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# FCC Proposes Rules to Stop "Mystery Fees" on Phone Bills

The Federal Communications Commission ("FCC") has launched a rulemaking proceeding aimed at protecting consumers from "mystery fees" and so-called "cramming" practices, which is the placement of unauthorized charges on a customer's monthly telephone bill. For now, the FCC is merely soliciting comments on these proposals; however, given its finding that "cramming is a significant and ongoing problem that has affected consumers for over a decade," some regulatory action after public comments are received may be in the offing.

**"Cramming" vs. Consent**

While the FCC's rulemaking focuses on unauthorized charges, the practice of using a telephone bill for "third party payments" has been around for some time and has been embraced by many consumers. Indeed, a Senate report cited by the FCC explains how some consumers may elect to use their telephone accounts "like a credit card or debit card account."

A telephone company must first allow vendors to place charges for vendor products and services on the telephone company's bill. That authorization may take placed directly, or indirectly through the use of so-called "aggregators." An approved vendor can accept a consumer's telephone number as a means of payment and can place a charge for a product on the consumer's telephone bill. This typically voluntary, consumer-initiated form of payment transaction becomes an illegal "cramming" transaction when the third party charge is not authorized by the customer.

**Billing and Blocking Recommendations**

The FCC has tentatively recommended that wireline telephone companies should notify their subscribers "clearly and conspicuously" at the point of sale, on each bill, and on their websites of the customer's option to block third-party charges from their telephone bills, if the carrier offers that option. Also, third-party charges would have to be conspicuously itemized and labeled on telephone company bills. In addition, both wireline and wireless service providers would have to include on all telephone bills and on their websites a notice that consumers may file complaints with the FCC. Service providers would also have to provide FCC contact information on their bills to assist consumers in filing agency complaints.

**A Growing Concern for Consumers?**

The proposed rules would strengthen the FCC's existing *Truth-in-Billing* rules, which were adopted in 1999 and amended in 2005. The FCC contends that despite those rules, and despite voluntary industry practices aimed at protecting consumers from improper billing practices, the "substantial volume" of cramming complaints filed with the FCC, the Federal Trade Commission ("FTC") and state and local consumer protection agencies shows that these measures are not working. The FCC stated that its agency and the FTC have determined that "even small unauthorized charges can result in tens of millions [of] dollars in total costs to consumers" and that often these unauthorized charges are not detected by consumers.

The FCC cited an FTC commissioned survey that concluded that only five percent of consumers who were affected by a particular cramming company were even aware of the unauthorized charges on their telephone bill. The FCC estimated that 15 to 20 million U.S. households a year potentially have "mystery fees" on their monthly wireline phone bills. The FCC contends that its proposed rules would help consumers detect cramming by highlighting third-party charges on their bills, prevent cramming by promoting blocking options where they are available, and encourage consumers to file complaints with the FCC if necessary.

**More Aggressive Regulatory Measures Pondered**

The FCC has sought comment on several other measures that, according to the agency, "could help consumers detect, rectify, and prevent cramming." The additional regulatory requirements under consideration by the FCC include the following:

- require phone companies to allow their customers the option to "block" third-party charges on their phone bills;
- prohibit carriers from assessing an additional fee for blocking services; and
- prohibit third-party charges on telephone bills altogether. This proposal was recommended by a state utility commission in previous comments filed with the FCC.

The FCC's *Notice* also sought comments on whether telephone companies should be required to provide "accurate contact information" for third-party vendors on the customer's telephone bills and screen third parties for prior legal violations. The FCC has also sought comment on whether any or all of these proposed regulations should also apply to wireless service providers and to providers of interconnected Voice-over-Internet-Protocol ("VoIP") services.

**Next Steps**

The FCC is soliciting comments from the public with respect to its anti-cramming proposals. The deadline for filing comments will be 60 days after the FCC's Notice has been published in the Federal Register, something that has not happened as of this writing. Reply comments will be due 30 days later.

In a proceeding of such obvious importance to so many different commercial and consumer groups, and given the Constitutional implications of its actions, one would expect that the FCC will take due consideration of the comments filed before reaching any final conclusions. Should you wish to participate in this FCC rulemaking proceeding, or if you have any questions, please contact Rick Joyce of Venable's Communications Practice Group.

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