STATE OF NEW YORK

9624

IN ASSEMBLY

January 28, 2020

Introduced by M. of A. JACOBSON, WEPRIN, OTIS -- 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:

Section 1. The opening paragraph of section 92-d of the public service law, as separately amended by chapters 546 and 547 of the laws of 2000, is amended to read as follows:

Each local exchange telephone company shall inform its customers of the provisions of section ninety-two-i of this article, sections three hundred ninety-nine-p [~~and~~], three hundred ninety-nine-z and three hundred ninety-nine-pp of the general business law, and article ten-B of the personal property law, as such provisions relate to the rights of consumers with respect to cramming, telemarketers, sellers, the no telemarketing sales call statewide registry and automatic dialing-announcing devices, by means of:

§ 2. The public service law is amended by adding a new section 92-i to read as follows:

§ 92-i. Cramming prohibited. 1. For the purposes of this section, "cramming" means the inclusion and imposition of charges on the invoice or bill of a customer from a telephone corporation at the request of a third party or billing aggregator that (a) were not authorized by the customer, or (b) if authorized, were obtained through misleading or deceptive means.

2. A customer shall not be liable for charges appearing on the invoice or bill of a telephone corporation that are the result of cramming. No charges for any products or services, other than those provided by the telephone corporation, its affiliates, a third party video provider with whom a telephone corporation or its affiliate jointly market services, or otherwise permitted by law, shall be included on any bill or invoice of a customer, unless the third party requesting the payment of such charges retains and provides upon request valid proof that:

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

LBD05747-01-9

<u>(a) the customer was provided with clear and conspicuous disclosure of all material terms and conditions of the product or service being offered, including but not limited to all initial and recurring charges and the fact that such charges shall appear on the customer's telephone bill;</u>

<u>(b) after receiving clear and conspicuous disclosure as provided in paragraph (a) of this subdivision, the customer explicitly consented to the nature and amount of such charges; and</u>

<u>(c) the third party offering the product or service or an agent of such third party provided the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute.</u>

<u>3. Any charges for third party products or services that are included on a bill or invoice by a telephone corporation without the consent of the customer having been obtained as provided in subdivision two of this section shall be void and unenforceable, and shall be removed from the bill or invoice upon notice from such customer.</u>

<u>4. The commission shall supervise and ensure compliance with the provisions of this section, and may promulgate any rules and regulations it deems necessary or desirable to ensure such compliance, including but not limited to any additional requirements for verification of customer orders and any additional standards that third parties or agents must meet to be authorized to receive payment through the inclusion of charges on bills or invoices of telephone corporations. Any failure by a telephone corporation to comply with the provisions of this section may be redressed as provided in subdivision three of section ninety-six of this article or as otherwise authorized by law.</u>

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

<u>§ 390-bb. Cramming prohibited. 1. For the purposes of this section, "cramming" means the inclusion and imposition of charges on the invoice or bill for telephone service to a customer from a cable television company, as defined in section two hundred twelve of the public service law, that provides telephone service to customers in New York, at the request of a third party or billing aggregator that (a) were not authorized by the customer, or (b) if authorized, were obtained through misleading or deceptive means.</u>

<u>2. A customer shall not be liable for charges appearing on the invoice or bill of a cable television company for telephone service that are the result of cramming. No charges for any products or services, other than those provided by the cable television company, its affiliates, a third party video provider with whom a cable television company or its affiliate jointly market services, or otherwise permitted by law, shall be included on any bill or invoice for telephone service, unless the third party requesting the payment of such charges retains and provides upon request valid proof that:</u>

<u>(a) the customer was provided with clear and conspicuous disclosure of all material terms and conditions of the product or service being offered, including but not limited to all initial and recurring charges and the fact that such charges shall appear on the customer's telephone service bill;</u>

<u>(b) after receiving clear and conspicuous disclosure as provided in paragraph (a) of this subdivision, the customer explicitly consented to the nature and amount of such charges; and</u>

<u>(c) the third party offering the product or service or an agent of such third party provided the customer with a toll-free telephone number</u>

<u>**the customer may call and an address to which the customer may write to resolve any billing dispute.**</u>

<u>**3. Any charges for third party products or services that are included on a bill or invoice for telephone service by a cable television company without the consent of the customer having been obtained as provided in subdivision two of this section shall be void and unenforceable, and shall be removed from the bill or invoice upon notice from such customer.**</u>

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

1. Every cable television company, and all officers, agents and employees of any cable television company shall obey, observe and comply with every order, direction or requirement made by the commission, under authority of this article, so long as the same shall be and remain in force. Except as provided in subdivision two of this section, any cable television company which shall violate any provision of this article <u>**or section three hundred ninety-bb of the general business law**</u>, or which fails, omits or neglects to obey, observe or comply with any order or any direction or requirement of the commission, shall forfeit to the people of the state of New York a sum to be set by the commission not to exceed one thousand dollars for each and every offense; every violation of any such order or direction or requirement, or of this article <u>**or section three hundred ninety-bb of the general business law**</u>, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

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