

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : June 15, 2012

**To : The Commission
(Meeting of June 21, 2012]**

**From : Kimberly Lippi
Public Utilities Counsel IV**

**Roxanne L. Scott
Program and Project Supervisor, Communications Division**

**Subject : Filing of Comments in Response to FCC's Further Notice of
Proposed Rulemaking (FNPRM) Regarding Anti-Cramming
Rules**

RECOMMENDATION: The Commission should file comments in the Federal Communications Commission's (FCC) Further Notice of Proposed Rulemaking (FNPRM) on anti-cramming rules.¹ The FCC seeks comment on whether stronger measures to prevent cramming on wireline bills are necessary, such as prohibiting most third party billing charges from being placed on telephone bills or requiring billing telephone companies to obtain consumers' affirmative consent before placing third-party charges on their own bills to consumers ("opt-in").² Staff recommends that the Commission support a prohibition or an "opt-in" requirement, with limited exceptions, for third-party billing on wireline bills.

INTRODUCTION: Cramming is the placement of unauthorized charges on a customer's telephone bill. Despite efforts by both the federal and state governments, including this Commission, to combat cramming, it still remains a significant and ongoing problem. The highest incidence of cramming occurs when telephone companies allow third parties to place charges on their consumers' telephone bills, enabling

¹ *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; Further Notice of Proposed Rulemaking*, CG Dkt.No.11-116, CG Dkt.No. 09-158, CC Dkt. No. 98-170; (FCC 12-42) rel. April 27, 2012. (FNPRM)

² *Id.*, at para.136.

consumers' telephone numbers to operate similarly to a credit or debit card account number for vendors.

In the *Report and Order (R&O)* issued April 27, 2012, in this docket, the FCC noted that “its complaint records show that during the period from 2008 to 2010, the [FCC] received between 2,000 and 3,000 cramming complaints each year. Furthermore, cramming consistently ranks among the top billing-related complaints received by the [FCC] involving wireline telephone service. Of the cramming complaints [the FCC] received from 2008 to 2010, 82 percent related to wireline telecommunications and 16 percent related to wireless telecommunications.”³ The FCC further stated that:

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*, 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.⁴

The Federal Trade Commission (FTC), which also investigates and brings suits against crammers, confirms that “cramming is a significant area of increasing consumer complaints.”⁵

On July 12, 2011, Majority Staff of the U.S. Senate Commerce Committee released the *Senate Staff Report* with the results of its investigation into unauthorized charges on consumer [wireline] telephone bills. In that report, the Senate staff found that despite the FCC'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. The report found that, on a yearly basis, billing carriers place approximately

³ *Id.*, at para. 20. The FCC found that “the record does not demonstrate a need for rules to address cramming for CMRS or VoIP customers at this time.” *Id.*, at para. 47.

⁴ *Id.*, at para 22 (footnotes omitted).

⁵ *Id.*, at para 24.

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 customers' landline telephone bills. The report also concluded that billing carriers are profiting from these third-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 customers' telephone bills. 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."⁶

After reviewing the record, the FCC found 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."⁷ In the R&O, the FCC adopted rules to require carriers that 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."⁸

The FCC further stated: "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."⁹ Therefore, the FCC now seeks comment in the *Further Notice* on additional potential measures to prevent cramming, including an "opt-in" requirement for wireline carriers.

DISCUSSION: The FCC recognizes 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."¹⁰ The FCC therefore seeks additional

⁶ *Id.*, at para. 33-34.

⁷ *Id.*, at para. 45.

⁸ *Id.*, at para. 48. Although the FCC did not require that wireline carriers provide a blocking option, the CPUC requires both wireline and wireless carriers to offer customers an option to block third-party charges, with exceptions for affiliates of the billing telephone company and long distance service providers.

⁹ *Id.*, at para. 49.

¹⁰ *Id.*, at para. 137.

comment on whether it 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, the FCC seeks comment with respect to the structure and mechanics of an opt-in approach as well as how an opt-in requirement could be implemented for existing consumers whose carrier already may be placing non-carrier third-party charges on their telephone bills.¹¹ In particular, the FCC seeks additional comment on whether an opt-in approach is warranted and how it should be structured. The FCC asks the following questions in this regard: (1) whether an opt-in requirement should apply only to new consumers or to all consumers; (2) whether an opt-in requirement, if adopted, should apply to all third-party charges or whether third-party charges for telecommunications services should be exempt; and (3) whether the exemption should apply to all third-party telecommunications services or only certain ones.¹²

Staff recommends the Commission file comments addressing the following:

- 1) If the FCC does not prohibit wireline third-party billing outright, it should require that carriers offer either (a) outright blocking or (b) an opt-in for all wireline third-party billings, with the exception of billings for the carrier's affiliates and billings for long distance companies. The FTC supports the implementation of a default block, which would require consumers to affirmatively opt-in prior to any third-party charges being placed on their telephone bills.¹³ Although in its decision adopting the Consumer Protection Initiative (D.06-03-013, as modified by D.06-12-042) the CPUC deferred from consideration of an "opt-in" approach to prevent third-party cramming, the evidence collected since that decision issued makes clear that such an approach is now necessary.
- 2) If the FCC does adopt an opt-in requirement, it should give the billing carrier the flexibility to decide if the carrier wants to offer an "all or nothing" opt-in, or permit customers to opt-in on a product-by-product or service-by-service basis.
- 3) The opt-in requirement should apply to both new and current customers, but carriers should be given a reasonable amount of time to phase in the opt-in approach for current customers.
- 4) The FCC should require the billing carrier to obtain customer approval for third-party charges via a written letter of authorization either in hard copy or electronic form, or by verbal recording.

¹¹ *Id.*

¹² *Id.*, at para. 139.

¹³ *Id.*

- 5) The FCC should require carriers to inform their customers at the point-of-sale of the opt-in option. Default blocking of third-party charges should remain in place unless a customer affirmatively opts-in. For customers who have opted-in, the carriers should be required to notify them annually of their option to opt-out or block third party billing.
- 6) Staff recommends that the CPUC reserve its right to comment on extending the opt-in requirement to wireless until staff has reviewed and evaluated opening comments, because such a measure could raise unique issues for wireless services.

Comments are due June 25, 2012; reply comments are due July 9, 2012. Assigned staff: Legal Division – Kim Lippi (703.5822); CD – Simin Litkouhi (703.1865) and Candace Choe (703.3442).

KJL:cdl