

Before the  
Federal Communications Commission  
Washington, D.C.

In the Matter of	)	
	)	
	)	
Empowering Consumers to Prevent and Detect	)	CG Docket No. 11-116
Billing for Unauthorized Charges ("Cramming")	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CG Docket No. 98-170

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## SUMMARY

The Attorneys General of Alabama, Alaska, Arizona, Delaware, Georgia, Indiana, Iowa, Kentucky, Maryland, Mississippi, Nevada, New Hampshire, New Mexico, New York, Oregon, Tennessee and Washington welcome the Federal Communication Commission's desire to address the plague of telephone bill cramming by unscrupulous third parties. Crammers exploit the open access to telephone billing to generate huge amounts of unauthorized charges on customers' telephone bills, costing consumers and businesses enormous amounts of money, time, and frustration. Telephone companies that facilitate third-party billing reap significant revenue from these frauds, and incur serious customer dissatisfaction and costs from processing billing disputes.

Over the last 25 years, the Attorneys General have brought a number of law enforcement cases seeking to halt specific crammers from preying on unsuspecting customers. More often than not, these efforts became a game of "cat and mouse" or "whack-a-mole." Dishonest vendors are shut down one day, only to reappear under a new name or in a new state a short time later. As the Attorneys General expend limited state resources to fight this battle, customers continue to be victimized.

State utility regulators, legislatures, and Attorneys General have attempted a number of remedial measures similar to the proposals under consideration by this Commission,<sup>1</sup> namely those involving improved disclosure and optional blocking. Unfortunately, the experiences of state Attorneys General has shown that such limited measures are largely ineffective at preventing billing abuses by dishonest third-party vendors. Mere disclosure of third-party charges on customer bills does little to dissuade

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<sup>1</sup> FCC 11-106, Notice of Proposed Rulemaking, adopted and released July 12, 2011, ("Cramming NPRM").

crammers from continuing their fraudulent schemes, as too many telephone customers fail to notice the unauthorized charges on their bills. In fact, many customers are not even aware that by subscribing to a wireline or wireless service, they are exposed to being billed by unknown third-parties for services or products they neither want nor use. If a customer does identify an unauthorized charge on his or her bill, the customer ultimately finds the process of getting the charge removed burdensome and frustrating.

In light of these experiences, the Attorneys General strongly submit that the disclosure and optional blocking remedies proposed by the Commission in the July 12, 2011 Cramming NPRM will be inadequate and ineffective in eliminating the practice of cramming. Instead, the most effective solution to protect customers would be to ban all non-telecommunications<sup>2</sup> service providers from using wireline telephone bills to collect their fees. If the Commission is not willing to impose a total ban, the Attorneys General submit that the only other option is to require telephone companies to block all third-party charges for existing and future customers absent the customer's affirmative assent to such charges. Those customers who desire to pay for non-telecommunications services or products through their telephone bills should be allowed to opt-in to such billing on a vendor-specific basis by communicating their consent directly from their landline telephone to their telephone company. By allowing customers to authorize third-party charges only from their own telephone, the telephone company's calling records will verify that the opt-in consent is authentic and prevent dishonest crammers from faking the customer's authorization. In addition, the Commission should require

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<sup>2</sup> Limited third-party charges for telecommunications services such as collect calls, operator services, and prisoner calls home, which have not been the source of cramming complaints, could be allowed.

telephone companies to remove unauthorized charges from customers' bills the first time customers dispute a specific vendor's charge to their accounts.

The Commission should also adopt reasonable customer protections for wireless customers, even though third-party charges on wireless telephone bills have thus far generated fewer cramming complaints as compared to wireline telephone service. The enormous popularity of wireless services—which are displacing wireline telephones for a growing portion of the public—and the introduction of new smart phone features that convert wireless handsets into virtual electronic wallets capable of making purchases in a myriad of settings, require that the Commission adopt effective protective measures before wireless cramming becomes as bad or even worse than wireline cramming.

The Attorneys General urge the Commission to mandate that all wireless carriers implement a procedure by which no third-party charges may be added to a customer's bill unless the customer affirmatively consents to pay for the service through his or her telephone bill by means of a call or text message made from the customer's own wireless telephone device to their telephone company. Proof of customer consent, verified through the telephone company's switching or call detail records, would eliminate vendor falsification of authorization.

In addition, to ensure that consent is provided by the customer of record rather than by people who simply have access to the customer's telephone (e.g., unauthorized employees or family members), all customers should be offered free blocking of third-party charges on their wireless devices. If the customer imposes such a block and later wishes to remove the block for a specific vendor, wireless carriers should be required to obtain a personal identification number from the customer. As with wireline customers,

wireless carriers should be required to remove charges from customers' bills the first time the customer disputes a third-party charge as being unauthorized, and offer these customers blocking options.

By adopting and enforcing these recommended remedial measures, the Commission can more effectively protect customers from this epidemic of cramming fraud. Once unauthorized third-party charges are eliminated from customers' bills, federal and state regulatory and law enforcement agencies will no longer need to devote so much of their limited resources to combating these crammers.

Georgia Attorney General Sam Olens joins points I, II, III, V, and VI of these comments.

## INTEREST OF THE ATTORNEYS GENERAL

The state Attorneys General enforce federal and state consumer protection laws,<sup>3</sup> and advocate for consumers and small businesses in courts as well as federal and state regulatory proceedings. For decades, prosecuting crammers has been a law enforcement priority for the undersigned Attorneys General. Many state Attorneys General have devoted substantial efforts to investigate consumer complaints of unauthorized third-party charges, resulting in law enforcement actions against dishonest vendors, intervention in state regulatory and legislative proceedings concerning cramming protections and investigations of telephone company billing practices.<sup>4</sup>

The state Attorneys General have strived, through partnership with the Federal Trade Commission and the Federal Communications Commission, to stem the tide of unauthorized third-party telephone bill charges, with only limited success to date. It is clear that new and stronger federal measures are necessary and appropriate at this time.

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<sup>3</sup> See e.g.: New York General Business Law ("NYGBL") § 349 (deceptive business practices), NYGBL § 350 (false advertising), New York Executive Law § 63(12) (persistent fraud and illegality); Nevada Deceptive Trade Practices Act, NRS Chapter 598; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Illinois Consumer Fraud Act, 815 ILCS 505 *et seq.*; Oregon Unlawful Trade Practices Act ORS 646.605 *et seq.*; Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code 17.41 *et seq.*; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*; Iowa Consumer Fraud Act, Iowa Code § 714.16 and § 476.103; Iowa Telecommunications Service Provider Fraud Act, Iowa Code Ch. 714D; Vermont Consumer Fraud Act, 9 V.S.A. 2451 *et seq.*; Kentucky Consumer Protect Act, KRS 367.170; KRS 278.542(1)(h); Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 *et seq.*; Florida Deceptive and Unfair Trade Practices Act: Chapter 501, Part II, sections 501.201 *et seq.*; Md. Code Ann., Com. Law §§ 13-101 through 13-501.

<sup>4</sup> See, e.g.; *In re Verizon New York, Inc.*, Assurance of Discontinuance, New York Attorney General, March 30, 2005; *State of Kansas ex rel. v. IDSelectSecurity, Inc. et al.*; *State of Minnesota, by its Attorney General, Lori Swanson v. Cheap2Dial Telephone, LLC*; *In re Durham Technology, LLC d/b/a MyiProducts IMail*, Assurance of Discontinuance, Vermont Attorney General, March 14, 2011; *In re YPD Corporation*, Assurance of Discontinuance, Vermont Attorney General, March 14, 2011; *State of Florida, Office of the Attorney General v. Email Discount Network et al.*; *People of the State of Illinois v. LiveDeal, Inc.*; *People of the State of Illinois v. Minilec ISP Warranty, LLC*; *People of the State of Illinois v. ID Lifeguards, Inc.* Illinois has filed 30 cramming related lawsuits since 1996. Vermont has settled with 8 third-party vendors since 2010.

## ARGUMENT

### **I. Cramming Has Become an Epidemic, Plaguing Countless Consumers and Businesses.**

Although telephone company billing of third-party charges grew out of the breakup of AT&T in 1984 -- to enable long distance carriers to place and collect calling charges on the phone bills of local exchange carriers -- such legitimate third-party charges now comprise only a tiny portion of the third-party charges billed by telephone companies.<sup>5</sup> Today, the overwhelming portion of such charges are billed on behalf of fly-by-night vendors who exploit the telephone carrier billing system to collect fraudulent charges from customers who neither agree to purchase nor use the "service" purportedly ordered by the customer.

In recent years, the Attorneys General have seen a dramatic rise in the number of cramming complaints; and in the vast majority of these complaints, customers are finding charges for "enhanced" services on their telephone bills. An enhanced charge is a charge for *non-call* related services, such as email, website hosting, discount buying programs or voicemail services. Our investigations have revealed that these enhanced services are rarely used by the customer, or the service is one (e.g., voicemail or a personal email account) that the customer could obtain for free or at a much lower cost through the customer's telephone company. In light of these findings, we suspect that the majority of these customers either did not, in fact, sign up for the vendor's service<sup>6</sup> or unwittingly

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<sup>5</sup> Though there may be a handful of legitimate third-party vendors employing telephone carrier billing and collection, such as AOL Online and Roadrunner Internet access dial-up services, the Attorneys General believe they comprise a small fraction of the total amount of third-party charges billed to customers.

<sup>6</sup> One vendor investigated by the Illinois Attorney General billed governmental agencies, businesses, and even the local library's "dial-a-story" phone number for a credit repair service.



enrolled themselves by accepting some other product or service. As a result, many customers are being exposed to widespread cramming violations, essentially amounting to theft.

The New York Attorney General's investigation of Unitedtel.com is just one example of the countless investigations conducted by the Attorneys General. From a list of over 41,000 third-party charges totaling more than \$613,000 billed to New York customers by this single vendor during a 15-month period, the Attorney General examined a single month's worth of charges billed to customers in area code 585 (the Rochester area). During March 2010, of 2,250 charges to area code 585 customers (totaling \$33,637.50 in charges), 251 charges (11.15%) were disputed by customers to either Frontier Telephone (the local telephone company) or the vendor, resulting in \$6,685.65 in refunds. However, when the Attorney General surveyed 356 customers billed by this vendor to determine whether the charges for peer-to-peer music downloading were authorized, no customers reported authorizing the charges, five were unsure, and 191 (or 97.5%) of the 196 responding customers reported the charges were unauthorized. This also demonstrates how few customers notice third-party charges that appear on their bills. Interestingly, some of the crammed charges were even billed to Frontier Telephone's own lines and not discovered by the telephone company until after the Attorney General's investigation.

A series of cramming investigations conducted by the Vermont Attorney General also revealed remarkably low levels of consumer awareness with regard to third-party charges. In the course of surveying a number of Vermont consumers, the Attorney General discovered that 89.5% of consumers (503 out of 562 respondents) had not

authorized the third-party charges appearing on their landline telephone bills.<sup>7</sup> In fact, a number of these consumers reported absolutely no need for the services they purportedly purchased from the third-party vendors, such as voicemail.<sup>8</sup>

In another cramming investigation in Kansas, the Kansas Attorney General determined that the vendor was not relying on the customer's express authorization (i.e. verbal or written authorization) for the charges. Rather, the vendor relied upon, and ultimately submitted to the billing aggregator, an electronic letter of authorization ("LOA") comprised of certain data supporting the vendor's contention that the customer authorized the charge. The vendor claimed this data was captured or provided by the customer at the time of enrollment. It included information such as the customer's name, phone number, zip code, Internet protocol (IP) address, date of birth, and time or date of authorization. More often than not, however, the data contained within a particular LOA was publicly available or simply wrong, resulting in an alarmingly high rate of refunds to customers that had supposedly authorized the charges.<sup>9</sup>

Furthermore, investigations by the Attorneys General have revealed that billing aggregators are performing nothing more than a cursory examination of customer authorizations, in whatever form, with the exclusive goal of confirming that the requisite data or sound bites have been included by the vendors. When confronted with the inherent flaws in this system, billing aggregators shift responsibility onto the telephone

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<sup>7</sup> Written testimony of Assistant Attorney General Elliot Burg, submitted to the United States Senate Committee on Commerce, Science and Transportation, p. 2. July 13, 2011.

<sup>8</sup> *Id.*

<sup>9</sup> One vendor investigated by the Kansas Attorney General billed 3,069 Kansas consumers from January 1, 2007 to December 31, 2009. Of those consumers, the vendor refunded 1,814 or 59% percent of all Kansas consumers prior to any involvement by the Attorney General or state regulators.

companies, claiming that each telephone company sets its own guidelines for billing, payment collection and customer complaints. The aggregator claims simply to be responsible for following those guidelines. As a result, when billing aggregators perform an actual verification of a customer's authorization, they do so only on a random basis or if the vendor has been placed into the aggregator's monitoring system.<sup>10</sup>

While billing aggregators claim to screen and monitor their vendors for fraudulent activity, the sheer number of cramming complaints indicates that more can, and should be done to protect customers. The reality is that it is all too easy for unscrupulous vendors to create and use numerous corporations and varying addresses to undermine these programs and commit fraud without detection.<sup>11</sup> Most importantly, the billing aggregators rarely terminate their relationships with these vendors upon discovering the fraudulent activity. Rather, the vendors are placed on probation or in a monitoring system, allowing the vendors to continue inflicting harm upon consumers.

The foregoing experience by various state Attorneys General is further corroborated by the Senate Committee on Commerce, Science, and Transportation Office of Oversight and Investigations Majority Staff's July 12, 2011 Report: Unauthorized Charges on Telephone Bills (herein, "Senate Report"). The Staff's extensive investigation found that, "Telephone customers with third-party charges on their

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<sup>10</sup> In November 2009, in the course of a cramming investigation launched by the Kansas Attorney General, a large billing aggregator admitted this fact.

<sup>11</sup> In 2010, for example, the Kansas Attorney General filed two cases in which the only difference between the three limited liability companies named in each case was, in fact, their names. See *State of Kansas ex rel. v. Email Discount Network, LLC et al.*, 10C582, 3<sup>rd</sup> District Court, Shawnee County; *State of Kansas ex rel. v. Voicemail Direct USA, LLC et al.*, 10C581, 3<sup>rd</sup> District Court, Shawnee County. In 2009, the Nevada Attorney General brought an enforcement action against fifteen interrelated corporations. See *State of Nevada, Office of the Attorney General, ex rel. v. The Payment People, Inc. et al.*, 1<sup>st</sup> Judicial District, 09C43110. The Illinois Attorney General filed a case in 2006 against two corporations, operated by the same individuals, offering the same product for the same price using identical websites. See *People of the State of Illinois v. MSMB2B Inc. et al.*, Sangamon County.

telephone bills overwhelmingly reported that the charges were unauthorized."<sup>12</sup> The Federal Trade Commission ("FTC") submitted similar evidence to the Commission showing that cramming has become an epidemic, as demonstrated by over 7,000 consumer complaints of unauthorized telephone bill charges lodged with the FTC during 2010, up from 3,000 such complaints in 2008.<sup>13</sup>

It is also well-established that billing aggregators and telephone companies both earn a certain percentage of the total amount of any charge billed to a particular consumer.<sup>14</sup> However, most telephone companies lack established procedures to verify, in advance of billing, that consumers expressly authorized the charges to be placed on their telephone bills. Rather, the telephone company relies on the billing aggregators to obtain the necessary verification. As a result, the telephone companies maximize their profits, at the expense of their own consumers.<sup>15</sup>

## **II. Current Efforts To Eliminate Cramming Have Not Succeeded**

As noted by the Commission, cramming is a significant and ongoing problem. The number of complaints received by the Commission, FTC, and state Attorneys General indicate that voluntary industry practices are wholly ineffective. And,

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<sup>12</sup> Senate Report, at ii.

<sup>13</sup> See Consumer Sentinel Network Data Book for January-December 2010, Appendix B3: Consumer Sentinel Network Complaint Category Details, at 80, Federal Trade Commission, March 2011. <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>. See also, Comments of 25 State Attorneys General, FCC Notice at ¶ 25.

<sup>14</sup> For example, on a \$5.00 charge, the billing aggregator may keep \$0.05 and the telephone service provider may keep \$1.50. The remaining \$3.45 collected from the consumer is remitted to the vendor.

<sup>15</sup> According to the testimony of Walter McCormick Jr., President and CEO of the United States Telecom Association, AT&T earns approximately \$50 million dollars a year from the placement of third-party charges on consumer telephone bills. Mr. McCormick provided this testimony at the United States Senate Committee on Commerce, Science, and Transportation hearing on Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose held on July 13, 2011, 114:33-115:34 (herein "McCormick Statement"). See also Senate Report, at iii.

unfortunately, enforcement actions brought by both state and federal regulators cannot eliminate a practice made possible by insufficient regulations.

**A. Law Enforcement Efforts to Reduce Cramming Are Insufficient**

Law enforcement simply cannot eliminate cramming without more aggressive regulation at either the state or federal level. As mentioned above, the Attorneys General and federal regulators have been actively pursuing crammers for well over a decade, resulting in a number of enforcement actions and settlements.<sup>16</sup> According to one industry leader, however, "the problem of cramming persists."<sup>17</sup> In some cases, these enforcement actions are brought against the same third-party vendors by different state or federal regulators over the course of several years.<sup>18</sup> Clearly, the profitability of cramming makes it an attractive business model, in spite of the risks associated with the practice.

In one of the largest cramming cases brought by federal regulators, the FTC entered into a Stipulated Final Judgment with BSG Clearing Solutions North America, LLC ("BSG") in March 2008.<sup>19</sup> By its own admission, BSG is the largest billing

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<sup>16</sup> *State of Oregon ex rel John R. Kroger, Attorney General v. Simple.net Inc., f/k/a Dial-Up Services, Inc., d/b/a Simple.Net, an Arizona Corporation*: In the Circuit Court for the State of Oregon, Count of Lincoln, 082810. *State of Kansas ex rel. v. Email Discount Network, LLC et al.*, 10C582, 3<sup>rd</sup> District Court, Shawnee County; *State of Kansas ex rel. v. Voicemail Direct USA, LLC et al.*, 10C581, 3<sup>rd</sup> District Court, Shawnee County. See also *supra* note 3.

<sup>17</sup> McCormick Statement, at 6.

<sup>18</sup> In 2006, for example, the Illinois Attorney General brought an enforcement action against Inc21.com Corporation. *People of the State of Illinois v. Inc21.com Corporation d/b/a GlobalYP.net and Roy Lin*, Sangamon County Circuit Court, September 12, 2006. The FTC sued this same vendor in 2010. *FTC v. Inc21.com Corporation et al.*, 688 F.Supp.2d 927 and 745 F.Supp.2d 975 (N.D. Cal. 2010).

<sup>19</sup> The FTC filed its case in United States District Court, Southern District of Florida in 2008. Case No. 9:06-CV-80180-KLR. The Stipulated Judgment was also entered into by Defendants Billing Concepts, Inc. and ACI Billing Services, Inc. d/b/a OAN.

aggregator in the United States.<sup>20</sup> In addition to resolving allegations made by the FTC in its complaint, the Stipulated Final Judgment contained strong injunctive terms requiring BSG to take affirmative steps to detect and prevent unauthorized charges on consumers' telephone bills. In spite of this settlement, and BSG's apparent compliance with its terms, cramming remains as pervasive as ever.

**B. Billing Aggregator and Telephone Company "Best Practices" Aren't Working**

In 1998, the industry promulgated its "Anti-Cramming Best Practices Guidelines" ("Best Practices"). Unfortunately, the experiences of the State Attorneys General prove that these guidelines, while well-intentioned, are too weak to combat the practice of cramming effectively.

As previously mentioned, telephone companies rely heavily on billing aggregators to verify the authenticity of third-party charges. In fact, this practice is encouraged by the "Best Practices" and codified in many contracts between aggregators and telephone companies. According to Walter McCormick Jr., President and CEO of the United States Telecom Association, telephone companies routinely seek "contractual commitments" from billing aggregators requiring aggregators to undertake "active oversight of all service providers for which they intend to submit charges."<sup>21</sup> For example, telephone company contracts require billing aggregators to obtain a variety of information on each vendor, including ownership and contact information, product or service descriptions,

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<sup>20</sup> BSG is the parent corporation of Billing Concepts Inc. d/b/a Zero Plus Dialing d/b/a USBI, Enhanced Services Billing Inc. d/b/a ESBI, ACI Billing Services Inc. d/b/a OAN, and HBS Billing Services Inc. d/b/a HBS.

<sup>21</sup> Written statement of Walter B. McCormick, Jr., *supra*, at 5.

and marketing materials.<sup>22</sup> Furthermore, aggregators are also requiring vendors (at the behest of the telephone companies) to make assurances regarding customer authorization or verification processes and agree to periodic audits.<sup>23</sup> In spite of these practices, cramming persists.

In *Main Street Telephone Company*, the FCC noted that despite the company's claims that it had screening procedures in place, "it appears that any validation procedure that Main Street actually performed simply verified the general existence of the telephone number and that the number was a working number—and in no way verified that an enrollee actually in any way intended to subscribe to . . . [the] service."<sup>24</sup> Likewise, the company sanctioned in *Cheap2Dial Telephone, LLC*, claimed to use several procedures to ensure that the customer billed had actually authorized the charges. In finding Cheap2Dial liable for apparent willful violations of the FCC's ratemaking provisions, the Commission explained that:

[t]o the extent that it actually uses them, Cheap2Dial's validation and verification processes are clearly inadequate to confirm that the person who 'enrolled in one of its plans, *i.e.*, the one whom Cheap2Dial will charge for service, actually authorized the service. As indicated, Cheap2Dial asserts that one of the ways it confirms customer authorization is to verify that the IP address used to sign up for service is within 100 miles of the telephone customer's billing address. On its face, this in no way verified that the person being billed for a service actually ordered the service. In fact, in many cases . . . the name and address in Cheap2Dial's enrollment records do not match the name and address of the customer who was charged for the service. Similarly, the email address used to sign up for the service often does not belong to the customer who is billed for service. The only information that

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<sup>22</sup> AT&T, for example, requires its aggregators to obtain detailed information on the vendor's principals, review the product or service to be sold along with any marketing materials, and investigate the vendor for prior billing violations. See AT&T Comments for the FTC's May 11, 2011 forum entitled Examining Phone Bill Cramming: A Discussion ("AT&T Comments"), at 4-5.

<sup>23</sup> McCormick Statement, at 5.

<sup>24</sup> *Main Street Tel. Co.*, Notice of Apparent Liability for Forfeiture, FCC 11-89 ¶ 16 (rel. June 16, 2011).

consistently belonged to the customer whom the Company charged was, in fact, his or her telephone number.<sup>25</sup>

Moreover, the Commission notes in its Cramming NPRM that "some carriers may be in compliance with many of these requirements and require no additional compliance efforts" with regard to their existing billing formats and/or disclosure materials.<sup>26</sup> This fact, alone, is recognition that the Commission must go further than its proposed rules in order to adequately protect telephone customers from cramming.

### **III. Most of the Remedies Proposed in the NPRM Have Proven to Be Inadequate and Ineffective.**

In the Cramming NPRM, the Commission proposes several new rules, which, if adopted, would:

- direct wireline telephone companies to notify customers of their right to block third-party charges from being put on their bills;
- direct wireline telephone companies to clearly and conspicuously disclose all third-party charges on a separate page of customers' telephone bills; and
- require that contact information for the third-party vendor be included on customer bills to enable customers to dispute any unauthorized charges with the vendor.<sup>27</sup>

While the Commission's intent in proposing these rules is laudable, the experience of several states that have already adopted measures similar to the Commission's proposed rules demonstrates that this approach will not succeed in protecting customers from unauthorized telephone bill charges.

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<sup>25</sup> *In the Matter of Cheap2Dial Telephone, LLC*, FCC 11-90, ¶ 18 (rel. June 16, 2011).

<sup>26</sup> Cramming NPRM, at 47.

<sup>27</sup> In addition, the Commission seeks comment on proposals raised by other parties, including: remove third-party charges from customers' bills the first time the customer reports the charge as unauthorized; require wireline telephone companies to screen prospective third-party vendors before allowing them access to billing and collection services; direct wireline telephone companies to monitor each vendor's charge-back rate and discipline and ban those that generate an excessive amount of customer bill disputes for unauthorized fees; and banning all third-party charges on wireline telephone bills.



Many of the above-listed protective measures proposed by the Commission have been required in several states for a number of years. For example, in New York, the protections proposed by the Commission are required by order of the New York State Public Service Commission<sup>28</sup> and a settlement reached by Verizon New York, Inc. with the New York Attorney General.<sup>29</sup> In 2007, the Florida Attorney General imposed similar third-party monitoring requirements on Verizon, Embarq, and BellSouth (d/b/a AT&T).<sup>30</sup> Yet, such measures have not adequately controlled cramming abuses. For these reasons, the Attorneys General offer the following comments for improving the Commission's proposed remedies. The States' proposals for preventing cramming are thereafter presented in Section IV.

**A. Free Blocking Options for All Customers**

Clearly, telephone companies have chosen to earn revenue from third-party vendors at the expense of their customers. As documented by the Senate Report,<sup>31</sup> residential and business customers who discover crammed charges on their telephone bills devote considerable effort and time to dispute these charges, either with their carrier or the vendor. Many business customers also pay bill consultants substantial fees to locate such fraudulent charges and get them removed from their bills.

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<sup>28</sup> See 16 New York Codes, Rules and Regulations, Part 606; NYPSC Case 90-C-1148 - *In the Matter of the Rules and Regulations of the Public Service Commission Contained in 16 NYCRR, Chapter VI, Telephone and Telegraph Corporations -- Amendments to Subchapter A, Service, by the Addition of a New part 606 - Billing and Collection Services*, Memorandum, Order and Resolution, Jan. 17, 1992.

<sup>29</sup> *In Re Verizon New York, Inc.*, Assurance of Discontinuance, Mar. 2005.

<sup>30</sup> *In the Matter of Verizon Florida LLC*, Assurance of Voluntary Compliance, Jul. 9, 2007; *In the Matter of Embarq Florida, Inc.*, Assurance of Voluntary Compliance, June 20, 2007; *In the Matter of BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Assurance of Voluntary Compliance, May 9, 2007.

<sup>31</sup> Senate Report at 17-19.

In response, a number of state regulators have required wireline telephone companies to offer customers the option of blocking third-party vendor charges entirely. Yet, these state-level protections have had only limited effect. Instead, the profit incurred from third-party billing seems to supersede the ill will incurred when customers complain to telephone companies about unauthorized third-party charges. In the Attorneys' General experience, telephone companies often redirect customers elsewhere or even threaten to cancel a customer's telephone service if he or she refuses to pay an unauthorized charge.<sup>32</sup> The Attorneys General speculate that productivity pressures on customer service representatives to handle high volumes of calls prevent many from properly explaining blocking options to customers who report an unauthorized charge. In addition, there is little incentive for telephone companies to disclose their optional blocking services given the fact that telephone companies profit from each charge. If the Commission adopts rules that make blocking services optional, there is little likelihood that wireline telephone companies would consistently and reliably offer this service to customers.

Instead, when a customer opens his or her account, all telephone companies should be required to ask whether the customer wishes to leave his or her bill open to third-party charges. In addition, the Commission should mandate that all wireline and wireless telephone companies offer their customers the ability to choose to block all third-party charges for free. This option should be offered to all customers whenever a

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<sup>32</sup> Even in states like New York, where the Public Service Commission Rules forbid termination of local service for nonpayment of third-party charges since 1992, telephone carrier representatives sometimes do not inform customers of these rights, and too often merely state the disputed charge is valid and must be paid, as there is nothing the carrier can do about it.

customer contacts the telephone company to dispute unauthorized third-party charges, as well as when the customer opens a new account.

Since business customers cannot always control use of their phones by irresponsible parties, and crammers have managed to fraudulently bill many large business customers enormous sums (including telephone companies' own lines).<sup>33</sup> The Commission should require all telephone companies to provide free blocking to all customers on all lines. No customer should be denied the right to avoid unauthorized third-party charges.

Furthermore, the Commission should require all telephone companies to take whatever steps necessary to ensure that when customers opt for blocking, no charges from third-party vendors will be billed to these customers. According to the Senate Report, third-party bill blocking may not be effective at preventing all third-party charges from reaching phone bills, as evidenced by several customer complaints about unwanted third-party charges despite a bill block being in place.<sup>34</sup> Therefore, it seems necessary for the Commission to require telephone companies to do more to protect consumers, such as requiring telephone companies to rely on their own, internal billing systems to block third-party charges.<sup>35</sup>

#### **B. Disclosure Of Third-Party Vendors On Customer Bills**

The Commission proposes to require telephone companies to disclose the identity of third-party vendors on customer bills so that customers can better understand what

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<sup>33</sup> Senate Report at 20-21.

<sup>34</sup> *Id.* at 33 – 34; Appendix A.

<sup>35</sup> According to the Senate Report, many wireline telephone companies may be relying on billing aggregators to block third-party charges. *Id.* at 33-34.

they are being charged for, identify charges that are unauthorized, and take steps to dispute and remove crammed charges. If the Commission's objective is to prevent cramming, it is inadequate to merely draw customers' attention to these charges. Industry practice has proven that disclosure of charges is insufficient to thwart consumer losses. Again, this protection has long been required in New York and other states, but the problem of cramming has worsened despite such disclosures.

In addition, disclosure is of only limited benefit to customers, because customers would still be burdened with reporting and disputing unauthorized charges. For business customers that subscribe to large numbers of telephone lines, the complexity of such bill review has spawned an entire industry of consultants who are paid by the businesses to identify crammed charges and get them removed.<sup>36</sup> Furthermore, disclosing the vendor's identity is inadequate if the customer does not know what he or she purportedly purchased or how to contact the vendor.

To improve the benefit of the Commission's proposed disclosures, the Commission should require the third-party vendor to disclose its full legal name, the physical address where its business is conducted, its local landline telephone number, a complete description of the product or service purchased and the date the product or service was purchased by the customer. Only such specific disclosures will give customers the information they need to determine the legitimacy of the charge and to dispute it if it is unauthorized. The Commission should be clear that the use of post office boxes, private mailboxes, virtual office addresses, UPS mail drops, or VoIP

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<sup>36</sup> According to the written statement of David Spofford, Chief Executive Officer of Xigo, LLC, a company that assists its business clients with managing their telecommunications expenses, 71% of Xigo's clients have been victims of phone bill cramming within the last three years. Mr. Spofford provided this statement to the United States Senate Committee on Commerce, Science and Transportation, at 1, July 13, 2011.

telephone numbers and other devices used to conceal the vendor's true identity or physical location is a violation of the rule. While a toll-free number may be provided, a landline telephone number must also be included to assist both customers and law enforcement in locating the vendor.

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

The Commission seeks comment on whether it should require wireline telephone companies to place third-party charges on a separate section of the customer's bill. Many telephone companies currently place third-party charges on a separate page of the bill, but this has proven totally ineffective in adequately alerting customers to the existence of the third-party charges. Often, third-party charges appear after numerous pages detailing carrier charges and fees, effectively obscuring the disclosure from notice by customers. The Commission itself notes that the lack of clarity in billing, notwithstanding the Truth in Billing Guidelines, continues to result in unauthorized charges to consumers:

[S]uccess in what appears to be a *constructively fraudulent enterprise* seems to rely on the fact that individuals and businesses the Company enrolled in its service failed to notice the unauthorized charges on their multipage telephone bills and so simply proceeded to pay them, often unaware that they contained charges from an entity other than their own telephone company. The charges were often listed on the last pages of the bill and/or did not contain clear descriptions of the services provided. *It would be difficult of someone who had never heard of . . . [the company] to recognize an unauthorized charge from them on the bill.*<sup>37</sup>

We recommend, therefore, that the total amount of third-party charges be disclosed on the summary of charges appearing at the very beginning of the customer's bill.

However, with the advent of paperless billing and automatic payment debited from customers' bank accounts, it is less and less likely that customers will scrutinize

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<sup>37</sup> *Main Street Tel. Co.*, Notice of Apparent Liability for Forfeiture, FCC 11-89 ¶ 18 (rel. June 16, 2011) (emphasis added).

their monthly bills to ferret out unauthorized third-party charges, even if the charges are more conspicuous. Complaints filed with the Attorneys General show that oftentimes customers have unknowingly paid for third-party services for months or even years without realizing that they were being billed by the third-party vendor. Codifying a rule that has already proven to be ineffective will do nothing more than provide additional defenses to those engaged in cramming.

#### **D. Disclosure of Commission Contact Information**

The Cramming NPRM proposes to require that the Commission's contact information be included on any telephone bill that includes third-party charges. In the Attorneys' General experience, very few customers file complaints for cramming violations, in part because customers do not know where to complain and landline telephone companies rarely direct customers to contact law enforcement. Therefore, this proposal may prove somewhat helpful.

However, if the customer is directed or encouraged to contact the Commission, the customer may be left with the impression that the Commission will actually mediate the complaint or obtain removal of the charge. Because the Commission does not operate in this manner, the Attorneys General recommend that customer bills also include information identifying the appropriate state public utility regulator (PSC/PUC), state Attorney General or other state law enforcement agencies that enforce anti-cramming statutes. The Attorneys General also recommend that the Commission work together with the FTC to share complaint data. This will ensure that all complaints are heard and no perpetrator escapes the attention of state or federal regulators.

In the course of resolving customer disputes of unauthorized charges, telephone

companies should also be required to refer customers to the Commission and state law enforcement agencies upon receiving consumer complaints regarding unauthorized third-party bills. Unlike the Commission and state utility regulators, if the third-party charge involves deceptive or misleading business practices, it is the FTC and state Attorneys General who have the authority and expertise to address these violations of law.<sup>38</sup> If these recommendations are followed, the appropriate governmental entities will be made aware of cramming in real time and be better able to identify patterns and practices affecting telephone customers.

#### **E. Due Diligence Checks on Third-Party Vendors**

The Commission asked for comments on whether telephone companies should be required to engage in due diligence investigations of third-party vendors. The problem, however, is that most wireline telephone companies do not deal directly with individual third-party vendors; instead, the telephone companies contract with third-party billing aggregators, relying on the due diligence of the billing aggregators to ensure third-party vendors are operating in compliance with the law.<sup>39</sup> In addition, many wireline telephone companies already have a maximum threshold for customer complaints. If that threshold is exceeded, the telephone company refuses to continue billing for the identified third-

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<sup>38</sup> For example, some third-party vendors have clearly disclosed the fee for their "service", but use deceptive and misleading advertising to trick customers into authorizing a charge by promising something different from what is actually delivered. Although not technically cramming, since the charges are authorized, these fraudulent and deceptive marketing practices are nevertheless illegal, and within the jurisdiction of State Attorneys General and the FTC to police.

<sup>39</sup> "The Billing Aggregator is responsible for complying with AT&T's subCIC application process, which requires submission of a multi-page application form, affidavits from both the proposed subCIC and Billing Aggregator, information on the officers and/or principals of the proposed subCIC, description of the services/product to be provided, associated marketing materials, and any required regulatory filings, among other information... The Billing Aggregator is responsible for ensuring the accuracy of all submissions by the subCIC and to conduct its own review of the proposed subCIC's qualifications." AT&T Comments, at 4-5. *See also supra* note 19. *See also* McCormick Statement, at 4.

party.

Unfortunately, crammers have discovered a way around these due diligence investigations and policies. A recent investigation by the Nevada Attorney General, for example, revealed a group of crammers using 12 shell corporations, all offering exactly the same service, to engage in large-scale cramming.<sup>40</sup> In this particular case, a major telephone company was in the process of blocking one corporation at the same time another corporation became active – apparently for the sole purpose of circumventing the block. The wireline telephone company had no way to connect the dots, and the billing aggregators clearly failed to detect the fraud.

The only way that the Attorney General discovered the true nature and structure of this operation was by using subpoena powers not available to wireline telephone companies. Therefore, due diligence investigations by telephone companies would only succeed if the billing aggregator is removed from the billing process, requiring the third-party vendor to deal directly with the telephone company. This simply is not practical.

In an Assurance of Discontinuance with Verizon New York, Inc., the New York Attorney General used the remedy of requiring the telephone company to screen vendors who trigger excessive customer bill disputes, similar to the Commission's proposal. However, unscrupulous vendors are able to game the system by forming multiple entities, thereby evading detection by the telephone company. This observation is corroborated by the Senate Report as one of several means used by crammers to hijack customers' telephone bills.<sup>41</sup>

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<sup>40</sup> *State of Nevada, Office of the Attorney General, ex rel. v. The Payment People, Inc. et al.*, 1<sup>st</sup> Judicial District, 09C43110.

<sup>41</sup> Senate Report at 22.



#### **IV. The Most Effective Solution to the Wireline Cramming Problem Is to Ban All Non-Telephone Third-Party Charges.**

Because phone bill cramming continues after years of enforcement proceedings, best practices, and telephone bill disclosures, the Attorneys General respectfully submit that the best way to protect customers from being billed on their telephone bills for products and services that they do not want, do not use, and did not agree to purchase is to ban third-party charges from telephone bills. This policy would be the most effective means for the Commission to ensure customers are protected from telephone bill cramming. In light of the fact that multiple investigations have revealed that over 95% of third-party charges are not authorized,<sup>42</sup> the Commission should not ignore the plight of innocent customers for the benefit of a comparatively few legitimate vendors. Some limited exceptions for certain telephone services, such as long distance calls, operator-assisted calls, prisoner calls and dial-around services, may be appropriate.

The Vermont legislature has enacted such a ban,<sup>43</sup> and other states are considering similar action. Vermont's statutory approach takes account of actual consumer expectations—*i.e.*, that consumers do *not* anticipate that they will be charged on their local telephone bills for third-party services. It is straightforward to enforce. It does not interfere with other methods of receiving payment for services provided, such as credit

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<sup>42</sup> In a recent Federal Trade Commission enforcement action alleging phone bill cramming by a third party vendor, the court found, based on a survey of the defendants' customers, that about 97 percent of the defendants' customers had not agreed to purchase the products for which the defendants billed them, and that just 5 percent of those customers were aware that the defendants' charges had appeared on their telephone bills. 95.9 percent of the defendants' customers surveyed indicated they did not use the product for which they were billed. *Federal Trade Commission v. Inc 21.Com Corporation*, 745 F. Supp. 2d 975, 1000-01 (N.D. Cal. 2010). *See also In re Unitedtel.com*, New York Attorney General.

<sup>43</sup> *See* 9 Vt. Stat. Ann. § 2466, which prohibits third-party charges from telephone bills with limited exceptions: goods and services sold by a company regulated by the Vermont Public Service Board; direct dial or dial-around services from the customer's telephone; operated assisted calls; collect calls and prison inmate calls.

cards, debit cards, personal checks, and electronic funds transfers. Finally, it is viewed as a solution to the problem of cramming which, if adopted nationally by the FCC, would be the most effective means to eliminate the problem of cramming.

Furthermore, such ban is authorized by the Commission's Title II jurisdiction.<sup>44</sup> Although the Commission stated, in 1986, that its rulemaking authority under Title II could not extend to regulation of third-party charges unrelated to telecommunications services,<sup>45</sup> the Commission altered its view in adopting the 1999 Truth In Billing Guidelines by asserting that it could regulate any third-party charge appearing on a phone bill pursuant to its Title II powers.<sup>46</sup> The Commission correctly found that "the telephone bill is an integral part of the relationship between a carrier and its customer."<sup>47</sup> Furthermore, since 1999 the Commission has construed its authority under Title II to extend to regulating cramming charges in several enforcement cases.<sup>48</sup>

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<sup>44</sup> 47 U.S.C. § 201(b) (1934).

<sup>45</sup> In 1986, the Commission held that "we believe that carrier billing or collection for the offering of another unaffiliated carrier is not a communication service for purposes of Title II of the Communications Act." *In the Matter of Detariffing of Billing & Collection Services*, 102 F.C.C.2d, ¶ 31, 1150 (1986).

<sup>46</sup> The Truth in Billing Guidelines require telephone bills "to be clearly organized, clearly identify the service provider, and highlight any new providers," to "contain full and non-misleading descriptions of charges that appear therein," and "to contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill." 14 F.C.C.R. 7492 ¶ 5 (1999). In adopting these Guidelines, the Commission held, "We find that our authority to enact the truth-in-billing guidelines set forth herein stems from . . . section 201(b) . . . ." *Id.* ¶ 21.

<sup>47</sup> *Id.* ¶ 20.

<sup>48</sup> In issuing a Notice of Apparent Liability for Forfeiture against a third-party biller, the FCC explicitly held that "[t]he Commission has found that the inclusion of unauthorized charges and fees on consumers' telephone bills is an unjust and unreasonable practice under section 201(b)." *In the Matter of Cheap2Dial Telephone, LLC, supra*, ¶ 10 (internal quotations omitted); *see also In the Matter of Main Street Telephone Company, supra*, ¶ 21 ("[W]e find that . . . cramming constitutes an unjust and unreasonable practice and demonstrates apparent willful and repeated violations of section 201(b) of the Act.")

**V. Short of a Total Ban, the Commission Should Require Wireline Telephone Companies to Block Third-Party Charges For All Customers and Permit Those Customers Who Want to Pay For Third-Party Services to Opt-In Only By Consenting From Their Telephone**

If the Commission is not willing to impose a total ban on third-party billing by wireline telephone companies, the only other option is to adopt a mandatory default blocking policy that requires customers to individually opt-in to a specific vendor's services if they truly wish to use and pay for services from that vendor through their telephone bills. Because the majority of customers do not want third-party charges on their bills, and most are unaware that their telephone bills are vulnerable to such charges, all wireline telephone companies should be required to block third-party billing for all existing and newly enrolled customers, by default. The customer should not be burdened with requesting a block, as most customers will not understand the need for such protection until after being victimized by a scammer. Blocking third-party charges should not cost customers any additional fee. Certain limited exceptions to the default block (*e.g.*, prisoner-family calls, operator assistance services like collect calling, and dial-around long distance "10-10-XXX calling") should apply, and customers should be informed of these limited exceptions.

In addition, because dishonest vendors have been known to falsify customer authorizations, when consumers opt to remove blocking for a specific vendor the customer should be required to provide consent directly to the telephone company from the customer's own telephone line used for the billing account, with identity confirmation by use of either the full telephone account number or a password selected by the

customer.<sup>49</sup> Third-party vendors should not be permitted to supply a customer's authorization to the telephone company directly, or through an intermediary billing aggregator. Customers should be allowed to selectively opt-in to specific third-party charges (*e.g.*, AOL or Earthlink or Direct TV services) without removing the block on all other third-party charges. If a customer opts to remove the block for a specific vendor, the telephone company must clearly and conspicuously disclose that this may expose them to unauthorized charges by unscrupulous vendors.

In addition, wireline telephone companies should be required to remove disputed charges from a customer's bill the first time the customer reports that a third-party charge is unauthorized. In other words, if the block fails, the customer should be provided immediate relief. Although some telephone company policies include this provision, in practice it is not uncommon for some service representatives to instead refer the complaining customer to the vendor or aggregator, saying there is nothing the telephone company can do about the bill charge. The Senate Report noted similar customer experiences.<sup>50</sup>

**VI. For Wireless Customer Protection, the Commission Should Mandate Customer Consent to Third-Party Charges Verified By Calls or Text Messages From the Customer's Telephone Before the Carrier Is Allowed to Add Third-Party Charges to a Customer's Bill.**

Although wireless customers file only 16% of all cramming complaints,<sup>51</sup> the increasing use of wireless telephone service, coupled with a decline in the number of

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<sup>49</sup> This procedure is analogous to that employed by the Commission for many years to curtail unauthorized switching of long distance carrier selection ("slamming") where the customer must personally verify the request to change providers.

<sup>50</sup> Senate Report at iv.

<sup>51</sup> Cramming NPRM, ¶¶ 19, 29.

landlines, may eventually lead to a greater portion of cramming complaints coming from wireless customers. In fact, wireless customers are increasingly using their wireless devices to make donations to charities,<sup>52</sup> participate in interactive media events, and purchase ringtones or other mobile applications, resulting in additional charges to their wireless telephone accounts. It is important, therefore, that the Commission establish effective consumer protections for wireless customers now, before wireless cramming becomes as pervasive as wireline cramming.

To ensure that all carriers adequately protect their wireless customers, even as new technologies enable yet unseen means for customers to make purchases with their wireless devices, the Commission should require all wireless telephone companies to obtain authorization for each third-party charge by way of a text or call made directly from the customer's wireless phone to the wireless telephone company. For example, charity donors are asked to send a text message to a specific code to authorize billing donations through their wireless telephone account. Such methods of verification create telephone switching records and call detail records that are often of substantial assistance in establishing that a customer did or did not authorize a disputed service or charge. Much existing wireless purchasing incorporates (by industry choice) effective protections to ensure that wireless providers bill customers only for charges the customer knowingly and intentionally authorizes. The Commission should mandate that all wireless carriers employ equally effective protections.

Wireless carriers should be required to clearly disclose the risks of bill cramming to new customers, who should also be provided the option of having all third-party

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<sup>52</sup> For example, the American Red Cross and other organizations raised substantial sums by enabling wireless customers to make donations by text messaging.

charges blocked from their account. This protection is necessary to provide the account holder with control as to what types of charges can be incurred on the wireless account. Whether it is to meet the needs of parents wanting to limit purchasing by children on family plans, or employers seeking to curtail irresponsible usage by employees with company-owned handsets, blocking options should be offered by wireless carriers without charge.

### **CONCLUSION**

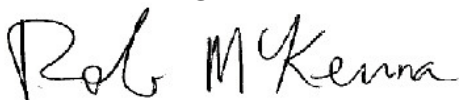
It is time that the Commission take decisive and effective action to put an end to unauthorized third-party charges on customer telephone bills. The undersigned Attorneys General urge the Commission to adopt the recommendations set forth herein.



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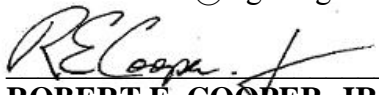
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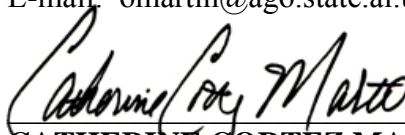
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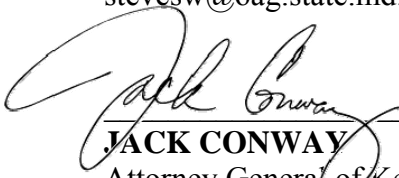
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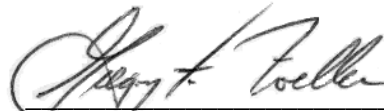
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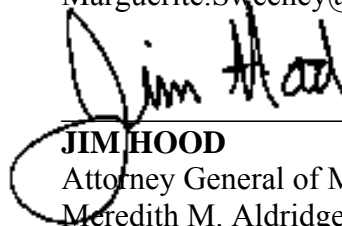
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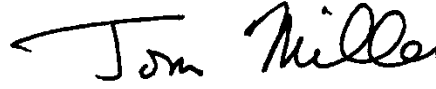
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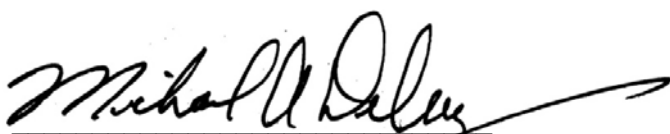


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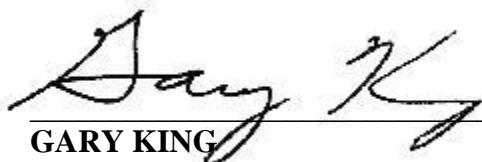
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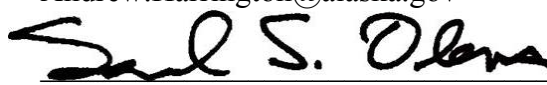
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