond those contained in our accessibility and Truth-in-Billing rules.[295] We note that our Truth-in-Billing rules already require that telephone bills must contain clear and conspicuous disclosure, *i.e.* notice that would be apparent to the reasonable consumer, of any information the consumer may need to inquire about or dispute any charge on the bill.[296]

8. Definition of Service Provider or Service

106. In the *NPRM*, we asked whether changes to the definitions of "service provider" or "service" in the context of the Truth-in-Billing rules or other Truth-in-Billing rule changes could be effective in preventing cramming.[297] The purpose of this query was to ascertain whether any uncertainty exists about whether all charges that appear on a telephone bill, regardless of the description of the charge, are subject to our Truth-in-Billing rules and, if so, what changes may be necessary to eliminate that uncertainty. It also allowed commenters to identify other changes that may be helpful. Commenters did not directly address the need to change the definitions of "service provider" or "service." In response to the more open-ended part of this inquiry, the Iowa Utilities Board expressed concern that the Truth-in-Billing rules do not appear to enable us to take enforcement action directly against non-carrier third-parties whose unauthorized charges are placed on telephone bills by carriers. It noted that our enforcement actions are against carriers, while the FTC takes similar actions against non-carriers.[298] While we appreciate this concern, our statutory jurisdiction is limited and we must continue to rely upon the FTC to exercise its jurisdiction over non-carriers. In light of the record before us, we find no basis for concern that our existing Truth-in-Billing rules are insufficiently broad to cover all charges on telephone bills. We believe that the existing rules are sufficiently broad to encompass all charges that appear on a telephone bill and that no changes are needed.

9. Federal-State Coordination

107. We are cognizant of the fact that our federal and state regulatory partners have a wealth of information regarding cramming complaints and enforcement and, therefore, we sought comment in

[293] *NPRM*, 26 FCC Rcd at 10049-50, ¶68.

[294] CPUC Comments at 16 (disclosures should be in the same language as the bill).

[295] *See* 47 C.F.R. §§ 6.1 *et seq*., 7.1 *et seq.*, 64.2400 *et seq.*

[296] *See* 47 C.F.R. § 64.2401.

[297] *NPRM*, 26 FCC Rcd at 10050, ¶¶70-71.

[298] Iowa Utilities Board Comments at 3.

the *NPRM* on how to better coordinate the sharing of information related to cramming.[299] Further, we sought updated information from state and local regulatory entities such as cramming complaint data, state enforcement actions and legislation.[300]

108. With respect to the sharing of information, the FTC invites and encourages all federal and state regulators, including the Commission, to submit all cramming complaints to its Consumer Sentinel database and to utilize the database to research and develop cases against crammers.[301] Florida's attorney general suggests that carriers should be required to submit annual cramming reports to the Commission that would be accessible to the state attorneys general and other consumer protection enforcement agencies.[302] The California Public Utility Commission recommends that the Commission require carriers to file reports with the state commissions.[303] The Michigan Public Service Commission suggests that we create a comprehensive list of all state and federal agency contacts interested in cramming as a way to share information and increase federal-state coordination.[304]

109. Several consumers groups and state entities express a concern that our proposed cramming rules will adversely affect state processing of cramming complaints, and that our cramming rules would preempt state cramming laws. NASUCA recommends that the Commission continue to promote current state processing of cramming complaints and enforcement efforts.[305] The Nebraska Public Service Commission advises the Commission to allow states to handle cramming complaints and report complaint resolution to the Commission.[306] Some parties urge the Commission not to preempt more stringent state cramming laws.[307] NARUC requests that the Commission confirm that federal cramming rules will not preempt more stringent or other state cramming standards or consumer protection rules.[308]

110. Some parties provide information about their experience with slamming regulation to support their views that the processing of cramming complaints should be left to the states. NASUCA notes that the Commission generally refers slamming complaints to the states and processes complaints only when the states elect not to process them.[309] This approach, they argue, should be carried over to cramming.[310] The Iowa Utilities Board encourages the Commission to model cramming regulations after Iowa's cramming regulations, which are very similar to our slamming regulations in that they require

[299] *NPRM*, 26 FCC Rcd at 10049, ¶66.

[300] *Id.* at 10049, ¶67.

[301] FTC Comments at 6-7. The Consumer Sentinel is a secure online database of consumer complaints filed with the FTC and other consumer agencies that is made available to law enforcement. The Commission can view the database, but it currently does not contribute the cramming complaints it receives from consumers to the database.

[302] Florida AG Comments at 2.

[303] CPUC Comments at 16.

[304] Michigan Public Service Commission Comments at 5-6.

[305] NASUCA Comments at 31.

[306] Nebraska Public Service Commission Comments at 4.

[307] NEC Comments at 18.

[308] NARUC Reply Comments at 5.

[309] NASUCA Comments at 33.

[310] *Id.*

independent verification of a consumer's decision to change service providers.[311] The Board believes that it would not be overly burdensome to subject service providers to a requirement – similar to that in the Commission's carrier change rules – that they provide valid verification of consumer authorization to include specific third-party charges on their telephone bills.[312] The California Public Utility Commission believes that state commissions should be permitted to enforce the federal cramming regulations just as they enforce federal slamming regulations.[313]

111. We acknowledge the important role that all of our federal and state regulatory partners play in protecting consumers from unauthorized charges on their telephone bills. We expect that the carriers and the states will continue to play their primary roles in handling consumers' cramming inquiries and complaints, and we do not adopt any specific requirements in terms of federal-state coordination at this time. We intend to continue to coordinate with state and local governments, and with the FTC, on this and other issues of mutual interest.

112. We also appreciate the suggestions regarding how coordination and enforcement may be improved and intend to examine these suggestions as we move forward. We find, however, that the record before us does not suggest adopting specific rules at this time. Finally, we emphasize that we are not pre-empting any state cramming restrictions. We also note that our Truth-in-Billing rules expressly do not pre-empt consistent state laws or rules.[314]

D. Implementation

113. Finally, we address the timing for implementation of the rules we adopt herein. We seek to ensure that the consumer protection measures we adopt are timely implemented so that consumers can begin to realize the benefits as soon as feasible, while allowing a reasonable time for wireline carriers to make the necessary changes to their billing systems, websites, and point-of-sale operations. We recognize that it likely will take carriers longer to make changes to their billing systems than to provide the required disclosures on their websites and at their points of sale. Considering this and the time it will take to obtain OMB approval of these rules, we conclude that it is reasonable to require carriers to implement required changes to their billing systems within 60 days after publication in the *Federal Register* of a notice that OMB approval has been obtained, and to require carriers to implement required disclosures on their websites and at their points of sale within 15 days after such notice.

V. LEGAL ISSUES

A. Communications Act

114. In the *NPRM*, we sought comment on our legal authority to adopt the rules we proposed, as well as comments on our legal authority regarding other proposals and issues raised therein. We noted that our proposed rules were rooted in the basic Truth-in-Billing concepts of clear, conspicuous, non-misleading, and unambiguous billing. We asserted that we have authority over these issues under section 201(b) of the Act, which is one of the jurisdictional bases for existing Truth-in-Billing rules, and sought comment on the need to invoke our Title I jurisdiction as additional authority.[315] We explained that section 201(b) requires that all "practices . . . in connection with" common carrier services be "just and reasonable," and that the Commission has explained previously that "the telephone bill is an integral part

[311] Iowa Utilities Board Comments at 9-10.

[312] *Id.* at 8.

[313] CPUC Comments at 2.

[314] 47 C.F.R. § 64.2400(c).

[315] *NPRM*, 26 FCC Rcd at 10054-55, ¶¶83-85.

of the relationship between a carrier and its customer."[316] We further stated that third-party charges appear on a telephone bill only as a result of carriers' practice of placing them there, and that the problem of crammed third-party charges depends on and arises from the relationship between the common carrier and its consumer.[317] In this regard, we noted that if it is not clear on the bill specifically what the charge is for and who the service provider is, a consumer may believe that the charge is related to a subscribed-to telecommunications services provided by the carrier.[318] We also inquired in the *NPRM* about whether our Title I ancillary jurisdiction applies.[319]

115. Section 201(b) Authority. Consistent with the Commission's determination in the *First Truth-in-Billing Order*,[320] we conclude that section 201(b) provides authority for the rules we adopt today. Commenters generally agree that our authority to adopt these rules is defined by the section 201(b) requirement that carrier practices "for and in connection with" telecommunications services must be just and reasonable.[321] State, federal, and consumer advocacy commenters agree that section 201(b) supports our authority to address cramming,[322] and that our jurisdiction to adopt the existing Truth-in-Billing rules applies equally to these proposed rules.[323] The 17 State Attorneys General assert that adoption of Truth-in-Billing rules in 1999 firmly established that we have jurisdiction over the placement of any and all charges on telephone bills.[324]

116. The rules we adopt today, including requirements for disclosure on bills, carrier websites, and at the point of sale, are an incremental outgrowth of the Truth-in-Billing rules that have been in place for more than a decade. In the *First Truth-in-Billing Order*, the Commission concluded that a critical part of the effective operation of a competitive telecommunications marketplace is to ensure that telephone bills provide consumers with all of the information they need to make informed telecommunications choices, as well as the tools to protect themselves against telecommunications-related fraud, because the telephone bill is an integral part of the relationship between a carrier and its consumer.[325] The Truth-in-Billing rules adopted in the *First Truth-in-Billing Order* require that telephone bills: 1) be clearly organized, clearly identify the service provider, and highlight any new providers; 2) contain full and non-misleading descriptions of charges that appear therein; and 3) contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges on the bill.[326] On March 29, 2000, the Commission modified some of the Truth-in-Billing rules, but kept these basic

[316] *First Truth-in-Billing Order*, 14 FCC Rcd at 7503, ¶20.

[317] *NPRM*, 26 FCC Rcd at 10054, ¶83.

[318] *Id.*

[319] *Id.* at 10055, ¶85.

[320] *See First Truth-in-Billing Order*, 14 FCC Rcd at 7503, ¶21.

[321] *See*, *e.g.*, AT&T Comments at 17; CenturyLink Comments at 17; Public Interest Commenters Comments at 4-5; Michigan Public Service Commission Comments at 6; NASUCA Comments at 14-15; 17 State Attorneys General Comments at 24.

[322] *See*, *e.g.*, Public Interest Commenters at 4-5; Michigan Public Service Commission Comments at 6; NEC Comments at 23-24; 17 State Attorneys General Comments at 24.

[323] *See*, *e.g.*, 17 State Attorneys General Comments at 24.

[324] 17 State Attorneys General Comments at 24.

[325] *See First Truth-in-Billing Order,* 14 FCC Rcd at 7503, ¶20.

[326] *See id.* at 7496, ¶5.

requirements in place.[327] As the record overwhelmingly demonstrates, cramming continues to be a significant problem in the telecommunications marketplace and has resulted in millions of fraudulent charges being placed on consumers bills.[328]

117. The Commission determined that its authority to adopt the Truth-in-Billing rules, which are designed to deter both slamming and cramming, derives from sections 201(b) and 258 of the Act.[329] The Commission noted that section 201(b) requires that all carrier charges, practices, classifications, and regulations "for and in connection with" interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement.[330] The additional Truth-in-Billing rules we adopt today are aimed solely at cramming and equally rest on our section 201(b) authority over interstate services. Like the existing Truth-in-Billing rules, these new rules serve to deter carriers from engaging in unjust and unreasonable practices "for and in connection with" their telecommunications services that are subject to Title II generally and to section 201(b), specifically.

118. The Commission has made clear that billing for telecommunications services is an integral part of the provision of telecommunications services.[331] As the *Senate Staff Report* and the *Inc21.com* court made clear, carriers' practice of placing non-carrier third-party charges on their own bills for their own telecommunications services enables cramming and attracts "fraudsters" who, the record amply demonstrates, exploit the carriers' relationship with their telecommunications consumers to induce those consumers to pay unauthorized charges. [332] This carrier practice simultaneously makes the carriers' bills for the telecommunications services they provide to consumers the vehicle by which unauthorized third-party charges are delivered to the carriers' consumers and the device that makes it difficult for consumers to detect that the charges are unauthorized, not for a telecommunications service, or from a third party instead of from their carrier. This conclusion is further supported by other commenters and victims of cramming who state that they easily would have detected the unauthorized charges had they been on a separate bill and instead of on their telephone bill,[333] and by the South Dakota Public Utilities Commission's description of a situation in which consumers in that state readily detected an unauthorized charge that they might easily have missed on a telephone bill as it was described in a manner that easily could have been taken as being associated with a telecommunications service.[334]

[327] *See Order on Reconsideration*. Specifically, the *Order on Reconsideration*: 1) modified the requirement for identification of new service providers to apply only to subscribed services for which the provider places periodic charges on the bill (*i.e.*, not per-transaction charges resulting from use of dial-around or directory assistance services—although such charges must be separated by provider); and 2) modified the "contact" requirement to allow for other electronic means in addition to the toll-free number, in limited cases where the customer does not receive a paper copy of the bill (for example billed by e-mail or Internet).

[328] *See infra* section III; *see also Senate Staff Report*.

[329] *See First Truth-in-Billing Order* at 7503*, citing* 47 U.S.C. §§ 201(b), 258. In addition, section 332 of the Act, 47 U.S.C. § 332, also provides us with jurisdiction to enact rules concerning CMRS carriers.

[330] *See First Truth-in-Billing Order* at 7503*, citing* 47 U.S.C. § 201(b).

[331] *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, Report and Order, 102 F.C.C.2d 1150 (1986), recon. denied, 1 FCC Rcd 445 (1986) ("*Detariffing Order*").

[332] *See FTC v. Inc21.com*, 688 F.Supp.2d at 929; *Senate Staff Report* at 11.

[333] *See, e.g*., FCC Complaint 11-C00271946-1 (consumer would have realized the charges were fraudulent if the third party companies were billing the consumer directly).

[334] *See* Letter from Chris Nelson, Chairman, South Dakota Public Utilities Commission, to FCC (Feb. 15, 2012) at 1-2.

119. Over a decade ago, the Commission rejected arguments that its authority to combat cramming is limited to charges for telecommunications services on a carrier's own bill, and that it lacked jurisdiction to enforce its cramming rules against a carrier for non-carrier charges on the carrier's own bill to consumers.[335] In that case, the carrier, LDDI, billed unauthorized charges for a psychic hotline provided by a partner company and contended that the Commission did not have jurisdiction under section 201(b) because the psychic hotline was an enhanced service. The Commission concluded that "the practice was 'in connection with' telecommunications service because it was inextricably intertwined with LDDI's long distance service." It was being jointly marketed with LDDI's own services, was included on the bill LDDI mailed for its own charges, and LDDI received a portion of the enhanced service's "membership" fees.[336] The record in this proceeding shows that carriers continue to benefit financially from the placement of third-party charges on the bills for their own telecommunications services and that such charges often are described to look like they are associated with a telecommunications service provided by the carrier. We therefore conclude that the findings underlying the rules we adopt today are consistent with the Commission's findings in the LDDI case, and thus likewise within the Commission's section 201(b) authority.

120. Arguments that our section 201(b) authority applies only to charges for telecommunications services on telephone bills are also contrary to the text of the statute. Our jurisdiction extends to carrier practices "for and in connection" with telecommunications services, not just to carrier practices "for" telecommunications services.[337] Such an interpretation leads to irrational outcomes and thus is unreasonable. Under this view, the Commission would have jurisdiction over those specific line items on a carrier's bill that are in fact for a telecommunications service, but would be powerless to address even the most blatant fraud on the rest of the bill, including fraud by the carrier related to non-telecommunications services and charges that are misleadingly described as being for a telecommunications service, because those charges are not in fact for a telecommunications service. We conclude that our authority is not so limited.

121. A number of commenters argue that the rules we proposed in the *NPRM* are not "in connection with" carriers' telecommunications services and therefore fall outside our section 201(b) jurisdiction because the rules are aimed at governing the relationship between the carrier and the third parties to which it provides unregulated billing-and-collection services rather than the relationship between the carrier and the consumers to which it provides telecommunications services.[338] We disagree that our rules are aimed at the carriers' relationship with their customers for unregulated billing-and-collection services. As we explained in the Discussion section of this *Report and Order*[339] and in this discussion, our rules are designed to address the specific carrier practices that affect their telecommunications service consumers. Carriers would not be subject to the Truth-in-Billing rules, including the rules we adopt today, if they issued a separate bill on behalf of non-carrier third-parties instead of comingling their own and third-party charges on their own bill.

122. For all of these reasons, we disagree with those commenters who argue that the carrier practices at issue are not "for and in connection with" their telecommunications services.

[335] *See Long Distance Direct, Inc. Apparent Liability for Forfeiture,* Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302 (2000) ("LDDI").

[336] *See id.*

[337] 47 U.S.C. § 201(b).

[338] *See*, *e.g.*, BSG Reply Comments at 17-20; MetroPCS Communications, Inc. Comments at 16.

[339] *See supra* section III.

123. *The Detariffing Order*. We also disagree with commenters who suggest that our rules are aimed at regulating the billing-and-collection services carriers provide to third parties when the Commission deregulated those services in 1986 or at the carriers' relationship with such third-party purchasers of its billing-and-collection services.[340] In the *First Truth-in-Billing Order*, the Commission determined that the *Detariffing Order*[341] did not prevent it from requiring that carrier billing practices "for and in connection with" telecommunications services must be just and reasonable.[342]

124. In this regard, we note that several commenters appear to misunderstand our inquiry in the *NPRM* about whether the Commission has authority to prohibit carriers from placing non-carrier third-party charges on their own bills to their own consumers for their own telecommunications services, and whether we should adopt such a prohibition. We did not intend to suggest that we were considering prohibiting carriers from providing billing-and-collection services to third parties on a comprehensive basis. Our focus has been and remains carriers' practices on their own bills to consumers of telecommunications services. To be clear, the kind of prohibition about which we inquired would not prevent carriers from continuing to provide billing-and-collection services to third parties.

125. Prior to the *Detariffing Order*, these billing-and-collection services were deemed to be common carrier services[343] subject to section 201(b). Thus, both the carriers' own charges and the third-party charges they placed on their bills were related to the carriers' provision of regulated services: the telecommunications services provided to end-user consumers and the billing-and-collection services provided to third parties. When the Commission reclassified and deregulated carriers' billing-and-collection services, it did not require carriers to cease placing third-party charges on their own bills,[344] and carriers continued the practice. As we have noted, it is this practice of placing third-party charges on bills for telecommunications services that makes cramming possible, as hindsight and the record demonstrate. Indeed, the record demonstrates that carriers' practice of placing non-carrier third-party charges on their own bills for telecommunications services enables their customers for now-deregulated billing-and-collection services to defraud their consumers for regulated telecommunications services and even attracts new "fraudsters,"[345] further demonstrating that carriers' practice of placing third-party charges on their own bills for their own services is "for and in connection with" their telecommunications services.

[340] *See*, *e.g.*, ISO Comments at 3-7; CCTM Comments at 4.

[341] The *Detariffing Order* states that:

> "Although carrier billing and collection for a communication service that it offers individually or as a joint offering with other carriers is an incidental part of a communications service, we believe that carrier billing or collection for the offering of another unaffiliated carrier is not a communication service for purposes of Title II of the Communications Act."

Detariffing Order, 102 F.C.C.2d at 1168.

[342] *See First Truth-in-Billing Order,* 14 FCC Rcd at 7506, ¶25 (citing 47 U.S.C. § 201(b)).

[343] We note that the term "telecommunications service" was first defined in the Telecommunications Act of 1996, and that many services that previously were deemed common carrier services fell under the new definition.

[344] *See Detariffing Order.*

[345] We do not suggest that all third parties engage in fraud. The record shows, however, that a significant percentage of the charges from third parties are unauthorized.

B. First Amendment

126. We also sought comment on First Amendment considerations related to our proposed rules and the other proposals and issues raised in the *NPRM*.[346] Based on the record, we find that the rules we adopt today do not unconstitutionally burden carrier speech.

127. Commenters that addressed First Amendment issues generally argued that our rules must satisfy the standards set forth in *Central Hudson*,[347] an intermediate scrutiny standard which provides that a regulation of commercial speech will be found compatible with the First Amendment if: (1) there is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest.[348] CenturyLink asserts that the rules we proposed in the *NPRM* and adopt in this *Report and Order* fail these standards because they are not necessary to achieve our objective of an "educated consumer body."[349] MetroPCS states that the rules we adopt today satisfy none of the three prongs of the *Central Hudson* test, but describes our interest as "assisting consumers in detecting and preventing placement of unauthorized charges on their telephone bills."[350] Other commenters characterize our interest similarly.[351] Fewer commenters discussed the more lenient First Amendment standard set forth in *Zauderer,*[352] a case in which the Supreme Court held that disclosure requirements are consistent with the First Amendment so long as they are "reasonably related to the [government's] interest in preventing deception of consumers."[353] CenturyLink, for example, cautioned that disclosure requirements can offend the First Amendment, even under the *Zauderer* standard, but did not assert that the disclosure requirements proposed in the *NPRM* did so.[354] We also note that wireline carriers generally did not address First Amendment issues in their comments.

128. As a threshold matter, we note that untruthful or misleading commercial speech does not enjoy First Amendment protections.[355] Nor does misleading speech or speech concerning unlawful activity raise First Amendment concerns.[356] The record clearly indicates that a substantial percentage of non-carrier third-party charges are unauthorized, and many of the unauthorized charges are fabricated or otherwise fraudulent in violation of state and federal laws. The record demonstrates that in some cases, upwards of 90 percent of charges by some non-carrier third-parties are unauthorized.[357] The record also

[346] *NPRM,* 26 FCC Rcd at 10055, ¶¶ 86-87.

[347] *See*, *e.g.*, MetroPCS Comments at 16-17; CenturyLink Comments at 20; Billing Concepts Comments at 11; CCTM Comments at 14; Online Business Association Comments at 8. *See also Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) ("*Central Hudson*").

[348] *Central Hudson,* 447 U.S. at 566.

[349] CenturyLink Comments at 20.

[350] MetroPCS Comments at 17-18.

[351] *See*, *e.g.*, ISO Comments at 8; CCTM Comments at 10.

[352] *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) ("*Zauderer*"). The Commission in its *NPRM* cited both *Zauderer* and *Central Hudson*. *NPRM*, 26 FCC Rcd at 10055, nn. 162, 163.

[353] *Zauderer* at 651.

[354] CenturyLink Comments at 22.

[355] *See*, *e.g.*, *Ibanez v. Florida Department of Business and Professional Regulation*, 512 U.S. 136, 142 (1994).

[356] *See*, *e.g., In re R. M. J.*, 455 U.S. 191, 203 (1982).

[357] Attorneys General of Illinois, Nevada and Vermont Comments at 2.

makes clear that many of the unauthorized charges are misleadingly described in a manner designed to make them appear to be associated with a telecommunications service in order to make it more difficult for consumers to detect and dispute them. Therefore, it appears that a significant percentage of the speech that the rules target is not protected by the First Amendment. Nevertheless, as the rules we adopt require speech in the form of mandatory disclosure and related format requirements as a means to combat unauthorized billing, the First Amendment is implicated. For the reasons set forth below, we hold that the disclosure and related formatting rules adopted today do not unconstitutionally burden speech.

129. We begin our analysis by determining the First Amendment standard of scrutiny applicable to those rules. The rules only implicate commercial speech[358] and, under well-established law, the First Amendment "accords a lesser protection to commercial speech than to other constitutionally guaranteed expression."[359] Moreover, even within the category of commercial speech, the Constitution "accords varying levels of protection depending on the type of commercial speech at issue."[360] As shown below, we believe that the more lenient *Zauderer* standard rather than the intermediate *Central Hudson* standard applies to the rules adopted herein.

130. The Supreme Court has long recognized that the government "has substantial leeway in determining appropriate information disclosure requirements for business corporations."[361] That latitude stems from the "material differences between disclosure requirements and outright prohibitions on speech."[362] Disclosure requirements, unlike speech bans, are not designed to prevent anyone from "conveying information."[363] Instead, those requirements "only require [persons] to provide somewhat more information than they might otherwise be inclined to present."[364] Where the required disclosure involves "only factual and uncontroversial information,"[365] the required disclosure "does not offend the core First Amendment values of promoting efficient exchange of information or protecting individual liberty interests."[366] To the contrary, because "the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides," a person's "constitutionally protected interest in *not* providing any particular [noncontroversial] factual information . . . is minimal."[367] The Supreme Court thus has held that the *Zauderer* standard, and not the intermediate *Central Hudson* standard, applies to the required disclosure of purely factual, non-controversial information that does not suppress speech.[368]

[358] Commercial speech is "expression related solely to the economic interests of the speaker and its audience." *Central Hudson*, 447 U.S. at 561. *See Jerry Beeman and Pharmacy v. Anthem Prescription*, 652 F.3d 1085, 1106 (9th Cir. 2011).

[359] *Central Hudson*, 447 U.S. at 564. *See Zauderer*, 471 U.S. at 637.

[360] *New York State Restaurant Ass'n. v. New York City Bd. of Health,* 556 F.3d 114 132 (2d Cir. 2009) ("*NY State Restaurant Ass'n*"). *See Milavetz Gallop & Milavetz v. United States,* 130 S.Ct. 1324 (2010).

[361] *Pac. Gas & Electric Co. v. Pub. Util. Comm'n of Calf.*, 475 U.S. 1, 15 n.12 (1986).

[362] *Zauderer,* 471 U.S at 650. *See Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 641 (6th Cir. 2010).

[363] *Id.*

[364] *Id.*

[365] *Id.*

[366] *Nat'l Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 113 (2d Cir. 2001). *NY State Restaurant Ass'n.,* 556 F.3d at 132.

[367] *Zauderer*, 471 U.S at 651 (emphasis in original). *See Milavetz.,* 130 S.Ct at 1339-40.

[368] *Milavetz.,* 130 S.Ct at 1339.

131. We find that the *Zauderer* standard governs the constitutional review of the rules adopted herein.[369] Our rule requiring carriers to disclose blocking options on its face is a disclosure requirement. Although crafted as format requirements, the purpose and effect of rules requiring the segregation of non-carrier third-party charges and the provision of separate subtotals for carrier and non-carrier charges is the disclosure of third-party charges. All the disclosures compelled by the rules involve "only factual and uncontroversial information."[370] None of the rules prohibit carriers "from conveying any additional information."[371]

132. We find that the rules we adopt today easily satisfy the *Zauderer* standard. The purpose of those rules is to curtail unauthorized charges on telephone bills. As explained elsewhere in this order, the means we have chosen to achieve that objective, *i.e.*, requiring carriers to disclose blocking options, to segregate non-carrier third-party charges, and to provide separate subtotals for carrier and non-carrier charges, enhances consumers' ability to detect and to prevent those unauthorized charges. By giving consumers greater ability to identify and prevent fraudulent telephone charges, the rules are "reasonably related to the [governmental] interest"[372] of preventing unauthorized charges on telephone bills.

133. Even if the commenters were correct in claiming that the intermediate three-part *Central Hudson* standard applies, however, we find that the rules pass constitutional muster. Under the first part of the *Central Hudson* test, we find that we have a substantial interest in assisting consumers in detecting and preventing placement of fraudulent, unauthorized charges on their telephone bills. The record is clear that cramming represents a major problem for consumers, with third-party billing providing approximately $2 billion in annual revenue, and evidence that a substantial portion of this revenue represents fraudulent billing.[373] Cramming continues to be a major source of consumer complaints filed at the Commission, at the FTC, and the states.[374] Moreover, the courts have long recognized fraud prevention to be a substantial governmental interest under the *Central Hudson*.[375] We disagree with the commenter that suggests our interest lies primarily in educating consumers. Based on the record, we believe that our rules will lead to better consumer education about cramming, but the thrust of the rules is enabling consumers to detect and prevent placement of unauthorized charges on their telephone bills.

134. We also find that the rules we adopt today also satisfy *Central Hudson*'s second prong by advancing the government's substantial interest. The FCC, through the Truth-in-Billing regulations, has a longstanding practice of regulating the format and organization of carrier invoices in order to "reduce . . . telecommunications fraud," including cramming and to "aid customers in understanding their telecommunications bills."[376] As discussed above, the record persuades us that these rules, *i.e.*, requiring carriers to disclose blocking options, to separate non-carrier third-party charges into a distinct section of

[369] *See id.* at 1339-40.

[370] *Zauderer*, 471 U.S at 650.

[371] *Milavetz,* 130 S.Ct. at 1340.

[372] *Zauderer*, 471 U.S at 651.

[373] *See Senate Staff Report* at ii.

[374] *See* FCC Quarterly Reports on Informal Consumer Inquiries and Complaints (2011); FTC Halts Massive Cramming Operation That Illegally Billed Thousands, www.ftc.gov/opa/2010/03/inc21.shtm (Mar. 1, 2010); Attorneys General of Illinois, Nevada and Vermont Comments at 2.

[375] *See, e.g.*, *Edenfield v. Fane*, 507 U.S. 761, 770, (1993); *Pagan v. Fruchey*, 492 F.3d 766, 772 (6th Cir, 2007); *Guardian Plans Inc. v. Teague*, 870 F.2d 123, 132 (4th Cir. 1989). We note that at least one commenter admits that our rules may satisfy this prong. *See* CTTM Comments at 10-11.

[376] 47 C.F.R. § 64.2400(a).

the bill, and to provide separate subtotals for carrier and non-carrier charges, are needed to advance our interest in assisting consumers in detecting and preventing unauthorized charges on their telephone bills. If consumers know about blocking options offered by their carrier, they can take action to prevent cramming by blocking from their bills the types of charges that the record indicates are most likely to be unauthorized. Similarly, identifying these kinds of charges in a section of the bill that is separate and distinct from the portion of the bill that lists telecommunications charges, and putting a separate subtotal for each type of charge on the payment page of the bill, will alert consumers if their bills contain the crammed charges, clearly and conspicuously identify those kinds of charges, and enable consumers to scrutinize those charges to detect any that are unauthorized. That these rules advance our stated interest is further confirmed by information in the record that consumers have difficulty detecting unauthorized charges given current practices related to formatting of bills and describing charges.

135. With respect to the third prong of *Central Hudson*, the rules we adopt today are no broader than necessary to serve our substantial interests. To satisfy this prong of the test, we do not have to demonstrate that we have adopted the least restrictive means of achieving our objective, that our rules perfectly fit our stated interest, or that we have adopted the best of all conceivable means for achieving our objective.[377] Instead, this prong of the *Central Hudson* test requires only that our rules be proportionate to the substantial interest we intend to advance.[378] Given the magnitude of the problem reflected in the record, the rules we adopt today represent an incremental, moderate approach to the prevention of cramming. For example, our requirement to place non-carrier third-party charges in a distinct section of the bill separate from carrier charges is far less intrusive than the alternative — suggested by some commenters — of banning third-party billing altogether.[379] Our rules are narrowly crafted so that they are no more extensive than necessary to further our objective of enhancing the ability of consumers to detect and to prevent unauthorized charges on their telephone bills, and thus they satisfy the third prong of *Central Hudson*.[380]

VI. FURTHER NOTICE OF PROPOSED RULEMAKING

136. As described in the *Report and Order*, the record reflects significant concern that bill formatting changes and greater transparency alone are not sufficient to deter the widespread problem of cramming. Commenters suggest a number of approaches that go beyond bill format changes, arguing that stronger measures, such as prohibiting all or most third-party charges from being placed on telephone bills or requiring carriers to obtain a consumer's affirmative consent before placing third-party charges on their own bills to consumers ("opt-in"), are necessary.[381] By and large, the state attorneys general, state public utility commissions, and public interest commenters contend that the requirement that carriers disclose the option of a blocking service to consumers will be less effective in preventing cramming than a complete prohibition of third-party billing or an opt-in approach.[382] In fact, state attorneys general note, contrary to some carrier practices discussed in the *NPRM*, that recent consumer complaints do not indicate that carriers offered a blocking service to their consumers, even after those consumers

[377] *Bd. of Trs. of State Univ. of New York v. Fox*, 492 U.S. 469, 477 (1989); *Nat'l Cable & Telecomms. Ass'n v. FCC*, 555 F.3d 996, 1002 (D.C. Cir. 2009).

[378] *Nat'l Cable*, 555 F.3d at 1002.

[379] *See* CTTM Comments at iv, 3 and 10-11 (prohibition is most extreme option).

[380] *See*, *e.g.*, BSG Comments at 11 and CTTM Comments at 10-11 (arguing against meeting this standard).

[381] *See* FTC Comments at 6; Florida AG Comments at 2; IURC Comments at 6; Iowa Utilities Board Comments at 9-10; Minnesota Attorney General Comments at 9; NASUCA Comments at 16; Virginia State Corporation Commission Staff Comments at 6; 17 State Attorneys General Comments at 25.

[382] *See, e.g.*, 17 States Attorneys General Comments at 23-25.

complained about cramming.[383] These parties, who argue in favor of prohibiting third-party billing or requiring an opt-in approach, express concern that requiring carriers to place third-party charges in a separate section of the bill, by itself, will not effectively reduce cramming.[384] In fact, the FTC submits that recent enforcement actions have shown that placing third-party charges in a separate section of the bill did not help consumers prevent or identify the crammed charges.[385] Furthermore, state attorneys general claim that the separation of third-party charges does not address the "root problem" of cramming and "merely makes it somewhat less likely that the phone bill cramming will go unnoticed for several months."[386] Should the Commission determine that additional measures are necessary, commenting consumer groups argue that a requirement for consumer consent or an affirmative opt-in to receive third-party charges should apply to consumers' wireline, VoIP, and/or CMRS bills and that any requirement to separate third-party charges on the bills of those consumers who opt-in should apply across all platforms because many communications services are now bundled.[387]

137. We recognize that the FTC, consumer groups, and state commenters have already urged us to adopt much more stringent requirements, primarily either by prohibiting carriers from placing non-carrier third-party charges on their own bills or by adopting an opt-in requirement whereby all carriers would be prohibited from placing non-carrier third-party charges on their own bills to any consumers unless they first obtained affirmative consumer approval.[388] While the record already gathered shows some support for the conclusion that such measures would be effective at preventing cramming and directly address the carrier practice that both the *Senate Staff Report* and the *Inc21.com* court identified as enabling and even encouraging cramming, we seek additional comment on whether we should adopt additional measure to prevent cramming, such as an opt-in approach, and, if so, the best way to implement such measures. In order to adequately evaluate an opt-in approach, we believe that a more detailed record is needed, especially with respect to the structure and mechanics of an opt-in approach and how opt-in could be implemented for existing consumers whose carrier already may be placing non-carrier third-party charges on their telephone bills. We also seek to bolster the record here with respect to the Commission's authority to adopt additional anti-cramming measures.

138. Additionally, Verizon recently agreed to settle a class-action lawsuit regarding cramming by agreeing to not place third-party charges on new consumers' bills unless the new consumers give Verizon affirmative approval. As a result, in this *Further Notice*, we seek comment on further measures to prevent cramming, including an opt-in requirement similar to what Verizon has agreed to do. We seek additional detailed information on whether an "opt-in" approach is warranted and if so, how the opt-in requirement should be structured, and how best to implement such a mechanism.

139. As a threshold matter, we seek additional comment on whether an "opt-in" approach is warranted and how it should be structured. For example, should an opt-in requirement apply only to new consumers or to all consumers? Should an opt-in requirement, if adopted, apply to all third-party charges or should third-party charges for telecommunications services be exempt? Should the exemption apply to

[383] *See* Attorneys General of IL, NV and VT Comments at 8.

[384] *See, e.g.,* Attorneys General of IL, NV and VT Comments at 9; 17 State Attorneys General Comments at 19; Public Interest Commenters Reply Comments at 4-5.

[385] FTC Comments at 4-5.

[386] Attorneys General of IL, NV and VT Comments at 9.

[387] *See, e.g.,* Public Interest Commenters Comments at 3-6; ITTA Comments at 7; CPUC Comments at 9; Michigan Public Service Commission Comments at 3; NASCUA Comments at 16.

[388] *See, e.g.*, 17 State Attorneys General Comments at 16; Public Interest Commenters Comments at 3; Nebraska Public Service Commission Comments at 3; FTC Comments at 5-6.

all third-party telecommunications services or only certain ones? The June 2011 NALs reflect that cramming can affect charges for telecommunications services.[389] Industry commenters have already argued that the danger of the "opt-in" approach is that recipients of certain services such as collect calls, directory assistance calls, and inmate facilities calls cannot necessarily be foreseen by the consumer prior to the need for those services, and therefore a consumer would not anticipate needing to opt-in to third-party billing.[390] The FTC states that its research suggests that third-party billing on telephone bills has been almost entirely a vehicle for defrauding consumers; therefore, it argues, the Commission should implement a default block which allows consumers to affirmatively "opt-in" to receiving third-party charges on their bills. According to the FTC, this would allow legitimate third parties to use the telephone billing platform only after obtaining the informed consent of the consumer to be charged.[391]

140. We seek additional comment on whether consumers would likely benefit from an "opt-in" mechanism with respect to non-telecommunications-related third-party charges. Specifically, would "opt-in" meaningfully address the problem of cramming? Would consumers adequately anticipate the need for third-party billing before they opt-in or opt-out? If not, how might the Commission and carriers consider addressing consumer education? Are there any analogous opt-in requirements, either in communications or other industries, that might inform our decisions here? Would the benefits to consumers or other factors favoring or disfavoring an opt-in approach be different under one opt-in structure versus another? How and by how much? For example, would an opt-in approach be more or less warranted if it applied only to new consumers as opposed to all consumers, including a carrier's embedded consumer base?

141. Assuming the Commission decides to adopt an "opt-in" approach, the secondary set of issues revolves around how an "opt-in" measure should be implemented from a practical standpoint. For example, should the Commission adopt an all-or-nothing opt-in where the consumer has an opportunity to opt-in or reject all third-party charges of any type, including long distance and other third-party carrier charges? Alternatively, should the consumer have the choice to opt-in or reject carrier and non-carrier charges separately, or should the consumer have an opportunity to indicate that they choose not to receive third-party billing charges unless or until they are consulted about specific individual charges from third parties? For example, the Mobile Marketing Association's "U.S. Consumer Best Practices" establish procedures for acquiring consumer consent to charges for additional services– including through "opt-in" or "double opt-in" mechanisms – in the context of short codes for text messaging.[392] Additionally, with respect to procedure, there is the question of the best format for implementing the "opt-in" mechanism. We seek comment on whether the carrier should be required to obtain consumer approval for third-party charges via a letter of authorization ("LOA") or to obtain verbal consent made to a third-party verifier ("TPV"). For example, multiple states' attorneys general commenting in this proceeding indicated that consumers should be required to provide consent directly to the telephone company from the consumer's own telephone line used for the billing account, with identity confirmation by use of either the full telephone account number or a password selected by the consumer.[393] We seek comment on the best procedures to obtain a consumer's opt-in to third-party charges, including other alternatives to those mentioned here.

[389] *See* June 2011 NALs.

[390] *See* BSG Comments at 2-3.

[391] *See* FTC Comments at 5-6.

[392] *See* MMA Best Practices.

[393] *See* 17 Attorneys General Comments at 25-26.

142. Also with respect to implementation, we are aware that some carriers and billing aggregators have concerns over the costs associated with implementing an "opt-in" requirement.[394] However, other commenters argue that any associated costs are not burdensome, particularly when measured against the anticipated benefit to consumers.[395] We seek comment on the specific costs of the measures we discuss in this *Further Notice*, and ways we might mitigate any implementation costs. For example, should opt-in be limited to just those wireline carriers that currently offer blocking of non-carrier third-party charges? Do smaller wireline carriers face unique implementation costs and, if so, how might we address those concerns? Should the Commission limit any opt in requirement to new consumers rather than a carrier's embedded base of consumers? If "opt-in" should only apply to new consumers or some other subset of existing consumers, then what is the basis – both factual and legal – for such a distinction? What are the distinguishing characteristics of each subset of consumers and their respective risk of being crammed that may justify disparate treatment? For example, recently Verizon announced a proposed settlement with its consumers to address cramming complaints it has received. Under the proposed settlement, Verizon will implement an "opt-in" requirement for new consumers by requiring, at the point of sale, consumers to give or withhold permission for Verizon to place third-party charges on their bills, and will provide notices on its bills to current consumers regarding the opportunity to "opt-out" by requesting blocking. We seek comment on whether a similar approach would be appropriate should the Commission adopt an "opt-in" requirement.

143. We also seek comment on the issue of where and when a consumer should be made aware of the opportunity to opt-in to third-party billing charges. Should we require carriers to inform the consumer at the point of sale, such as during the telephone conversation between the consumer and the carrier's customer service representative or while using online sign-up procedures, about blocking and the opportunity to opt-in to third-party charges? Should notification of the possibility of third-party charges and the option to opt-in to those types of charges also be required to appear in website, print, or in-store advertising? Additionally, should existing consumers be informed of the possibility of third-party charges on their bill and provided instructions or information as to how to opt-in or decline those charges? Furthermore, once a consumer has opted-in to receive third-party charges on their bill, should the consumer's current opt-in status be disclosed on every bill so that he or she will know whether to be looking for such charges on that bill?

144. We seek comment regarding the duration of each opt-in approval and what happens when a consumer decides to revoke a prior opt-in approval or to give new opt-in approval. Does the opt-in election continue in effect for the duration of service, until changed by the consumer, or some other time? Assuming that there should be a mechanism for a consumer to change an opt-in election with respect to receiving third-party charges, what procedures should be required to effectuate such a change? We seek comment on the potential ways to effectuate a change in consumer opt-in status with respect to some or all third-party charges.

145. We seek comment regarding the scope of each opt-in approval. Should a consumer be able to opt-in to specific types of third-party charges, *e.g.*, from charitable organizations, from a specific third party, or for a specific period of time? Do carriers have the technical ability to distinguish such charges today and, if not, what would be the cost to obtain that ability? Some of the state attorneys general commenting in this proceeding suggested that if a consumer opts to remove the block for a specific vendor, the carrier should be required to clearly and conspicuously disclose that this may expose

[394] *See* ISG Reply Comments at 5; Leap Comments at 5; MetroPCS Communications, Inc. Comments at 7; Verizon Comments at 9-11; CCTM Comments at 2; PayTel Comments at 1; US Telecom Comments at 5; Central Telecom Long Distance Comments at 5.

[395] *See* ILD Teleservices Comments at 5; NASUCA Comments at 16.

the consumer to unauthorized charges.[396] We seek comment on the level of consumer interest in this type of "opt-in" approach, the potential consumer benefits, as well as the complexity and costs such a scenario poses for carriers.

146. We seek comment on whether there might be additional measures we could take to combat cramming. Specifically, are there measures beyond an "opt-in" approach or alternative approaches that we should consider and might be more effective at combating cramming? As we noted in the Report and Order, cramming appears to be less a problem for CMRS consumers than for wireline consumers, but it may be on the rise. We recognize commenter concerns that wireless cramming is growing, and therefore seek comment on potential regulatory and non-regulatory measures to address the issue. Are there technological solutions that might help consumers, such as apps for mobile phones, that could help consumers avoid cramming? What steps has industry taken to date and what steps might it take in the future to protect CMRS consumers? In light of the record in this proceeding, are there any steps the Commission should consider to help CMRS consumers combat cramming? Moreover, to the extent that cramming issues develop for VoIP services, we request that commenters provide us with information about that issue and answer the relevant questions above, including how the Commission should address such issues. Finally, commenters should address implementation costs of any other proposed anti-cramming measures along with any questions of the Commission's legal authority to adopt such measures.

147. Finally, we seek comment on the respective roles of carriers and billing aggregators in screening charges for purposes of existing blocking options and how these roles might change if we were to adopt an "opt-in" requirement. The *Senate Staff Report* indicates that billing aggregators act as intermediaries that funnel charges from various third parties to the carrier serving the consumer to be billed.[397] In addition, information in the record indicates that both carriers and billing aggregators perform their own screening functions to identify third parties who are the subject of an excessive number of cramming complaints.[398] It therefore appears that billing aggregators perform both a sorting function and a screening function. This raises the question of the extent to which carriers or billing aggregators actually perform the screening necessary to block third-party charges under the blocking options carriers currently offer. It also raises the question of whether and to what extent carriers or billing aggregators would actually be in a position to perform the screening necessary to block charges even if we were to adopt an opt-in requirement.

148. We request that commenters provide specific information when addressing costs, benefits, implementation issues, and related matters. As discussed in the *Report and Order*, it is difficult to meaningfully assess general assertions regarding such issues and to balance competing claims that rely only on general assertions. General assertions are less persuasive than comments that provide specific information that quantifies dollar amounts of asserted costs or benefits, that estimates timeframes, or that explains the steps that must be taken in order to accomplish a particular objective.

149. *Legal Authority*. We acknowledge that the proposals in this *Further Notice* go beyond bill formatting and transparency. We seek comment on our authority to adopt an "opt-in" requirement for all or a sub-set of wireline carriers, and for all or a sub-set of wireline consumers. Would the Commission's section 201(b) authority to regulate practices "for and in connection with" telecommunications services support such requirements? Does the Commission's Title I ancillary

[396] *See id*. at 26.

[397] *See Senate Staff Report* at 8.

[398] *See* BSG Comments at 5-6; BVO Reply Comments at 5-6; CenturyLink Comments at 12-13; Frontier Comments at 10; PaymentOne Comments at 10-12.

authority provide support for such requirements? Are there other sources of authority for these measures? Would such measures present First Amendment concerns beyond those posed by the rules we adopt in the *Report and Order*? If so, how might we address those concerns? Are there legal considerations that would limit or support the Commission's authority to apply an opt-in requirement only to certain carriers or to certain consumers, such as new consumers versus all consumers? We also seek comment on whether there exist any other concerns regarding whether the Commission has the legal authority over the concepts discussed in this further notice

VII. PROCEDURAL MATTERS

A. Report and Order

1. Final Regulatory Flexibility Analysis

150. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[399] the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Report and Order*. The FRFA is set forth in Appendix C.

2. Final Paperwork Reduction Act Analysis

151. This document adopts new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3501-3520). The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507 of the PRA. The Commission will publish a separate notice in the *Federal Register* inviting comment on the new or revised information collection requirements adopted in this document. The requirements will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirements. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present document, we have assessed the potential effects of the various policy changes with regard to information collection burdens on small business concerns, and find that these requirements will benefit many companies with fewer than 25 employees by promoting the fair and expeditious resolution of program carriage complaints. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix C, *infra*.

3. Congressional Review Act

152. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

B. FNPRM

1. Initial Regulatory Flexibility Act Analysis

153. With respect to this *Further Notice*, an Initial Regulatory Flexibility Certification ("IRFA") is contained in Appendix D. As required by Section 603 of the RFA,[400] the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in the *Further Notice*. Written public comments are requested on the IRFA. Comments must be identified as responses

[399] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 ("CWAAA").

[400] *See* 5 U.S.C. § 603.

to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[401]

2. Paperwork Reduction Act

154. This *Further Notice* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.[402] In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[403] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[404]

3. Ex Parte Rules

155. Permit-But-Disclose. This *Further Notice* proceeding will be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[405] 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.

4. Filing Requirements

156. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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).

[401] *See* 5 U.S.C. § 603(a). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.

[402] Pub. L. No. 104-13.

[403] Pub. L. No. 107-198.

[404] 44 U.S.C. § 3506(c)(4).

[405] 47 C.F.R. §§ 1.1200 *et seq.*

- 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.

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

157. Accessibility Information. 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).

158. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

159. Additional Information. For additional information on this proceeding, contact Lynn Ratnavale, Lynn.Ratnavale@fcc.gov or (202) 418-1514, or Melissa Conway, Melissa.Conway@fcc.gov (202) 418-2887, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

VIII. ORDERING CLAUSES

A. Report and Order

160. **IT IS ORDERED**, pursuant to the authority found in sections 1-2, 4, 201, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-152, 154, 201, 303(r), and 403, this *Report and Order* **IS ADOPTED**.

161. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 4, 201, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. § 154, 201, 303(r), and 403 the Commission's rules **ARE ADOPTED** as set forth in Appendix A.

162. **IT IS FURTHER ORDERED** that the requirements of this *Report and Order* **WILL BECOME EFFECTIVE** as specified in paragraph 113 herein. The rules contain new or modified information collection requirements that require approval by the Office of Management and Budget under

the Paperwork Reduction Act and **WILL BECOME EFFECTIVE** after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective dates.

163. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

164. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

B. FNPRM

165. **IT IS ORDERED** that pursuant to the authority contained in sections 1-2, 4, 201, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-152, 154, 201, and 403, this *Further Notice of Proposed Rulemaking* **IS ADOPTED**.

166. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64 – Subpart Y – Truth-in-Billing Requirements for Common Carriers

1. The heading for Subpart Y is revised to read as follows:

Subpart Y –Truth-in-Billing Requirements for Common Carriers; Billing for Unauthorized Charges

2. Section 64.2400 is amended by revising paragraph (b) to read as follows:

(b) These rules shall apply to all telecommunications common carriers and to all bills containing charges for intrastate or interstate services, except as follows:

> (1) Sections 64.2401(a)(2), 64.2401(a)(3),_64.2401(c), and 64.2401(f) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a further rulemaking.
>
> (2) Sections 64.2401(a)(3) and 64.2401(f) shall not apply to bills containing charges only for intrastate services.

3. Section 64.2401 is amended by renumbering subparagraph (a)(3) as (a)(4), inserting a new subparagraph (a)(3), and adding a new paragraph (f) to read as follows:

§ 64.2401 Truth-in-Billing Requirements.

(a) *Bill Organization*. Telephone bills shall be clearly organized, and must comply with the following requirements:

> * * * * *
>
> (3) Carriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from all carrier charges. Charges in each distinct section of the bill must be separately subtotaled. These separate subtotals for carrier and non-carrier charges also must be clearly and conspicuously displayed along with the bill total on the payment page of a paper bill or equivalent location on an electronic bill. For purposes of this subparagraph "equivalent location on an electronic bill" shall mean any location on an electronic bill where the bill total is displayed and any location where the bill total is displayed before the bill recipient accesses the complete electronic bill, such as in an electronic mail message notifying the bill recipient of the bill and an electronic link or notice on a website or electronic payment portal.
>
> (4) The telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new services provider. For purpose of this subparagraph "new service provider" means a service provider that did not bill the subscriber for

service during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the subscriber that will result in periodic charges on the subscriber's bill, unless the service is subsequently canceled.

* * * * *

(f) *Blocking of third-party charges.*

(1) Carriers that offer subscribers the option to block third-party charges from appearing on telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each telephone bill, and on each carrier's website.

APPENDIX B

Comments Filed

Due to the significant number of comments filed by individual consumers in this proceeding, we have listed below only those comments received from industry, consumer advocacy groups, and governmental entities. All individual consumer comments, including those cited in the Report and Order, are available for inspection on the Commission's Electronic Comment Filing System ("ECFS").

American Roaming Network, Inc.
AT&T, Inc.
Attorneys General of Illinois, Nevada, and Vermont
Billing Concepts, Inc. d/b/a BSG Clearing Solutions (BSG)
Bizz Links
Business Discount Plan, Inc. (BDP)
Business Online Pages, Inc. (BOP)
Business Values Online, Inc. (BVO)
California Public Utilities Commission (CPUC)
Central Telecom Long Distance, Inc.
CenturyLink
Coalition for a Competitive Telecommunications Market (CCTM)
Consumer Telecom, Inc. (CTI)
Consumers Union, Center for Media Justice, et al. (Public Interest Commenters)
Critical Messaging Association
CTIA
Federal Trade Commission (FTC)
Florida Attorney General Pam Bondi (Florida AG)
Frontier Communications Corporation (Frontier)
ILD Teleservices
Independent Telephone & Telecommunications Alliance (ITTA)
Indiana Utility Regulatory Commission (IURC)
Internet Business Association (IBA)
Internet Searches Group (ISG)
Internet Search Optimization Group (ISO)
Iowa Utilities Board
Leap Wireless International, Inc. and Cricket Communications, Inc. (Leap Wireless)
LocalBiz USA
MetroPCS Communications, Inc.
Michigan Public Service Commission
Minnesota Attorney General
National Association of State Utilities Consumer Advocates (NASUCA)
National Association of Regulatory Utility Commissioners (NARUC)
National Consumers League (NCL)
Nebraska Public Service Commission
New England Commissions (NEC)
Online Business Association (OBA)
PaymentOne Corporation
Pay Tel Communications, Inc.
Personal Content Protection (PCP)
Preferred Long Distance, Inc.
Rocket Communication Services, Inc.

Search Engine Plus (SEP)
Securus Technologies, Inc.
Sprint Nextel Corporation
TCA
Tennessee Regulatory Authority
Tim McAteer, President, General Mgr. Inmate Calling Solutions
T-Mobile USA, Inc.
U.S. Telecom Inc. (US Telecom)
Verizon and Verizon Wireless (Verizon)
Virginia State Corporation Commission Staff
Voice on the Net (VON) Coalition
Wheat State Telephone, Inc. (Wheat State)
17 State Attorneys General
1800 Collect, Inc.

Reply Comments Filed

AT&T, Inc.
Billing Concepts, Inc. d/b/a BSG Clearing Solutions (BSG)
Business Online Pages, Inc. (BOP)
Business Values Online, Inc. (BVO)
Coalition for a Competitive Telecommunications Market (CCTM)
Consumers Union, Center for Media Justice, et al. (Public Interest Commenters)
CTIA
Internet Business Association (IBA)
Internet Searches Group (ISG)
Internet Search Optimization Group (ISO)
Mancuso, James L.
Montana Public Service Commission
NASUCA
National Consumers League (NCL)
National Telecommunications Cooperative Association (NTCA)
Online Business Association (OBA)
PaymentOne Corporation
Personal Content Protection (PCP)
Search Engine Plus (SEP)
Verizon and Verizon Wireless (Verizon)
1800 Collect, Inc.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking released by the Federal Communications Commission (Commission) on July 13, 2011.[2] The Commission sought written public comments on the proposals contained in the *NPRM*, including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Order

2. The record compiled in this proceeding, including the Commission's own complaint data, confirms that cramming[4] is a significant and ongoing problem that has affected wireline consumers for over a decade, and drawn the notice of Congress, states, and other federal agencies. The substantial volume of wireline cramming complaints that the Commission, FTC, and states continue to receive underscores the ineffectiveness of voluntary industry practices and highlights the need for additional safeguards. Recent evidence, such as the volume of wireless cramming complaints and wireless carriers' settlement of litigation regarding unauthorized charges, raises a similar concern with unauthorized charges on Commercial Mobile Radio Service (CMRS) bills, such as those of providers of wireless voice service.

3. Although the Commission has addressed cramming, i.e. the placement of unauthorized charges on telephone bills, as an unreasonable practice pursuant to Section 201(b) of the Act,[5] there are currently no rules that specifically address this practice. We believe that adopting these new rules will provide consumers with the safeguards they need to protect themselves from this risk.

4. In this *Report and Order* (*Order*), the Commission adopts measures under the Commission's Truth-in-Billing rules to help consumers detect and prevent the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as "cramming."[6] Specifically, to summarize the rules adopted, we adopt rules that (1) address the need for

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (*SBREFA*), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *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 No. 98-170, Notice of Proposed Rulemaking, 26 FCC Rcd 10021 (2011) (*NPRM*).

[3] *See* 5 U.S.C. § 604.

[4] "Cramming" is defined as the practice of placing the unauthorized third-party charges on a consumer's telephone bill.

[5] *See*, *e.g.*, *Long Distance Direct, Inc.*, File No. ENF-99-01, Memorandum Opinion and Order, 15 FCC Rcd 3297 (2000) (assessing a forfeiture for slamming and cramming violations pursuant to sections 201(b) and 258). "Slamming" is the unlawful practice of changing a subscriber's selection of a provider of telephone service without that subscriber's knowledge or permission.

[6] *See* 47 U.S.C. § 201; 47 C.F.R. §§ 64.2400-64.2401.

additional safeguards for wireline telephone consumers that build on existing industry efforts to prevent cramming and (2) that are necessary to enable consumers to further detect cramming when it occurs and then prevent it. Specifically, we revise our rules to require wireline carriers that currently offer blocking of third-party charges to clearly and conspicuously notify consumers of this option on their bills, websites, and at the point of sale; 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]

5. We believe the rules the Commission has adopted in the Order strike an appropriate balance between maximizing consumer protection and avoiding imposing undue burdens on carriers and billing aggregators. These rules avoid imposing the undue burden on consumers of eliminating third-party billing as a convenient means by which to receive charges. Consumers will still have access to third-party billing, but information about their option to block third-party charges will be more readily available to them should they choose to not allow third-party charges on their bill. Additionally, these rules avoid the imposition of undue burdens on small carriers that would raise their billing costs to an extent that would inhibit their businesses' ability to remain competitive and perhaps stifle innovation in the marketplace. The imposition of significant costs to billing and network systems without any additional benefit to consumers would be unwise. Therefore, we believe this strikes the necessary balance between the two alternatives. Furthermore, optional blocking is a service many carriers and billing aggregators already make available to consumers and our requirements will simply make the information about blocking more obvious to consumers when they sign up for telephone service. Additionally, requiring a separate section and separate totals for third-party non-carrier charges will also make it easier for a consumer to identify exactly the services for which they are being charged without requiring an entirely separate bill or the elimination of such charges from bills.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. There were no comments filed in direct response to the IRFA. Some commenters, however, raised issues and questions about the impact the proposed rules and policies would have on small entities.

7. Point of Sale Disclosure of Blocking Options. There is significant record support for this approach. Although the state attorneys general, many state public utility commissions, and public interest commenters generally believe that the Commission should adopt additional measures to combat cramming, these groups support more disclosure to and the education of consumers as a general matter.[8] Some state public utility commissions support the proposed disclosure requirement regarding blocking as outlined by the Commission.[9] In fact, a few state commissions emphasize the importance of a point of sale disclosure.[10] The Iowa Utilities Board suggests that if carriers were to actively promote the blocking capability, then cramming complaints would be "reduced substantially."[11] NARUC urges the

[7] *Id*.

[8] *See, e.g.,* National Consumers League Comments at 7.

[9] *See, e.g.,* IURC Comments at 3 (informing consumers of the ability to block third-party charges would be of significant benefit to Indiana consumers).

[10] *See, e.g.,* Tennessee Regulatory Authority Comments at 2 (supporting the Commission's proposal to require carriers to inform consumers of third-party blocking services, but suggesting that disclosure on the bill is unnecessary whereas disclosure at the point of sale is uniquely helpful to consumers).

[11] *Id.*

Commission to require all carriers disclose third-party blocking options to their consumers.[12] Some billing companies also support the Commission's proposed disclosure of blocking requirement.[13] Several billing aggregators do not oppose proposals to improve disclosure and clarify the procedures for offering third-party blocking services provided that the proposed changes do not go beyond the format of the bills or increase the carriers' costs.[14] The FTC acknowledges that improved billing disclosures would benefit consumers who receive third-party charges on their bills.[15]

8. Some carriers generally oppose clear and conspicuous disclosure of existing blocking options. These carriers claim that required methods of disclosure in terms of format or medium would interfere with bill formatting flexibility, be unnecessary, or be costly.[16] CenturyLink recommends that the Commission not mandate the disclosure of blocking options at the point of sale or on each bill, but rather start with required disclosure of blocking options on the website and on bill inserts.[17] CenturyLink claims that verbal disclosures about blocking at the point of sale or point of contact will be expensive and potentially irrelevant to some consumers.[18] Similarly, ITTA contends that the Commission should not require disclosure on every bill or at the point of sale because only a small percentage of consumers are likely to need or use this information in any given month and disclosure runs counter to efforts to reduce billing costs.[19] Regarding the point of sale, ITTA suggests that a disclosure requirement would be overly broad and add to subscriber confusion.[20] NTCA cautions against mandatory changes to billing formats or customer notification requirements for small rural carriers because they would be extremely expensive to implement and provide little benefit.[21] Despite these comments nothing in the record convinces us that it will be unduly burdensome or costly for carriers to implement this requirement – especially since we are granting carriers the implementation flexibility they requested – given that it appears from the record that many or most carriers already offer blocking and, based upon the record, appear to notify consumers of blocking options when consumers dispute unauthorized charges. Thus, many carriers will be required only to expand their existing notification.

9. We note that, despite the carriers' collective concern about the cost of implementing specific disclosure requirements concerning blocking on the bill and at the point of sale, one rural carrier,

[12] NARUC Reply Comments at 4-5 (suggesting that all voice service providers disclose blocking options on, at least, an annual basis, and that all required disclosures be clear and conspicuous).

[13] *See, e.g.,* PaymentOne Corporation Comments at 17.

[14] *See, e.g.,* BVO Comments at 1-2.

[15] *Id.* at 6.

[16] *See, e.g.*, AT&T Comments at 14 (would not oppose a disclosure requirement provided that AT&T would not have to change its existing processes and would have the flexibility to determine the format and manner in which the disclosure is made); BVO Comments at 1-2 (does not oppose improvement of information on bills and clarification of blocking options so long as it does not increase cost to the LEC or go beyond the format of the bills).

[17] CenturyLink Comments at 6.

[18] *Id.* at 7-9. CenturyLink estimates that the additional cost to fully describe third-party billing and disclose a subscriber's blocking option during a point of sale communication would cost the company over $3 million a year. *See id.* at 8 n.16.

[19] ITTA Comments at 4.

[20] *Id.*

[21] NTCA Comments at 2.

Wheat State, supports the Commission's proposed rule requiring notification at the point of sale, on each bill, and on their websites of the option to block third-party charges.[22] Frontier also supports the Commission's proposal that carriers clearly and conspicuously notify consumers of third-party blocking features.[23] Although Frontier cautions against the imposition of specific formats or medium for such disclosures, Frontier states that disclosure of third-party blocking is an "important" consumer protection measure and consumer education is "paramount."[24]

10. In this Report and Order we are adopting a requirement that carriers that already offer blocking simply disclose that option at point of sale so that consumers receive the benefit of better information. In fact, we note that most ITTA member companies offer blocking,[25] some small carriers require written subscriber approval before they will place third-party charges on their bills to consumers,[26] and all of the carriers that provided information to the Senate Commerce Committee indicated that they offer some sort of blocking upon subscriber request.[27] We also note that publicly available information indicates that some carriers already post information about blocking options on their websites.[28] Further, we anticipate that implementation costs will be offset, at least in part, by reductions in the number of subscriber calls to carriers' customer service representatives because of the anticipated reduction in the number unauthorized charges consumers will have to dispute. CenturyLink's estimate that making point-of-sale disclosures will cost it approximately $3 million annually in additional customer service labor costs does not account for the reduced labor costs associated with having the same customer service representatives handling cramming calls from consumers and therefore likely overstates net costs. It is conceivable that carriers could experience a net reduction in such costs. Even AT&T, which is a strong proponent of flexibility, notes that commenters "generally support notifying consumers of third-party blocking options and separating their charges from third-party charges on the bill."[29]

11. We believe that granting wireline carriers this flexibility will better enable them to customize their disclosures to their blocking capabilities while avoiding potential confusion or inaccuracies that could occur if we were to adopt additional requirements. Consistent with our existing Truth-in-Billing rules, we afford carriers the flexibility to implement this requirement in the manner that best accomplishes the goal of the rule within the context of each carrier's individual website, bill, and point-of-sale scripts.[30] This flexibility should enable carriers to avoid unnecessary marketing and billing costs while still providing effective disclosures to their consumers. Each carrier's disclosures must accurately reflect the current capabilities of its blocking options.

[22] Wheat State Comments at 2.

[23] Frontier Comments at 2.

[24] *Id.*

[25] ITTA Comments at 2.

[26] Iowa Utilities Board Comments at 9.

[27] *Senate Staff Report* at 33.

[28] *See* http://www.frontier.com/blockingoptions/ (visited March 8, 2012). We note these websites only to demonstrate that some carriers already voluntarily provide some notification about blocking options, but we do not offer any opinion as to whether any current, specific type of disclosure would comply with the rules we adopt herein.

[29] AT&T Reply Comments at 12.

[30] *See First Truth-in-Billing Order*.

12. Separate Section of Bill for Non-Carrier Third Party Charges. We adopt the requirement that where charges for one or more service providers that are not carriers appear on a telephone bill, the charges must be placed in a distinct section of the bill separate from all carrier charges. We believe this requirement is critical to enabling consumers to detect the most common types of unauthorized charges on their telephone bills. There is significant support for greater separation of bill charges. Some public interest groups encourage the Commission to strengthen our rules regarding the separation of third-party charges on the bill in addition to adopting an opt-in requirement whereby a consumer would have to affirmatively elect to receive third-party charges on their bill.[31] Some state public utility commissions and state attorneys general go further in their support of a separation of charges requirement and recommend that third-party charges appear separately in the body of the bill and be separately identified on the first page of the subscriber's bill.[32] Some commenters argue that greater bill separation will not be effective to combat cramming. The FTC submits that recent enforcement actions have shown that placing third-party charges in a separate section of the bill did not help consumers prevent or identify the crammed charges.[33] Most of the state attorneys general argue that the separation of third-party charges – that most carriers already practice – has proven totally ineffective in adequately alerting consumers to the existence of third-party charges.[34] They claim that the separation of third-party charges does not address the "root problem" of cramming and "merely makes it somewhat less likely that the phone bill cramming will go unnoticed for several months."[35] We disagree. While we acknowledge that changes to bill format may not, standing alone, be enough to protect consumers against cramming, the requirement we adopt today should make it easier for consumers to detect unauthorized charges on their bills that are described so as to appear to be for a subscription telecommunications service, a common tactic used to hide unauthorized charges.

13. We also clarify, as we noted in the *NPRM*, that the rules adopted herein do not change anything with respect to carrier billing for bundles.[36] The record indicates that cramming is not a significant problem for bundles. Further, it likely would be extremely confusing to consumers, and make it difficult for them to verify whether they are being billed the correct price, if they were billed for a bundle as if they were buying each service ala carte. For purposes of this rule, the facts that the bundle is marketed by the carrier as its product, is marketed as a single product at a single price, and includes telecommunications services provided by the carrier, is sufficient for the bundle to be treated as a carrier charge.

14. Separate Totals for Carrier and Non-Carrier Charges. We also require carriers in the Report and Order to clearly and conspicuously disclose separate subtotals for charges from carriers and charges from non-carrier third-parties on the payment page of their bills. For consumers who do not receive a paper bill, these subtotals must be clearly and conspicuously displayed in an equivalent location and in any bill total that is provided to the subscriber before the subscriber has opportunity to access an electronic version of the bill, such as in a transmittal email message or on a webpage. The record is clear

[31] Public Interest Commenters Reply Comments at 4-5.

[32] *See, e.g.*, Florida AG Comments at 2 (third-party charges should appear on the first page of the bill where the total charges are disclosed, and also on a separate page of the bill solely dedicated to third-party charges); Nebraska PSC Comments at 3.

[33] FTC Comments at 4-5.

[34] 17 State Attorneys General Comments at 19.

[35] Attorneys General of IL, NV and VT Comments at 9.

[36] "Bundled services" are various types of services, such as telephone, cable and Internet services, that are offered and billed by a single entity, even though they may be provisioned by multiple parties.

that one of the reasons consumers have difficulty detecting unauthorized charges is that these charges often are at or near the end of bills that may run into ten or more pages. Several commenters share this concern. By requiring separate subtotals on the payment page, which usually is the first page of a paper bill, we address these concerns and guard against the unintended consequence that the requirement to place non-carrier third-party charges in a distinct section of the bill could be implemented in a way that exacerbates problems associated with such charges being near the end of a bill. Requiring separate subtotals on the payment page also helps to alert consumers that their bill contains non-carrier third-party charges and that these charges are detailed in a distinct section of the bill. Thus, this requirement helps consumers to take advantage of the requirement to place non-carrier third-party charges in a distinct bill section and addresses the problem identified in the *NPRM* that consumers often are unaware that their bills can include non-carrier third-party charges. We note that the majority of state Attorneys General support this requirement and recommend that the total amount of third-party charges be disclosed on the summary of charges appearing at the very beginning of the subscriber's bill.[37] This requirement also should help consumers to be aware that their telephone bills may contain non-carrier charges, including charges for things wholly unrelated to the telecommunications services they purchase from carriers.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

15. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[38] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[39] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[40] Under the Small Business Act, a "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).[41]

16. *Incumbent Local Exchange Carriers ("Incumbent LECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.42 Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that

[37] *Id.*

[38] 5 U.S.C. § 604(a)(3).

[39] 5 U.S.C. § 601(6). Generally, the Small Business Administration, Office of Advocacy, defines a small business as an independent business having fewer than 500 employees. *See* http://www.sba.gov/sites/default/files/sbfaq.pdf.

[40] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comments, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[41] 15 U.S.C. § 632.

[42] 13 C.F.R. § 121.201, NAICS code 517110.

they were incumbent local exchange service providers.[43] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[44] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.[45]

17. *Competitive Local Exchange Carriers ("Competitive LECs"), Competitive Access Providers ("CAPs"), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[46] . Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.[47]. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[48] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[49] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[50] In addition, 72 carriers have reported that they are Other Local Service Providers.[51] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[52] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

18. *Billing Aggregators.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of billing aggregation services. The appropriate size standard under SBA rules is for the category Other Telecommunications Services and or Data Processing, Hosting and Related Services. Under those size standards, such a business is small if it has revenue of $25 million of less annually.[53] Based upon the information provided by the commenting billing

[43] *See* Trends in Telephone Service at Table 5.3.

[44] *See id*.

[45] *See* http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

[46] 13 C.F.R. § 121.201, NAICS code 517110.

[47] *See* http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

[48] *See* Trends in Telephone Service at Table 5.3.

[49] *See id.*

[50] *See id*.

[51] *See id*.

[52] *See id*.

[53] 13 C.F.R. § 121.201, NAICS codes 517919 and 518210.

aggregators,[54] the Commission estimates that the majority of billing aggregators are small entities that may be affected by rules adopted pursuant to the Notice.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

19. The rules adopted herein require that (1) wireline carriers to notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their websites, of the option to block third-party charges from their telephone bills, if the carrier offers that option; (2) require wireline carriers to place charges from non-carrier third-parties in a bill section separate from carrier charges; and (3) require wireline carriers to clearly and conspicuously disclose separate subtotals for charges from carriers and charges from non-carrier third-parties on the payment page of their bills.

20. These rules may necessitate that some common carriers make changes to their existing billing formats and/or disclosure materials. For example, to provide a separate section for non-carrier third-party charges and a separate total for non-carrier charges may necessitate changes to billing formats.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[55]

22. Point of Sale Disclosure of Blocking Options. In this *Order*, the Commission adopts a requirement that carriers notify consumers of their options to block non-carrier third- party charges from their telephone bills.[56] Although we acknowledge that this requirement imposes some costs on small carriers, we are limiting the requirement to disclosure of already existing blocking options. This limitation significantly reduces the compliance burden for all carriers, including small carrier entities. Furthermore, in adopting the disclosure requirement, the Commission also concluded that the costs imposed upon carriers are outweighed by the fact that consumers would be significantly more protected from crammed charges appearing on their telephone bills.

23. Separate Section of Bill for Non-Carrier Third Party Charges. In this *Order*, we amend our rules to require that when one or more service providers that are not carriers appear on a telephone bill, the charges must be placed in a distinct section of the bill separate from all carrier charges. Some carriers argued that the separation of charge is ineffective[57] and that any new regulation would increase costs, thus hampering competition in the industry.[58] We acknowledge that this rule places some burden

[54] *See, e.g.*, PaymentOne Corporation Comments at 1.

[55] 5 U.S.C. § 603(c)(1)-(c)(4).

[56] *See Order supra* ¶48.

[57] *See* Attorneys General of IL, NV and VT Comments at 9

[58] *See, e.g.,* BSG Comments at 2-3; BOP Reply Comments at 2-5; ISO Comments at 2; OBA Reply Comments at 2-4.

on carriers, but we believe that the burden is mitigated because we do not mandate any specific format. Moreover, carriers have flexibility to develop their own solutions that comply with the rule as best works for the size and their particular billing system, thereby reducing the burden associated with the rule the Commission adopts in this Order. Furthermore, we believe it will make it much easier for consumers to identify the charges on their bill that the record suggests are most likely to be crammed.

24. *Separate Totals for Carrier and Non-Carrier Charges.* We also require carriers to clearly and conspicuously disclose separate subtotals for charges from carriers and charges from non-carrier third-parties on the payment page of their bills. The separate totals requirement is part and parcel of the separation section for non-carrier third-party charges. Although we did not receive any comments stating that this rule would cause a significant economic impact on small businesses, we acknowledge that changing the billing format in any way imposes some costs upon the carrier. However, we have determined that the benefit to consumers in making their bills more clear and usable outweighs the burden on the carrier.

25. We specifically identified two alternatives to the rules adopted in this Order for the purpose of reducing the economic impact on small businesses. First we considered requiring all carrier to offer blocking. Second, we considered requiring a specific bill format. However, we rejected both of these alternatives because they are more costly to small businesses.

REPORT TO CONGRESS: The Commission will send a copy of the *Order*, including this FRFA, in report to be sent to Congress pursuant to the Congressional Review Act.[59] In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[60]

[59] *See* 5 U.S.C. § 801(a)(1)(A).

[60] *See* 5 U.S.C. § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended, ("RFA"),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The *Further Notice* contains proposals that: (1) a carrier, if it offers blocking, ask all new subscribers whether they would like to "opt-in" to blocking of third-party charges on their bills and record the subscriber's election for purposes of blocking or not blocking third-party charges on that subscriber's bill; and (2) carriers include on all telephone bills and on their websites, for use by existing customers, information about the option to block third-party charges from their telephone bills and record any subsequent request by a current customer to block or not block third-party charges on that subscriber's bill.

3. The record compiled in this proceeding reflects that cramming primarily has been an issue for wireline telephone customers. The record compiled in this proceeding, including the Commission's own complaint data, confirms that cramming is a significant and ongoing problem that has affected wireline consumers for over a decade, one that has drawn the notice of Congress, states, and other federal agencies. The substantial volume of wireline cramming complaints that the Commission, FTC, and states continues to receive underscores the ineffectiveness of voluntary industry practices and highlights the need for additional safeguards. Although we adopted some rules in the *Report and Order* in this proceeding, they do not address other aspects of cramming which we now consider in the *Further Notice*, including growth in wireless cramming and how the Commission should address any cramming issues that develop for VoIP services. We believe that adopting the requirements as above will provide consumers with the additional safeguards they need to protect themselves from this risk.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to this FNPRM is contained in Sections 1-2, 4, 201, 258, and 403 of the Communications Act of 1934, as amended 47 U.S.C. §§ 151-152, 154, 201, 258, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.[4] The RFA generally

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] 5 U.S.C. § 603(b)(3).

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] Under the Small Business Act, a "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration ("SBA").[7] Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[8] The FNPRM seeks comment generally on mobile providers of voice, text and data services. However, as noted in Section IV of the FNPRM, we are seeking comment on the scope of entities that should be covered by the proposals contained therein.[9]

6. *Incumbent Local Exchange Carriers* ("*Incumbent LECs"*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[10] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[11] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[12] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.[13]

7. *Competitive Local Exchange Carriers ("Competitive LECs"), Competitive Access Providers ("CAPs"), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[14] . Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant

[5] 5 U.S.C. § 601(6).

[6] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[7] 15 U.S.C. § 632.

[8] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://web.sba.gov/faqs/faqindex.cfm?areaID=24 (revised Sept. 2009).

[9] *See Order supra* section IV.

[10] 13 C.F.R. § 121.201, NAICS code 517110.

[11] *See* Trends in Telephone Service at Table 5.3.

[12] *See id*.

[13] *See* http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

[14] 13 C.F.R. § 121.201, NAICS code 517110.

Service Providers, and Other Local Service Providers can be considered small entities.[15]. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[16] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[17] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[18] In addition, 72 carriers have reported that they are Other Local Service Providers.[19] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[20] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

8. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[21] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[22]. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[23] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[24] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

9. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[25] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[26] Under the present and prior categories, the SBA has deemed a wireless business

[15] *See* http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

[16] *See* Trends in Telephone Service at Table 5.3.

[17] *See id.*

[18] *See id*.

[19] *See id*.

[20] *See id*.

[21] 13 C.F.R. § 121.201, NAICS code 517110.

[22] *See* http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

[23] *See* Trends in Telephone Service at Table 5.3.

[24] *See id.*

[25] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.

[26] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

to be small if it has 1,500 or fewer employees.[27] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 1,383 firms that operated that year.[28] Of those, 1,368 firms had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service ("PCS"), and Specialized Mobile Radio ("SMR") telephony services.[29] An estimated 261 of these firms have 1,500 or fewer employees and 152 firms have more than 1,500 employees.[30] Consequently, we estimate that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms are small.

10. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[31] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[32] According to Commission data, 434 carriers report that they are engaged in wireless telephony.[33] Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees.[34] Therefore, we estimate that 222 of these entities can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. The *Further Notice* contains proposals that: (1) a carrier, if it already offers blocking, ask all new subscribers whether they would like to "opt-in" to blocking of third-party charges on their bills and record the subscriber's election for purposes of blocking or not blocking third-party charges on that subscriber's bill; and (2) carriers that already offer blocking include on all telephone bills and on their websites for use by existing customers, information about the option to block third-party charges from their telephone bills and record any subsequent request by a current customer to block or not block third-party charges on that subscriber's bill.

12. These proposed rules may necessitate that some carriers make changes to their existing billing formats and/or disclosure materials which would impose some additional costs to carriers. For example, to provide the required charge blocking option information on their bills may necessitate changes to billing formats. However, some carriers may already be in compliance with many of these requirements and therefore, no additional compliance efforts will be required.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

[27] 13 C.F.R. § 121.201, NAICS code 517210 ("2007 NAICS"). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[28] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?—bm=y&-geo—id=&-fds—name=EC0700A1&-—skip=700&-ds—name=EC0751SSSZ5&-—lang=en.

[29] *See* Trends in Telephone Service at Table 5.3.

[30] *See id.*

[31] 13 C.F.R. § 121.201, NAICS code 517210.

[32] *Id*.

[33] Trends in Telephone Service at Table 5.3.

[34] *Id*.

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[35]

14. The Commission believes that any economic burden these proposed rules may have on carriers is outweighed by the benefits to consumers. However, in the *Further Notice* the Commission specifically asks how to minimize the economic impact of our proposals. For instance, we seek comment on the specific costs of the measures we discuss in the *Further Notice*, and ways we might mitigate any implementation costs. We also particularly ask whether smaller carriers face unique implementation costs and, if so, how the Commission might address those concerns.[36] In addition, for example, we seek comment on alternatives for how a carrier should obtain a consumer's opt-in to third-party charges, if the Commission decides to adopt an "opt-in" approach.[37] Finally, we seek comment on the overall economic impact these proposed rules may have on carriers because we seek to minimize all costs associated with these proposed rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

15. None.

[35] 5 U.S.C. § 603(c).

[36] *See Further Notice supra* ¶142.

[37] *See Further Notice supra* ¶141.

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: *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 No. 98-170.

Today we take another step forward in the Commission's Consumer Empowerment Agenda as we unanimously adopt rules to stop cramming – the placement of unauthorized charges on telephone bills.

What's cramming? One victim put it well in a letter to the FCC. Getting crammed is like getting a charge on your credit card bill "for a meal you never ate at a restaurant you've never been to."

Cramming is a big issue. It causes billions of dollars of financial damage annually for wireline telephone consumers, according to a Senate Commerce Committee staff report.

Cramming is widespread, extending from residential telephone lines to government lines to small business lines. The owner of several Krispy Kreme franchises was hit with $4,000 worth of charges for e-faxes and other services that were never used or authorized.

Last year, as a result of investigations led by our Enforcement Bureau, the Commission issued forfeitures totaling over $11.5 million against four crammers.

The Senate Commerce Committee has been focused on this issue, and its Majority Staff has issued an important and compelling report.

But the record in this proceeding makes clear that, while our enforcement efforts have helped, more needs to be done.

To protect consumers, we need to do two things: help consumers identify these charges when they appear on telephone bills, and prevent them from appearing on their telephone bills in the first place.

The rules we adopt today will do both.

They will require wireline carriers to clearly and conspicuously notify consumers that the carriers can block third party charges – meaning that consumers can stop these charges before they occur.

Our new rules will also require carriers to separate non-telecom third-party charges – such as e-Faxes – from regular charges to make it easier for consumers to spot cramming when they review their bills.

Importantly, this enhanced disclosure applies whether consumers receive their bills by paper or online. This is consistent with our general recognition that in the digital era our rules should reflect digital realities and opportunities – and as many as 20% of consumers have signed up for e-billing.

I applaud those wireline carriers that are stepping forward and implementing new measures to protect their customers from unauthorized third-party charges. AT&T, CenturyLink, and Verizon have each acknowledged the cramming problem and announced plans to stop placing some third-party charges on their telephone bills later this year. These are important and commendable steps, and I encourage other carriers to step forward and join these leaders.

Meanwhile, we will remain focused on consumer protection and empowerment, and, uniform rules for all carriers will help ensure that all consumers receive additional protection from unauthorized charges on their wireline telephone bills.

The new rules we adopt today aren't the end of our work. The Further Notice of Proposed Rulemaking we issue seeks comment on additional steps to tackle this problem. In particular, we ask exactly how such measures might work, how effective they might be at protecting consumers, how they could be implemented, and how costly they might be. For example, we ask whether ensuring that consumers opt-in before being billed for different types of third-party charges would offer further protection against cramming.

We also seek comment on wireless cramming, as we look into whether that is becoming a consumer issue. There should be no doubt: if the record in the FNPRM demonstrates a problem, we will act. I know the same is true of the Federal Trade Commission and state agencies, which have also taken significant enforcement actions in this area.

The Senate Commerce Committee has done very important work in shining a light on this and other consumer issues. The Senate Commerce Committee hearings and majority staff report have been instrumental in informing this proceeding and our actions today.

I should also note that this is not the first time the Commission has addressed cramming. Going back more than a decade, the Commission has facilitated voluntary industry efforts, adopted rules, and taken enforcement actions against carriers. And, as I mentioned, last year the Commission issued significant forfeitures.

I thank my colleagues for their excellent input on this item, and for sending a clear message that this Commission will continue to act on behalf of consumers.
I thank our Consumer and Governmental Affairs Bureau for their hard work on behalf of consumers, to date and going forward – and for the diligent efforts of staff across the Commission on this item.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *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 No. 98-170.

Consumers have complained for well over a decade about being surprised to find various unauthorized charges popping up on their telephone bills. This practice commonly has been referred to as "cramming". Dating back to 1999, the FCC began adopting various "Truth-in-Billing" rules to protect consumers from cramming practices. Nevertheless, according to the FCC's records and numerous consumer complaints, it appears that "cramming" continues to vex consumers.[1]

Accordingly, I vote to approve today's report and order and further notice of proposed rulemaking. I was pleased that the report and order takes a narrower approach by focusing merely on disclosure requirements for wireline carriers, and wireline carriers only, instead of expanding these requirements to wireless and VOIP providers which have not experienced as high a consumer complaint rate compared to the wireline industry.

The order will make it easier for consumers to detect unauthorized charges on their wireline phone bills. Furthermore, our action will ensure that consumers are alerted of blocking options by wireline carriers that provide such blocking capabilities. This, in turn, will empower consumers to shield themselves from the practice of unauthorized charges being "crammed" on their wireline telephone bills.

Additionally, I note that prior to our action today, some carriers have already agreed to various voluntary efforts such as implementing consumer education efforts for consumers and launching an opt-in process. Furthermore, some carriers have even announced their intent to end the practice of placing third party charges for "miscellaneous" or "enhanced" services on their phone bills.

As for the issues discussed in the further notice, the Commission must keep in mind that new regulations almost always cause collateral and unpredictable economic effects. Therefore, it is my hope that the Commission will keep this law of bureaucratic physics in mind during any continued examination of cramming because regulatory burdens are ultimately passed on to consumers as additional costs. In that regard, I encourage any stakeholders that are concerned about costs of potential regulations to provide such burden estimates for the record. Also, if further action is deemed necessary and appropriate, the Commission must be ever vigilant in ensuring that it does not tread beyond its legal authority.[2]

I thank the Chairman and the Consumer Bureau staff for their efforts to find a narrow solution to thwart unauthorized cramming practices. I also would like to recognize the long hours spent by the majority staff of the Senate Commerce Committee to craft their report on the scope of the cramming problem and the negative effects of cramming on consumers.

[1] Interestingly, however, according to the Bureau staff's analysis of the FCC's quarterly reports on informal consumer inquiries and complaints, the number of complaints received by the FCC regarding cramming dipped to approximately 1,700 complaints in 2011 compared to the higher complaint numbers in the previous three years (2,157 in 2008, 3,181 in 2009 and 2,516 in 2010).

[2] For example, the further notice explores whether the Commission should impose a requirement that third party charges would only be permitted if a consumer elected to "opt in". In that context, the further notice points out that such an "opt in" regime would go beyond bill format and transparency issues and therefore raises questions as to whether the FCC would be exceeding its authority under Section 201(b) of the Act. 47 U.S.C. 201(b).

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *In the Matter of 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 No. 98-170.

Cramming for wireline customers continues to be a problem, so I am pleased that we are moving forward with some very basic consumer protections. The action we take today builds upon the significant work of the Senate Commerce Committee in its investigation on cramming. While some carriers recently announced that they are discontinuing certain third party billing services, the rules we adopt will give the customers of those carriers that continue to offer third-party billing of non-telecom services better tools than they currently have today.

First, the education of consumers through carrier disclosures will help wireline consumers take advantage of the blocking that's already available from providers. It may also have the added benefit of educating consumers that third-party charges may appear on their bills, so they can be on the look out for such charges. Second, the requirement that wireline carriers separate third-party charges on their bills for non-telecom services will help consumers spot cramming. This will allow the industry to be more responsive to consumers who discover unauthorized charges on their bills. Those disputes can then be resolved more quickly, and consumers can avoid paying for services or goods they did not order.

Our action today is just an initial step, in that we will continue to evaluate other measures that could protect consumers, such as a requirement that consumers opt-in to third-party charges. In addition, we are seeking comment on the rising level of wireless cramming complaints. The number of CMRS complaints almost doubled last year at the FCC, and several states are investigating wireless cramming. As is well known, most Americans are wireless customers, and for those who are low-income, cramming can be especially harmful. Thus, it is my hope that commenters will address these issues in the Further Notice. I thank the Chairman and Commissioner McDowell for accommodating my request to seek further comment about cramming in the CMRS industry. I wish to also thank the Bureau staff for its diligent work in this proceeding. I look forward to the next steps in further ensuring that all consumers are protected from unauthorized third-party charges on their telephone bills.