Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF THE
FEDERAL TRADE COMMISSION

Introduction

The Federal Trade Commission (FTC) appreciates this opportunity to respond to the Federal Communications Commission's (FCC) Notice of Inquiry on how consumer-friendly information policies can protect and empower consumers as they purchase and use communications services.[1]

As explained in further detail below, the FTC maintains a database of consumer complaints, including complaints about communications services. Analysis of recent complaints shows that consumers are often confused about their purchases of communications services and may not be getting the services they thought they had purchased. Complaint data also indicate that consumers may fall prey to cramming of unauthorized charges onto their telephone bills. Based on these data, as well as our significant consumer protection and competition expertise, the FTC offers several recommendations to provide consumers with accurate, meaningful, and timely information about the communications services they purchase and use.

Section I of this comment recommends that price advertisements for communications services reflect the price the consumer actually pays – including all taxes, fees, and associated charges, which can increase the total price by over 20 percent. This policy would facilitate competition by allowing consumers to compare directly the prices of competing communications services (e.g., mobile versus wireline broadband) that are subject to different levels of taxes, fees, and charges. Section I also recommends [redacted]osures wouldecon

competitors.[6] Studies have demonstrated that price advertising tends to enhance competition and lower prices.[7]

Before a consumer signs up for a particular communications service or plan, advertising is an important source of information that guides the consumer's purchase decision. Numerous service providers promote their communications services through national and regional television and radio advertising, as well as through print, online, telemarketing, and direct mail advertising campaigns. Advertising of material terms allows consumers to compare similar services offered by one or more providers, and also to weigh the relative importance of different terms.[8] Depending on the context and usage, certain terms may be material, including, for example, contract duration, use

other fees) will be added to the monthly bill, leading to total monthly charges that are more than eighteen percent higher than the advertised price.[12]

When price advertising fails to reveal what the consumer will actually pay, the likely effect is not only consumer confusion, but also a distortion of competition. This is especially true in situations where consumers are attempting to compare similar functional services based on different technologies, such as landline versus wireless or cable versus telephony.[13] Different communications services are subject to varying levels of fees, taxes, and other associated charges; unlike state sales taxes, these fees and taxes are not uniform across types of providers and services. Consumers typically are not well-versed in the different tax and fee regulations that apply to competing types of services and providers. These disparities may make it difficult for consumers to compare their out-of-pocket costs. For example, a landline provider may offer stand-alone high-speed internet services for $40.95 per month, and a competing mobile broadband provider may offer similar services for $40.00 per month. When the landline customer receives a bill, charges include a $3.00 modem fee and $4.10 for fees and taxes, for a total of $48.05. In contrast, the mobile customer's bill includes $.57 in fees and taxes, for a total of $40.57. Thus, what looked like a $.95 price differential is actually a difference of $7.48 per month. As a result, competition on the merits may be distorted.

Consumer confusion relating to inadequate price and fee information is likely to arise more frequently as consumers increasingly shop among competing broadband providers of substitutable services, including telephone service as well as satellite and cable television programming. Consumers are no longer confined to obtaining voice telephone service from one provider and cable television programming from another. Advances in technology have broken down barriers and enabled some consumers to mix and match these services to assemble their own communications bundles, which makes it even more important that the various taxes and fees be adequately disclosed. In addition, other consumers now choose to purchase a bundled set of services from a single provider (such as a "triple play" of phone, internet, and television). Advertising of prices that do not match what consumers are likely to pay may make it still more difficult for consumers to compare their options to determine whether the bundled or non-bundled

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[12] The FTC has challenged price claims that involve misrepresentations of the true price to the consumers or hidden charges that were not disclosed to consumers until after purchase. *See, e.g.*, *General Rent-A-Car, Inc.*, 54 Fed. Reg. 30,106 (July 18, 1989) (consent order); *Alamo Rent-A-Car, Inc.*, 54 Fed. Reg. 25,106 (June 13, 1989) (consent order). The complaints in both General Rent-A-Car and Alamo Rent-A-Car alleged that the companies failed to disclose to consumers the existence and amount of airport surcharges and mandatory fuel charges when consumers inquired about renting vehicles. *See also* *FTC v. World Travel Vacation Brokers, Inc.*, No. 87 C 8449 (N.D. Ill. Sept. 28, 1987) (temporary restraining order) (complaint alleged that the company represented that the costs of its travel certificates would entitle consumers to a round-trip airfare to Hawaii, when in fact, the cost of the airfare was added to the actual rates for accommodations); *FTC v. Amy Travel Services, Inc.*, No. 87 C 6776 (N.D. Ill. Aug. 3, 1987) (temporary restraining order) (complaint alleged that company engaged in unfair and deceptive acts or practices by misrepresenting and deceptively failing to disclose the true costs of the vacations they sold).

[13] This example is based on current communications providers' offerings in the District of Columbia.

services meets their needs, especially if the impact of taxes, fees, and other charges as they relate to the bundled and non-bundled services are not readily apparent.

Ideally, the advertised price should be equal to the amount the consumer pays, and consumers should be able to understand in advance the price they ultimately will pay. It would be easier for consumers to compare prices between and among providers and services if advertised prices included all regulatory fees, taxes, and associated charges that are known ahead of time by the provider or apportioned by the provider.[14] If the taxes, fees, and charges are not included in the advertised price, the advertisement should provide for consumers easily to obtain this information.[15] Implementation of this recommendation not only will facilitate vigorous competition, but also is likely to reduce consumer confusion surrounding line-item charges on monthly bills because consumers are concerned mostly about the monthly amount they will pay. A point-of-sale disclosure (e.g., at the time the consumer accepts the contract) is inadequate because it comes too late in the shopping process to allow meaningful price comparisons and thereby facilitate robust competition.

We believe that this recommendation can be tailored to accommodate different forms of advertising when, for example, taxes vary by state or local jurisdiction and the provider has no discretion over the level or amount of the tax. For example, current technology allows providers to quote online consumers the exact price they will pay; when a consumer uses the internet to research or purchase communications services, the provider typically asks the consumers to enter his or her zip code prior to listing available services and associated prices. Based on location information, the provider knows the specific taxes and surcharges imposed by state and local jurisdictions and therefore should be able to provide consumers with the price they will actually pay, which will aid in comparison shopping. The same level of detail regarding actual prices could be provided in bill inserts that advertise new services and prices to existing customers, because the provider already knows the consumer's address and billing jurisdiction. At every opportunity, providers should strive to provide consumers with the price they will actually pay, utilizing current as well as innovative means.

B. Standardized Information Disclosures of the Terms of Communications Services Offers Reduce Search Costs and Facilitate Competition.

In competitive markets, consumers compare products and services among providers and weigh the different terms being offered when making decisions about what to purchase. Where search and other transaction costs (both in terms of time and money) are relatively low, consumers are more likely to rely on these market processes to satisfy

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14 To the extent that regulatory fees vary monthly or quarterly, it may be desirable to develop mechanisms to stabilize these fees for longer time periods, which will further enhance transparency in determining typical monthly charges.

15 *See* FCC-FTC Joint Policy Statement, *supra* note 9, at 9-16.

By contrast, when consumers do not understand the costs and terms of their mortgages, "they may pay more for their mortgage than necessary, obtain inappropriate loan terms, fall prey to deceptive lending practices, and experience unpleasant surprises and financial difficulties during the course of their loans."[20] Needless to say, similar harms can occur

II. The Federal Trade Commission Has Substantial Law Enforcement Experience in Stopping Unauthorized Billing

The FCC has asked specifically if there are lessons to be learned from consumer protection efforts of other government agencies combating the placement of unauthorized charges on telephone bills, a practice known as cramming. The FTC has much experience, both in policy work and law enforcement action, tackling the practice of placing unauthorized charges on telephone bills. For many years, FTC has investigated suspect charges and taken law enforcement actions in courts across the nation to shut down fraudulent businesses and to return money to defrauded consumers

Cramming is a significant area of increasing consumer complaint. More than 3,000 complaints received by Consumer Sentinel during the past 12 months relate to what consumers describe as unauthorized charges on telephone bills (including landline, mobile wireless, and Voice over Internet protocol (VoIP) services).[24]

The FTC treats cramming as both “deceptive” and “unfair” conduct, under the FTC Act.[25] Practices characterized as “deceptive” under the FTC Act involve a representation, whether it is a misrepresentation or an omission; the representation is likely to mislead consumers acting reasonably under the circumstances; and a representation that is likely to affect a consumer's choice of or conduct regarding a product or service and thus be material.[26] When a company places a charge on a consumer’s telephone bill, it represents to that consumer that the charge is valid and that the consumer is obligated to pay for that item. Where the charge has been “crammed” onto a consumer’s bill, those representations are not just likely to be misleading; they are false. Under such circumstances, the FTC has taken enforcement action against unauthorized billing as a deceptive practice under the FTC Act.[27]

Cramming also has been challenged as

telephone bills is likely to injure consumers because they are likely to pay the charges, simply because they appear on their telephone bill. Even if each consumer loses only a small dollar amount, the total injury to consumers across the country from cramming can still be substantial. Consumers cannot reasonably avoid having fake items placed on their telephone bills. The cramming of unauthorized charges onto consumers' telephone bills provides no benefit to consumers or competition.[29] Courts repeatedly have held such unauthorized billing to be an unfair act or practice.[30]

The FTC has focused on two types of companies that place charges on consumers' telephone bills. First are the "vendors" that originate some of the line item charges that consumers may find on their bills for products or services. Second are "billing aggregators" that interface between the vendor and a telephone company. Although some vendors submit charges directly to telephone companies for placement on their subscribers' telephone bills, most vendors contract with one of several large billing aggregators. The billing aggregators supply information to the telephone companies about the vendors' businesses, submit the charges to the telephone companies on behalf of the vendors, and often field complaints and inquiries from consumers. The charges may appear on a billing aggregator's separate section of a bill, or as a line item billed by the billing aggregator on behalf of the vendor. The FTC, which has limited jurisdiction over common carriers, has primarily targeted such vendors and billing aggregators, as well as individuals associated with those companies, in law enforcement actions to stop cramming.[31]

III. Several Policy Adjustments Can Help Eliminate Cramming.

As discussed above, effective and meaningful disclosures can help consumers understand their communications bills. This information can create an environment in

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which consumers can more readily notice small fake charges on their telephone bills.
These changes alone, however, are unlikel

enforcement action for unfair billing; and that the physical location of the company exists.[34]

The FTC believes measures such as these can help reduce opportunities for cramming. Because of limitations on the FTC's authority, the FTC does not have the ability to put into place similar restrictions on certain communications service providers. Therefore, the FTC encourages the FCC to explore adopting additional controls to ensure that all communications service providers and the aggregators involved in their billing processes undertake due diligence of vendors before permitting a vendor to use the billing platform to place charges on consumers' bills.

B. Provide for Greater Coordination among and With Law Enforcement Entities.

Greater coordination among law enforcement entities can help combat cramming scams. There is much consumer confusion about which government agency to contact to complain about different types of cramming.[35] How can a consumer know to alert the FCC or a state utility commission when questioning some fees and rates, but to alert the FTC or state attorney general's office about completely fabricated long distance charges, or to complain to any of the above entities if the charge involves VoIP? One part of the solution is for government agencies to share these complaints with each other and have a process to handle them, rather than redirecting consumers to other agencies to complain yet again. As noted above, Consumer Se

C. Provide Consumers with Information They Need to Detect Cramming.

Consumers should have easy-to-understand monthly bills as well as a reliable way to get more information about specific charges on their bills, so they can detect cramming more easily. In the FTC’s law enforcement experience, a key problem in cramming is that consumers do not recognize the name of the product, service, or company listed next to a charge on their bill. Telephone bills that better describe the services and charges appearing on them would enable consumers to avoid falling prey to unscrupulous service providers which hide or mislabel unauthorized charges on consumers' telephone bills.

There are many ways to better identify the source of line items on bills. For example, concerns about unclear identification have been raised in the context of electronic debits. In response, the main industry association, NACHA -- The Electronic Payments Association -- has required companies to identify themselves by the name that is known and readily recognized by the consumer.[37] Also, consumer testing of sample billing descriptions and charges is likely to help ensure consumers understand the information on their bills. For example, if a purchase is made through a website, the name of website should be identified in the billing description if it is not otherwise clear in the item description.

The FCC has asked whether it should adopt requirements about which party is identified as the consumer contact for each charge on the bill. In our law enforcement experience, no particular party is better suited than another party to provide information about the nature of a charge. However, we believe that a consumer should not have to make multiple calls to learn more about a charge, or to dispute it.

Currently, consumer complaints about a charge often are directed to a number of parties – the telephone company, the billing aggregator, and the vendor. In the FTC’s law enforcement experience, consumers tend to complain to their own communications provider first even if the vendor or billing aggregator is listed on the bill next to the charge. If the consumer contacts the vendor identified on the bill and it is a fraudulent vendor, our experience is that those vendors often do not answer the phone or provide accurate information. Furthermore, if the contact information on the bill is for a billing aggregator, that aggregator often just redirects consumers to the vendor, rather than resolve the dispute itself. The FCC should consider adopting specific measures to require one or all of these parties, depending upon the context, to take responsibility for answering consumer inquiries and resolving disputes about charges in a timely manner.[38]

D. Require Communications Providers and Billing Aggregators to Investigate and Detect Cramming.

The parties involved in the communications billing process should be required to investigate and detect cramming in response to consumer complaints and inquiries. Regardless of which entity – vendor, billing aggregator, or communications provider – receives the initial consumer complaint, it ought to have processes in place to investigate. The extent of any investigation should reflect the volume and nature of complaints.

In our law enforcement experience, we have seen too often that communications providers and billing aggregators fail to conduct a reasonable investigation after them Industry as a whole should then make better use of this information by investigating patterns of problematic charges and vendors to help eliminate sources of fraudulent billing.[40]

E. Increase Consumer Control over Billing through New Technologies.

Finally, the FTC encourages the development of, and spread of information about, technology that can give consumers more control of the charges that are placed on their communication bills. In 1998, the FTC asked the FCC to consider having providers include information on how consumers can block certain services in their monthly telephone bills as a way of possibly avoiding unauthorized charges. Some consumers may want to block long-distance or third-party calls, particularly if such options are available in a way that allows consumers some ability to tailor their options. Similarly, there appear to be some blocking options for wireless subscribers.[41] When consumers are provided only with "all-or-nothing" choices, such as eliminating all text messaging or all third-party billing, however, it is unclear how many consumers benefit. We urge the FCC to explore how technology has changed and to determine if technology can help combat unauthorized billing.

IV. Conclusion

The FTC applauds the FCC's efforts to examine whether consumers have sufficient access to relevant information about the communications services they purchase and use. The FTC has identified se
accurate, meaningful, and timely information to consumers regarding the communications services they purchase and use. It also has provided seonhe policy suggestions for reducing unauthorized billing on communications service bills. By

robust communications marketplace that benefits consumers.

[40] The FTC has addressed this issue in a recent law enforcement settlement, where a billing aggregator agreed to alert the service provider if complaints from consumers reach a certain level. See