

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 11–116 and 09–158; CC Docket No. 98–170; FCC 11–106]

### Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information and Disclosure; Truth-in-Billing and Billing Format

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this document is to seek comment on proposed amendments to the Commission’s Truth-in-Billing rules that would require wireline telephone companies (*i.e.* wireline telecommunications common carriers) to notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their Web sites, of the option to block third-party charges from their telephone bills, if the company offers that option, and place charges from non-telephone company third-parties in a bill section separate from telephone company charges, and would require both wireline and wireless (*i.e.* Commercial Mobile Radio Service (“CMRS”) common carriers) telephone companies to notify subscribers on all telephone bills and on their Web sites that subscribers may file complaints with the Commission, provide the Commission’s contact information for the submission of complaints, and include on Web sites a link to the Commission’s complaint Web page. This action will enable subscribers to detect, rectify, and prevent placement of unauthorized charges on their telephone bills; a practice known as “cramming.”

**DATES:** Comments are due on or before October 24, 2011. Reply comments are due on or before November 21, 2011.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 11–116 by any of the following methods:

- *Federal Communications Commission’s Web site:* Follow the instructions for submitting comments.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional

information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** John B. Adams, Consumer and Governmental Affairs Bureau, Policy Division, at (202) 418–2854 (voice), or e-mail [JohnB.Adams@fcc.gov](mailto:JohnB.Adams@fcc.gov).

For additional information concerning the potential new or revised information collection requirements contained in document FCC 11–106, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via e-mail [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Notice of Proposed Rulemaking (“NPRM”), FCC 11–106, adopted and released on July 12, 2011, in CG Docket Nos. 11–116 and 09–158, and CC Docket No. 98–170. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or Internet: <http://www.bcpweb.com>. This document can also be downloaded in Word or Portable Document Format (“PDF”) at <http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill>. 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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Pursuant to 47 CFR 1.1200 *et seq.*, this matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 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 section 1.1206(b) of the Commission’s rules. In proceedings governed by section 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.

### Synopsis

In the NPRM, the Commission proposes rules to require wireline and wireless telephone companies to provide to subscribers information that will enable subscribers to detect, rectify, and prevent cramming. Cramming is the placement of unauthorized charges on subscribers’ telephone bills. Specifically, the Commission proposes that wireline telephone companies disclose to subscribers information about blocking of third-party charges and place third-party charges in a separate bill section from all telephone company charges. The Commission further proposes that wireline and wireless telephone companies, on their bills and on their Web sites, notify subscribers that they can file complaints with the Commission, provide the Commission’s contact information for filing complaints, and provide a link to the Commission’s complaint Web site on their Web sites.

### Disclosure of Blocking of Third-Party Charges

The Commission proposes that wireline telephone companies that offer subscribers the option to block third-party charges from their telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each bill, and on their Web

sites. The Commission seeks comment on specific details about how this disclosure should be implemented. The proposed rules amend the Commission's Truth-in-Billing rules (codified at 47 CFR 64.2400–64.2401), which mandate “clear and conspicuous” disclosure (*i.e.* notice that would be apparent to the reasonable consumer) of certain information on telephone bills. The Commission seeks comment on the wording, placement, font size, and other relevant factors, at the point of sale, on bills, and on Web sites, that would be necessary for this notification, as well as any notification about fees for blocking, to satisfy this standard. Can existing practices of telephone companies that already offer blocking be improved other than by the proposed disclosures, such as by better training of customer service representatives?

#### *Separate Bill Section for Third-Party Charges*

The Commission proposes that wireline telephone companies place charges from non-telephone company third parties in a distinct section of the telephone bill separate from telephone company charges. The Commission's Truth-in-Billing rules already require charges from different telephone companies on a single telephone bill to be separated. Those rules also permit service bundles to be listed as a single service offering of the telephone company, even if the bundle includes third-party services. No change is proposed as to the manner in which bundles may be billed under our rules. Are more specific requirements needed? Should third-party charges be listed separately on the first page of telephone bills or further highlighted in some other fashion? Is there any need to require identification of the third-party vendor associated with each charge beyond the requirements already contained in the Truth-in-Billing rules? What changes will telephone companies need to make to billing systems to comply with this proposed rule? How much will these changes cost and how long will they take? Are there ways to minimize burdens on telephone companies, especially smaller ones?

#### *Disclosure of Commission Contact Information*

Information available to the Commission, including a report from the General Accountability Office, indicates that many telephone subscribers do not know how to file complaints about telephone service. The Commission proposes that wireline and wireless telephone companies, on their bills and on their Web sites, clearly and

conspicuously notify subscribers that they can file complaints with the Commission, provide the Commission's contact information for filing complaints, and provide a link on their Web sites to the Commission's complaint Web site. The disclosure should include the Commission's telephone number and Web site address. How much will it cost telephone companies to comply with this requirement, and how long will it take them to comply?

#### *Wireless and Internet Telephone Service*

The Commission seeks comment on whether all of the rules proposed for wireline telephone service also should apply to wireless and Internet telephone service. Complaint data from the Commission and the Federal Trade Commission indicate that approximately 80% to 90% of cramming complaints relate to wireline telephone service. What is the nature and magnitude of cramming for wireless telephone service? What percentage of unauthorized charges is from wireless telephone companies, and what percentage is from third parties? Do unauthorized charges occur more frequently with particular types of wireless service plans or features? Does cramming affect wireless telephone subscribers differently than wireline telephone subscribers? How? Are there differences between wireline and wireless telephone industry practices or billing platforms that are relevant in assessing the propriety and effectiveness of potential regulatory solutions? What are the differences? The Commission seeks current and updated data from states regarding wireless cramming and how differences in state authority over wireless telephone service impact the need for federal oversight. Can industry practices or voluntary guidelines successfully address cramming for wireless telephone service? To what extent are industry guidelines and practices evolving to address cramming, such as in-application marketing? Are options to block third-party charges, if any, clearly and conspicuously disclosed to subscribers?

#### *Additional Questions for Comment*

The Commission seeks comment on other possible requirements that may help subscribers to detect, rectify, and prevent cramming.

*Disclosure of Third-Party Contact Information:* Should telephone companies clearly and conspicuously provide contact information for each third party in association with its charges? Should specific contact information be provided, such as the

third party's name and toll-free customer service telephone number? The Commission's Truth-in-Billing rules permit, but do not require, telephone companies to provide contact information for third parties if the third party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve subscriber complaints. Implicit in this proviso is a requirement for the telephone company to verify the contact information. To what extent do telephone companies already verify third-party contact information? What would be the incremental burden on telephone companies to do so? How and to what extent would imposing a verification requirement benefit subscribers, telephone companies, or both? Should any particular form of verification be required? At what intervals should telephone companies be required to re-verify third-party contact information?

*Requiring Wireline Telephone Companies to Offer Blocking:* Should wireline telephone companies be required to block third-party charges upon subscriber request? If so, should they be prohibited from charging a fee for doing so? Many wireline telephone companies already offer blocking at no additional fee, which suggests that there is no technical or cost barrier to making blocking available, or that the cost of doing so is not sufficiently high to warrant additional fees beyond the monthly recurring charge for wireline telephone service. What technical or cost barriers exist? Which telephone companies offer blocking? What specific types or categories of charges are blocked? Is an additional fee assessed for blocking, and what is the amount of the fee? How was the amount of the fee determined? What kinds or types of charges should be subject to blocking if wireline telephone companies were required to block them, such as charges from long distance telephone companies, Internet service providers and other providers affiliated with the telephone company, and non-telephone company third parties? Should bundles, which may contain services provided by third parties, be treated differently?

*Prohibiting All Third-Party Charges on Wireline Telephone Bills:* The Commission seeks comment on the impact, both positive and negative, that prohibiting third-party charges on wireline telephone bills, unless the subscriber opts in, may have on wireline telephone companies, subscribers, and third parties. What is the scope of the Commission's authority to impose such a ban? What kinds or types of charges

should be subject to such a prohibition on third-party charges?

*Due Diligence:* The Commission seeks comment on whether it should require carriers, before contracting or agreeing with a third party to place its charges on telephone bills, to screen each third party to ensure that it has operated and will continue to operate in compliance with all relevant state and federal laws. What is the nature and adequacy of current industry practices in this regard? How are telephone companies monitoring and tracking subscriber complaints with respect to cramming? What thresholds exist with respect to cramming complaints before a telephone company takes adverse action against a third party? Should such thresholds be required and what should they be? What annual percentage of charges from third parties is refunded, uncollectible, or unbillable? To what extent do telephone companies attempt to identify affiliated companies after one affiliate has been identified as engaging in cramming, attempt to track whether a company continues under a different name, or attempt to track whether the same persons engage in cramming via a new company? How successful have telephone companies been in doing so? What penalties or other measures are employed to deter cramming? Are there improvements that could be made or do better deterrents exist? How many third parties submit charges to telephone companies for placement on telephone bills? What are their lines of business or types of products? How many real parties in interest are there owning or operating these companies? How could third parties change or improve their efforts to monitor and track cramming complaints?

*Federal-State Coordination:* To address potential subscriber confusion about to which state and federal agencies they can complain about cramming and recognizing that coordinated state and federal efforts is a critical component to protecting subscribers, the Commission seeks comment on how to better coordinate sharing of cramming complaints and information. Are there ways to share information, such as through the shared complaint database maintained by the Federal Trade Commission? Should wireline and wireless telephone companies report trends or spikes in complaints they receive about specific third parties? What is the nature and extent of the cramming problem in each state? What is the number of wireline and wireless cramming complaints? What are the trends in the last few years? What enforcement or legislative

actions have states taken to address cramming?

*Accessibility:* How will the Commission's proposed rules affect, and could they be improved to better assist, people with disabilities, people living in Native Nations on Tribal Lands in Native communities, and people with limited English proficiency. What measures should telephone companies take to ensure that the information they provide to subscribers is accessible to such individuals.

*Internet Telephone Service:* The Commission seeks comment on whether any of the proposed rules, any of the other requirements discussed, or similar requirements should apply to providers of Internet telephone service (*i.e.* interconnected VoIP service). Do bills for Internet telephone service raise the same risks of cramming as wireline or wireless telephone service? Are there differences that necessitate a different regulatory approach? What kinds of safeguards are needed to protect and would be effective in protecting Internet telephone service subscribers from cramming?

*Definition of Service Provider or Service:* The Commission seeks comment on the need to define "service provider" or "service," as those terms are used in the Truth-in-Billing rules, to better address charges that arguably may not be for a service. What specific definitions would be effective? Are there alternatives, such as changing the Truth-in-Billing rules to refer to more than services and service providers? What specific rules would need to be changed and what specific changes would be needed?

#### *Effective Consumer Information Disclosure*

In proposing rules to improve transparency on cramming or any other consumer issue, the Commission intends to look at the many factors involved in effective consumer information disclosure. This will ensure that the rules serve their intended purpose without posing an undue burden on industry. There are two key criteria for the success of such an approach. First, acknowledging the potential difficulty of quantifying benefits and burdens, the Commission needs to determine whether the proposed disclosure rules will significantly benefit consumers and, in fact, clarify important issues for them—for example, by helping them detect hidden charges, making contractual terms more transparent, or clarifying rates and fees. Second, the Commission seeks to maximize the benefits to consumers from our proposed rules

while taking into consideration the burden of compliance to carriers. These costs and benefits can have many dimensions, including cost and revenue implications for industry, financial benefits to consumers, and other, less tangible benefits, such as the value of increasing consumer choice or preventing fraud.

To address the first criterion in the case of cramming, the Commission seeks comment on the best ways to ensure that the proposed disclosures will actually benefit consumers. To what extent may consumers be expected to utilize the additional information? Are there ways to implement the disclosures that would increase the number of consumers who will benefit and the nature of the benefits? What are the best ways to ensure that disclosure of third-party charges on bills is clear and conspicuous; that third-party blocking options are clearly disclosed; and that FCC contact information is provided in ways that consumers will see it and know how to use it? What, if any, are the best practices of consumer disclosure in other areas and of assessing the effectiveness of disclosures? Are there other examples, research, and recommendations that would be applicable here?

To address the second criterion in the case of cramming, the Commission seeks comment on the nature and magnitude of the costs and benefits of the proposed rules to consumers and carriers. How, if at all, do these vary by telephone company and by type (*e.g.*, wireline, wireless) and size of telephone company? What, if any, specific concerns exist for telephone companies serving rural areas, Native Nations on Tribal lands and Native communities, and their customers. The Commission seeks specific information about whether, how, and by how much such carriers and their customers may be impacted differently in terms of the costs and benefits of the proposed rules. What is the most cost-effective approach for modifying existing policies and practices to achieve the goals of the proposed rules?

The Commission seeks comment on the extent of cramming, including totals for all charges and unauthorized charges from third parties, total annual unauthorized charges to wireline and CMRS consumers, amounts credited annually to consumers for unauthorized charges, total uncollectible charges, how much the proposed rules will reduce these amounts, and methods to quantify unauthorized charges accurately. The Commission also seeks comment on the costs to consumers to block third-party charges, to monitor bills to guard against

cramming, and to resolve disputes over unauthorized charges, including intangible costs like time. The Commission invites comment regarding consumers' experiences with unauthorized charges.

How and how much has cramming affected consumer confidence and decisions of whether to purchase particular kinds of goods or services? Will the proposed rules lead to increased consumer purchasing, and how much? What are potential costs of cramming to third-party vendors that do not engage in cramming, such as costs associated with reduced demand for their products due to a loss of consumer confidence in the marketplace, and reduced innovation and investment due to lower demand for their products? What are the potential costs that the proposed rules and other potential requirements may impose on third-party vendors, such as lost revenue from legitimate transactions? Are there any other potential costs and/or benefits to third-party vendors from the proposed rules?

What are the specific kinds and amounts of compliance costs that carriers may incur? If billing or other system modifications are required, what is the exact nature of those modifications, the time required to implement them, and their cost? What is the amount of annual revenue that carriers receive from providing billing-and-collection services to third parties and the anticipated reduction, if any, that would result from adoption of the proposed rules or other requirements? Will these figures differ depending upon which third-party charges are blocked? What are telephone companies' costs to offer the ability to block all third-party charges?

The Commission seeks comment on the nature and magnitude of costs that carriers might avoid or reduce by complying with the proposed rules. Some possible cost savings might be reductions in the number of calls to customer service, reduced costs to process refunds, reduced costs to investigate disputed charges, reduced uncollectible charges, reduced costs to monitor billing activities by third parties, and reduced costs to audit third parties or to develop and monitor performance improvement plans imposed upon third parties.

The Commission seeks comment on and quantification of any other costs and benefits that it should consider, and information that will enable it to weigh the costs and benefits associated with the proposed rules. Commenters should provide specific data and information, such as actual or estimated dollar

figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained and any supporting documentation or other evidentiary support. Vague or unsupported assertions generally can be expected to be less persuasive than more specific and supported statements.

#### Legal Issues

*Communications Act:* What is the nature and scope of the Commission's authority under the Communications Act of 1934, as amended, to adopt the proposed rules and regarding the additional issues for comment? The Commission believes that it has authority under Section 201(b) of the Communications Act to adopt the proposed rules. The bill format and labeling requirements in the Truth-in-Billing rules are based, in whole or part, on the Commission's authority under Section 201(b) of the Communications Act to enact rules to implement the requirement that all charges, practices, classifications, and regulations for and in connection with interstate communications service be just and reasonable. The problem of crammed third-party charges depends on and arises from the relationship between the telephone company and its customer; telephone bills are an integral part of this relationship. Unauthorized third-party charges appear on telephone bills only because the telephone company permits them to be there. Further, if it is not clear on a telephone bill what a charge is for and who the service provider is, a consumer may erroneously believe that the charge is related to a service provided by the telephone company.

Section 332(c)(1)(A) of the Communications Act states that wireless telephone companies are subject to Section 201(b) authority for their common carrier services. They largely are subject to the Truth-in-Billing rules promulgated under Section 201(b) to the same extent as wireline telephone companies for common carrier services. Thus, the Commission believes that its authority to extend the proposed rules and other requirements to wireless telephone companies is co-extensive with its authority to promulgate them for wireline telephone companies. The Commission seeks comment on this analysis.

Does the Commission need to invoke its ancillary Title I authority to adopt requirements to address cramming? The Commission "may exercise ancillary jurisdiction only when two conditions are satisfied: (1) the Commission's general jurisdictional grant under Title

I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities." *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (DC Cir. 2010) (quoting *American Library Ass'n v. FCC*, 406 F.3d 689, 691–92 (DC Cir. 2005)). An exercise of such authority under Title I may be necessary here because entities that are not classified as common carriers nonetheless may, like common carriers, provide billing-and-collection services for third parties or submit charges for inclusion on a telephone bill.

The Commission has previously asserted ancillary jurisdiction over VoIP providers in other contexts. See, e.g., *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, 10261–66, paragraphs 26–35 (2005) (rules requiring VoIP providers to supply enhanced 911 capabilities to their customers), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (DC Cir. 2007). Can and should the Commission exercise Title I authority to apply the proposed rules to any non-carriers? Are there particular entities, including but not limited to interconnected VoIP providers, that should be subject to the proposed rules? Further, the Commission has previously asserted that its Title I authority extends to a common carrier's provision of billing-and-collection services to third parties that are not carriers. See *Detariffing of Billing and Collection Services, Report and Order*, 102 FCC 2d 1150, paragraphs 35–38 (1986). It seeks comment on whether that authority would extend to the proposals in the NPRM.

*First Amendment:* 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. *Central Hudson Gas and Electric Corp. v. Public Service Commission*, 447 U.S. 557, 566 (1980). Moreover, "regulations that compel 'purely factual and uncontroversial' commercial speech are subject to more lenient review than regulations that restrict accurate commercial speech." See, e.g., *New York State Restaurant Association v. New York City Board of Health*, 556 F.3d 114, 132 (2nd Cir. 2009) (upholding New York City health code requiring restaurants to post calorie content information on their menus and menu boards) (citing *Zauderer v. Office of Disciplinary*

*Counsel*, 471 U.S. 626, 651 (1985)); *National Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 113 (2nd Cir. 2001) (upholding Vermont statute prescribing labeling requirements on mercury-containing lamps).

The Commission's statutory obligations include protecting consumers from unjust or unreasonable charges and practices. The record in this proceeding suggests that consumers continue to incur substantial costs each year from the inclusion of unauthorized charges on their telephone bills. The proposed rules are designed to advance the government's interest by providing consumers with basic tools necessary to protect themselves from these unauthorized charges. The Commission seeks comment on whether the proposed rules and other issues for comment are consistent with these and any other First Amendment considerations.

#### *Procedural Matters*

**Ex Parte Presentations:** This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted in accordance with the Commission's rules.

**Filing of Comments and Reply Comments:** Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may submit comments, identified by CG Docket No. 11–116 by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 11–116. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Because three docket numbers appears in the caption of this proceeding, filers must submit four additional copies for the additional docket numbers. In addition, parties

must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). 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. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.

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.

The comments and reply comments filed in response to this NPRM will be available via ECFS at: <http://fjallfoss.fcc.gov/ecfs2/>. You may search by docket number (Docket No. CG–11–116). Comments are also available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from Best Copy and Printing, Inc., telephone (800) 378–3160, facsimile (301) 816–0169, e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

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#### **Initial Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act of 1980, as amended, ("RFA"), 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 the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### *Need for, and Objectives of, the Proposed Rules*

In document FCC 11–106, the Commission summarized the record compiled in this proceeding and the Commission's own complaint data. The record confirms that cramming 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 telephone service.

Although the Commission has addressed cramming as an unreasonable practice under Section 201(b) of the Communications Act, there are currently no rules that specifically address unauthorized charges on wireline telephone bills. The Commission believes that adopting such requirements will provide consumers with the safeguards they need to protect themselves from this risk.

#### *Legal Basis*

The legal basis for any action that may be taken pursuant to the NPRM is contained in Sections 1–2, 4, 201, 301, 303, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–152, 154, 201, 301, 303, 332, and 403.

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

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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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”). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. The NPRM seeks comment generally on wireline and wireless telecommunications common carriers. However, as noted in Section IV of the NPRM, the Commission seeks comment on how to reduce burdens on small entities.

*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. 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 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. 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 NPRM. Thus, under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

*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. 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. 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. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. 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. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. 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 NPRM.

*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. 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. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

*Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 1,383 firms that operated that year. 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. An estimated 261 of these firms have 1,500 or fewer employees and 152 firms have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, it estimates that the majority of wireless firms are small.

*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). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 434 carriers report that they are engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees. Therefore, the

Commission estimates that 222 of these entities can be considered small.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

In the NPRM, the Commission proposes requirements that: (1) Require wireline carriers to notify subscribers clearly and conspicuously at the point of sale, on each bill, and on their Web sites, 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 and CMRS carriers to include on all telephone bills and on their Web sites the Commission's contact information for the submission of complaints. The record reflects that cramming primarily has been an issue for wireline telephone customers. However, there is evidence of a concern with unauthorized charges on wireless bills. Therefore, the Commission also seeks comment on whether it should extend any similar protections to wireless consumers.

These proposed rules may necessitate that some common carriers make changes to their existing billing formats and/or disclosure materials. For example, to provide the required contact information on their bills may necessitate changes to billing formats. However, some carriers may be in compliance with many of these requirements and require no additional compliance efforts.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

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.

In the NPRM, the Commission seeks comment on ways to minimize the economic impact on carriers to comply with the proposed rules. For example, it seeks comment on establishing timeframes that will allow carriers sufficient opportunity to make any

necessary changes to comply with any rules adopted in a cost efficient manner. The Commission also seeks comment on how to alleviate burdens on small carriers. It seeks guidance on whether the proposed rules should be limited to wireline service or whether there are justifications to extend those safeguards to wireless service. Finally, it seeks comment on an extensive cost and benefit analysis to determine the overall impact on consumers and industry of the proposed rules.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

**Initial Paperwork Reduction Act of 1995**

The NPRM seeks comment on a potential new or revised information collection requirement or may result in a new or revised information collection requirement. If the Commission adopts any new or revised information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

**Ordering Clauses**

Pursuant to the authority contained in sections 1–2, 4, 201, 301, 303, 332, and 403 of the Communications Act of 1934, as amended 47 U.S.C. 151–152, 154, 201, 301, 303, 332, and 403, the Notice of Proposed Rulemaking *is adopted*.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend Part 64 as follows:

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620 unless otherwise noted.

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

**§ 64.2400 Purpose and scope.**

(a) \* \* \*

(b) These rules shall apply to all telecommunications common carriers, except that §§ 64.2401(a)(2), 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 future rulemaking.

3. Section 64.2401 is amended by revising paragraphs (a)(2) and (d) and by adding new paragraph (f) to read as follows:

**§ 64.2401 Truth-in-Billing Requirements.**

(a) \* \* \*

(2) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. 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 separate from all carrier charges.

\* \* \* \* \*

(d) *Clear and conspicuous disclosure of inquiry and complaint contacts.*

(1) Telephone bills must contain clear and conspicuous disclosure of any information that the subscriber may need to make inquiries about or contest charges on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf.

(2) Where the subscriber does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or the Internet, the common carrier may comply with these



billing disclosure requirements by providing on the bill an e-mail or Web site address. Each carrier must make a business address available upon request from a consumer.

(3) Telephone bills and carrier Web sites must clearly and conspicuously state that the subscriber may submit inquiries and complaints to the Federal Communications Commission, and provide the telephone number, Web site address, and, on the carrier's Web site, a direct link to the webpage for filing such complaints. That information must be updated as necessary to ensure that it remains current and accurate.

\* \* \* \* \*

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

Common 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 Web site.

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BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 11-140, RM-11638; DA 11-1413]

#### Television Broadcasting Services; Panama City, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by Gray Television Licensee, LLC ("Gray"), the licensee of station WJHG-TV, channel 7, Panama City, Florida, requesting the substitution of channel 18 for channel 7 at Panama City. WJHG's viewers continue to experience problems receiving the station's VHF channel 7 digital broadcasts despite two power increases since it began operations on digital channel 7. Gray states that the

best solution to resolve the majority of viewers reception problems is to move to a UHF channel, which serves the public interest by resolving over-the-air reception problems in certain areas of WJHG's predicted service areas.

**DATES:** Comments must be filed on or before September 22, 2011, and reply comments on or before October 7, 2011.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joan Stewart, Esq., Wiley Rein, LLP, 1776 K Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:**

Joyce L. Bernstein,  
joyce.bernstein@fcc.gov, Media Bureau,  
(202) 418-1647.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11-140, adopted August 15, 2011, and released August 17, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, DC, 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-

13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

Federal Communications Commission.

**Barbara A. Kreisman,**

Chief, Video Division, Media Bureau.

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

##### § 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida is amended by removing channel 7 and adding channel 18 at Panama City.

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