

113TH CONGRESS
1ST SESSION

S. 1144

To prohibit unauthorized third-party charges on wireline telephone bills, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2013

Mr. ROCKEFELLER (for himself, Ms. KLOBUCHAR, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit unauthorized third-party charges on wireline telephone bills, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Telephone Billing
5 Act of 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) For years, telephone users have complained
9 that their wireline telephone bills included unauthor-
10 ized third-party charges.

1 (2) This problem, commonly referred to as
2 “cramming”, first appeared in the 1990s, after
3 wireline telephone companies opened their billing
4 platforms to an array of third-party vendors offering
5 a variety of services.

6 (3) Since the 1990s, the Federal Communica-
7 tions Commission, the Federal Trade Commission,
8 and State attorneys general have brought multiple
9 enforcement actions against dozens of individuals
10 and companies for engaging in cramming.

11 (4) An investigation by the Committee on Com-
12 merce, Science, and Transportation of the Senate
13 confirmed that cramming is a problem of massive
14 proportions and has affected millions of telephone
15 users, costing them billions of dollars in unauthor-
16 ized third-party charges over the past decade.

17 (5) The Committee showed that third-party bill-
18 ing through wireline telephone numbers has largely
19 failed to become a reliable method of payment that
20 consumers and businesses can use to conduct legiti-
21 mate commerce.

22 (6) Telephone companies regularly placed third-
23 party charges on their customers’ telephone bills
24 without their customers’ authorization.

1 (7) Many companies engaged in third-party bill-
2 ing were illegitimate and created solely to exploit the
3 weaknesses in the third-party billing platforms es-
4 tablished by telephone companies.

5 (8) In the last decade, millions of business and
6 residential consumers have transitioned from
7 wireline telephone service to interconnected VoIP
8 service.

9 (9) Users of interconnected VoIP service often
10 use the service as the primary telephone line for
11 their residences and businesses.

12 (10) Millions more business and residential con-
13 sumers are expected to migrate to interconnected
14 VoIP service in the coming years as the evolution of
15 the nation's traditional voice communications net-
16 works to IP-based networks continues.

17 (11) Users of interconnected VoIP service that
18 have telephone numbers through the service should
19 be protected from the same vulnerabilities that af-
20 fected third-party billing through wireline telephone
21 numbers.

22 **SEC. 3. UNAUTHORIZED THIRD-PARTY CHARGES.**

23 (a) IN GENERAL.—Section 258 of the Communica-
24 tions Act of 1934 (47 U.S.C. 258) is amended—

1 (1) by amending the heading to read as follows:

2 **“SEC. 258. PREVENTING ILLEGAL CHANGES IN**
3 **SUBSCRIBER CARRIER SELECTIONS AND UNAU-**
4 **THORIZED THIRD-PARTY CHARGES.”**; and

5 (2) by adding at the end the following:

6 **“(c) PROHIBITION.—**

7 **“(1) IN GENERAL.—**No local exchange carrier
8 or provider of interconnected VoIP service shall
9 place or cause to be placed a third-party charge that
10 is not directly related to the provision of telephone
11 services on the bill of a customer, unless—

12 **“(A) the third-party charge is from a con-**
13 **tracted third-party vendor;**

14 **“(B) the third-party charge is for a prod-**
15 **uct or service that a local exchange carrier or**
16 **provider of interconnected VoIP service jointly**
17 **markets or jointly sells with its own service;**

18 **“(C) the customer was provided with clear**
19 **and conspicuous disclosure of all material terms**
20 **and conditions prior to consenting under sub-**
21 **paragraph (D);**

22 **“(D) the customer provided affirmative**
23 **consent for the placement of the third-party**
24 **charge on the bill; and**

1 “(E) the local exchange carrier or provider
2 of interconnected VoIP service has implemented
3 reasonable procedures to ensure that the third-
4 party charge is for a product or service re-
5 quested by the customer.

6 “(2) FORFEITURE AND REFUND.—

7 “(A) IN GENERAL.—Any person who com-
8 mits a violation of paragraph (1) shall be sub-
9 ject to a civil forfeiture, which shall be deter-
10 mined in accordance with section 503 of title V
11 of this Act, except that the amount of the pen-
12 alty shall be double the otherwise applicable
13 amount of the penalty under that section.

14 “(B) REFUND.—Any local exchange car-
15 rier or provider of interconnected VoIP service
16 that commits a violation of paragraph (1) shall
17 be liable to the customer in an amount equal to
18 all charges paid by that customer related to the
19 violation of paragraph (1), in accordance with
20 such procedures as the Commission may pre-
21 scribe.

22 “(3) ADDITIONAL REMEDIES.—The remedies
23 under this subsection are in addition to any other
24 remedies provided by law.

25 “(4) DEFINITIONS.—In this subsection:

1 “(A) AFFIRMATIVE CONSENT.—The term
2 ‘affirmative consent’ means express verifiable
3 authorization.

4 “(B) CONTRACTED THIRD-PARTY VEN-
5 DOR.—The term ‘contracted third-party vendor’
6 means a person that has a contractual right to
7 receive billing and collection services from a
8 local exchange carrier or a provider of inter-
9 connected VoIP service for a product or service
10 that the person provides directly to a customer.

11 “(C) THIRD-PARTY CHARGE.—The term
12 ‘third-party charge’ means a charge for a prod-
13 uct or service not provided by a local exchange
14 carrier or a provider of interconnected VoIP
15 service.”.

16 (b) RULEMAKING.—

17 (1) IN GENERAL.—Not later than 90 days after
18 the date of enactment of this Act, the Federal Com-
19 munications Commission, in consultation with the
20 Federal Trade Commission, shall prescribe any rules
21 necessary to implement the provisions of this sec-
22 tion.

23 (2) MINIMUM CONTENTS.—At a minimum, the
24 regulations promulgated by the Federal Communica-
25 tions Commission under this subsection shall—

1 (A) define how local exchange carriers and
2 providers of interconnected VoIP service will
3 obtain affirmative consent from a consumer for
4 a third-party charge;

5 (B) include adequate protections to ensure
6 that consumers are fully aware of the charges
7 to which they are consenting; and

8 (C) impose recordkeeping requirements on
9 local exchange carriers and providers of inter-
10 connected VoIP service related to any grants of
11 affirmative consent by consumers.

12 (c) **EFFECTIVE DATE.**—The Federal Communica-
13 tions Commission shall prescribe that any rule adopted
14 under subsection (b) shall become effective for a local ex-
15 change carrier or provider of interconnected VoIP service
16 not later than the date that the carrier’s or provider’s con-
17 tractual obligation to permit another person to charge a
18 customer for a good or service on a bill rendered by the
19 carrier or provider expires, or 180 days after the date of
20 enactment of this Act, whichever is earlier.

21 **SEC. 4. RELATIONSHIP TO OTHER LAWS.**

22 (a) **NO PREEMPTION OF STATE LAWS.**—Nothing in
23 this Act shall be construed to preempt any State law, ex-
24 cept that no State law may relieve any person of a require-
25 ment otherwise applicable under this Act.

1 (b) PRESERVATION OF FTC AUTHORITY.—Nothing
2 in this Act shall be construed as modifying, limiting, or
3 otherwise affecting the applicability of the Federal Trade
4 Commission Act (15 U.S.C. 41 et seq.) or any other law
5 enforced by the Federal Trade Commission.

6 **SEC. 5. SEVERABILITY.**

7 If any provision of this Act or the application of that
8 provision to any person or circumstance is held invalid,
9 the remainder of this Act and the application of that provi-
10 sion to any other person or circumstance shall not be af-
11 fected thereby.

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