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I N A S S E M B L Y

May 16, 2012

Introduced by M. of A. SKARTADOS, DINOWITZ, BRONSON, CASTRO, CLARK, COLTON, FARRELL, GALEF, JAFFEE, LANCMAN, MARKEY, N. RIVERA, ROBERTS, STEVENSON, TITONE -- Multi-Sponsored by -- M. of A. CYMBROWITZ, GLICK, GOTTFRIED, HOOPER, SCHIMEL, WEINSTEIN -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the public service law and the general business law, in relation to consumer protections against cramming

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph of section 92-d of the public service
2 law, as separately amended by chapters 546 and 547 of the laws of 2000,
3 is amended to read as follows:
4 Each local exchange telephone company shall inform its customers of
5 the provisions of SECTION NINETY-TWO-G OF THIS ARTICLE, sections three
6 hundred ninety-nine-p [and], three hundred ninety-nine-z and three
7 hundred ninety-nine-pp of the general business law, and article ten-B of
8 the personal property law, as such provisions relate to the rights of
9 consumers with respect to CRAMMING, telemarketers, sellers, the no tele-
10 marketing sales call statewide registry and automatic dialing-announcing
11 devices, by means of:
12 S 2. The public service law is amended by adding a new section 92-g to
13 read as follows:
14 S 92-G. CRAMMING PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION,
15 "CRAMMING" MEANS THE INCLUSION AND IMPOSITION OF CHARGES ON THE INVOICE
16 OR BILL OF A CUSTOMER FROM A TELEPHONE CORPORATION AT THE REQUEST OF A
17 THIRD PARTY OR BILLING AGGREGATOR THAT (A) WERE NOT AUTHORIZED BY THE
18 CUSTOMER, OR (B) IF AUTHORIZED, WERE OBTAINED THROUGH MISLEADING OR
19 DECEPTIVE MEANS.
20 2. A CUSTOMER SHALL NOT BE LIABLE FOR CHARGES APPEARING ON THE INVOICE
21 OR BILL OF A TELEPHONE CORPORATION THAT ARE THE RESULT OF CRAMMING. NO
22 CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN THOSE PROVIDED BY THE
23 TELEPHONE CORPORATION, ITS AFFILIATES, A THIRD PARTY VIDEO PROVIDER WITH
24 WHOM A TELEPHONE CORPORATION OR ITS AFFILIATE JOINTLY MARKET SERVICES,
25 OR OTHERWISE PERMITTED BY LAW, SHALL BE INCLUDED ON ANY BILL OR INVOICE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 OF A CUSTOMER, UNLESS THE THIRD PARTY REQUESTING THE PAYMENT OF SUCH
2 CHARGES RETAINS AND PROVIDES UPON REQUEST VALID PROOF THAT:

3 (A) THE CUSTOMER WAS PROVIDED WITH CLEAR AND CONSPICUOUS DISCLOSURE OF
4 ALL MATERIAL TERMS AND CONDITIONS OF THE PRODUCT OR SERVICE BEING
5 OFFERED, INCLUDING BUT NOT LIMITED TO ALL INITIAL AND RECURRING CHARGES
6 AND THE FACT THAT SUCH CHARGES SHALL APPEAR ON THE CUSTOMER'S TELEPHONE
7 BILL;

8 (B) AFTER RECEIVING CLEAR AND CONSPICUOUS DISCLOSURE AS PROVIDED IN
9 PARAGRAPH (A) OF THIS SUBDIVISION, THE CUSTOMER EXPLICITLY CONSENTED TO
10 THE NATURE AND AMOUNT OF SUCH CHARGES; AND

11 (C) THE THIRD PARTY OFFERING THE PRODUCT OR SERVICE OR AN AGENT OF
12 SUCH THIRD PARTY PROVIDED THE CUSTOMER WITH A TOLL-FREE TELEPHONE NUMBER
13 THE CUSTOMER MAY CALL AND AN ADDRESS TO WHICH THE CUSTOMER MAY WRITE TO
14 RESOLVE ANY BILLING DISPUTE.

15 3. ANY CHARGES FOR THIRD PARTY PRODUCTS OR SERVICES THAT ARE INCLUDED
16 ON A BILL OR INVOICE BY A TELEPHONE CORPORATION WITHOUT THE CONSENT OF
17 THE CUSTOMER HAVING BEEN OBTAINED AS PROVIDED IN SUBDIVISION TWO OF THIS
18 SECTION SHALL BE VOID AND UNENFORCEABLE, AND SHALL BE REMOVED FROM THE
19 BILL OR INVOICE UPON NOTICE FROM SUCH CUSTOMER.

20 4. THE COMMISSION SHALL SUPERVISE AND ENSURE COMPLIANCE WITH THE
21 PROVISIONS OF THIS SECTION, AND MAY PROMULGATE ANY RULES AND REGULATIONS
22 IT DEEMS NECESSARY OR DESIRABLE TO ENSURE SUCH COMPLIANCE, INCLUDING BUT
23 NOT LIMITED TO ANY ADDITIONAL REQUIREMENTS FOR VERIFICATION OF CUSTOMER
24 ORDERS AND ANY ADDITIONAL STANDARDS THAT THIRD PARTIES OR AGENTS MUST
25 MEET TO BE AUTHORIZED TO RECEIVE PAYMENT THROUGH THE INCLUSION OF CHARG-
26 ES ON BILLS OR INVOICES OF TELEPHONE CORPORATIONS. ANY FAILURE BY A
27 TELEPHONE CORPORATION TO COMPLY WITH THE PROVISIONS OF THIS SECTION MAY
28 BE REDRESSED AS PROVIDED IN SUBDIVISION THREE OF SECTION NINETY-SIX OF
29 THIS ARTICLE OR AS OTHERWISE AUTHORIZED BY LAW.

30 S 3. The general business law is amended by adding a new section 390-
31 bb to read as follows:

32 S 390-BB. CRAMMING PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION,
33 "CRAMMING" MEANS THE INCLUSION AND IMPOSITION OF CHARGES ON THE INVOICE
34 OR BILL FOR TELEPHONE SERVICE TO A CUSTOMER FROM A CABLE TELEVISION
35 COMPANY, AS DEFINED IN SECTION TWO HUNDRED TWELVE OF THE PUBLIC SERVICE
36 LAW, THAT PROVIDES TELEPHONE SERVICE TO CUSTOMERS IN NEW YORK, AT THE
37 REQUEST OF A THIRD PARTY OR BILLING AGGREGATOR THAT (A) WERE NOT AUTHOR-
38 IZED BY THE CUSTOMER, OR (B) IF AUTHORIZED, WERE OBTAINED THROUGH
39 MISLEADING OR DECEPTIVE MEANS.

40 2. A CUSTOMER SHALL NOT BE LIABLE FOR CHARGES APPEARING ON THE INVOICE
41 OR BILL OF A CABLE TELEVISION COMPANY FOR TELEPHONE SERVICE THAT ARE THE
42 RESULT OF CRAMMING. NO CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN
43 THOSE PROVIDED BY THE CABLE TELEVISION COMPANY, ITS AFFILIATES, A THIRD
44 PARTY VIDEO PROVIDER WITH WHOM A CABLE TELEVISION COMPANY OR ITS AFFIL-
45 IATE JOINTLY MARKET SERVICES, OR OTHERWISE PERMITTED BY LAW, SHALL BE
46 INCLUDED ON ANY BILL OR INVOICE FOR TELEPHONE SERVICE, UNLESS THE THIRD
47 PARTY REQUESTING THE PAYMENT OF SUCH CHARGES RETAINS AND PROVIDES UPON
48 REQUEST VALID PROOF THAT:

49 (A) THE CUSTOMER WAS PROVIDED WITH CLEAR AND CONSPICUOUS DISCLOSURE OF
50 ALL MATERIAL TERMS AND CONDITIONS OF THE PRODUCT OR SERVICE BEING
51 OFFERED, INCLUDING BUT NOT LIMITED TO ALL INITIAL AND RECURRING CHARGES
52 AND THE FACT THAT SUCH CHARGES SHALL APPEAR ON THE CUSTOMER'S FOR TELE-
53 PHONE SERVICE BILL;

54 (B) AFTER RECEIVING CLEAR AND CONSPICUOUS DISCLOSURE AS PROVIDED IN
55 PARAGRAPH (A) OF THIS SUBDIVISION, THE CUSTOMER EXPLICITLY CONSENTED TO
56 THE NATURE AND AMOUNT OF SUCH CHARGES; AND

1 (C) THE THIRD PARTY OFFERING THE PRODUCT OR SERVICE OR AN AGENT OF
2 SUCH THIRD PARTY PROVIDED THE CUSTOMER WITH A TOLL-FREE TELEPHONE NUMBER
3 THE CUSTOMER MAY CALL AND AN ADDRESS TO WHICH THE CUSTOMER MAY WRITE TO
4 RESOLVE ANY BILLING DISPUTE.

5 3. ANY CHARGES FOR THIRD PARTY PRODUCTS OR SERVICES THAT ARE INCLUDED
6 ON A BILL OR INVOICE FOR TELEPHONE SERVICE BY A CABLE TELEVISION COMPANY
7 WITHOUT THE CONSENT OF THE CUSTOMER HAVING BEEN OBTAINED AS PROVIDED IN
8 SUBDIVISION TWO OF THIS SECTION SHALL BE VOID AND UNENFORCEABLE, AND
9 SHALL BE REMOVED FROM THE BILL OR INVOICE UPON NOTICE FROM SUCH CUSTOM-
10 ER.

11 S 4. Subdivision 1 of section 227-a of the public service law, as
12 added by chapter 83 of the laws of 1995, is amended to read as follows:

13 1. Every cable television company, and all officers, agents and
14 employees of any cable television company shall obey, observe and comply
15 with every order, direction or requirement made by the commission, under
16 authority of this article, so long as the same shall be and remain in
17 force. Except as provided in subdivision two of this section, any cable
18 television company which shall violate any provision of this article OR
19 SECTION THREE HUNDRED NINETY-BB OF THE GENERAL BUSINESS LAW, or which
20 fails, omits or neglects to obey, observe or comply with any order or
21 any direction or requirement of the commission, shall forfeit to the
22 people of the state of New York a sum to be set by the commission not to
23 exceed one thousand dollars for each and every offense; every violation
24 of any such order or direction or requirement, or of this article OR
25 SECTION THREE HUNDRED NINETY-BB OF THE GENERAL BUSINESS LAW, shall be a
26 separate and distinct offense, and, in case of a continuing violation,
27 every day's continuance thereof shall be a separate and distinct
28 offense.

29 S 5. This act shall take effect on the one hundred eightieth day after
30 it shall have become a law.