

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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

**COMMENTS OF CENTER FOR MEDIA JUSTICE, CITIZENS UTILITY BOARD,  
CONSUMER ACTION, CONSUMER FEDERATION OF AMERICA, NATIONAL  
CONSUMER LAW CENTER - ON BEHALF OF ITS LOW-INCOME CLIENTS,  
NATIONAL CONSUMER LEAGUE AND VIRGINIA CITIZENS CONSUMER COUNCIL**

November 18, 2013

## Table of Contents

<b>I. Introduction .....</b>	<b>3</b>
<b>II. Summary.....</b>	<b>3</b>
<b>IV. Wireless Cramming Fraud Costs Consumers Millions of Dollars Annually...5</b>	
<b>V. The Wireless Third-Party Billing Platform is the Chokepoint for Cramming Fraud.....</b>	<b>9</b>
<b>VI. Wireline Cramming Experience Demonstrates That Industry Self-Regulation Is Unlikely to Sufficiently Reduce Wireless Cramming Rates .....</b>	<b>10</b>
<b>VII. Current Wireless Anti-Cramming Strategies Are Flawed And Unlikely To Prevent Increasing Fraud Rates .....</b>	<b>12</b>
<b>VIII. The FCC Should Consider Sensible Regulations to Reduce Cramming Fraud While Protecting Legitimate Commerce.....</b>	<b>14</b>
<b>IX. Conclusion.....</b>	<b>16</b>

## I. Introduction

The Center for Media Justice, Citizens Utility Board, Consumer Action, Consumer Federation of America, National Consumer Law Center, *on behalf of its low-income clients*, National Consumers League and Virginia Citizens Consumer Council, hereby respectfully submit the following comments in response to the *Public Notice* adopted by the Commission in the above-captioned dockets.<sup>1</sup>

## II. Summary

Cramming -- the unauthorized placement of charges on telephone bills -- is a significant and growing threat to millions of American consumers. This fraud is believed to cost Americans hundreds of millions of dollars annually. Relying on publicly available data from the California Public Utilities Commission, the FCC, and the state of Vermont, we estimate that wireless cramming fraud alone costs U.S. consumers as much as \$887 million annually. While the stakeholders in the third-party billing ecosystem have attempted to address this threat through a variety of voluntary self-regulatory mechanisms, it is clear that these efforts have not adequately protected the nation's wireline and wireless subscribers. As it considers the issue of cramming, the Federal Communications Commission ("Commission" or "FCC") should keep in mind the failure of more than a decade of industry self-regulatory efforts to significantly reduce cramming rates on wireline phone bills. The FCC should therefore take regulatory action to better protect wireline and wireless telephone users from cramming fraud.

---

<sup>1</sup> *Consumer and Government Affairs Bureau Seeks to Refresh the Record Regarding "Cramming," CG Docket No. 11-116; Consumer Information and Disclosure, CG Docket No. 09-158; Truth-in-Billing Format, CC Docket No. 98-170 (Rel. August 27, 2013)*(hereafter "*Public Notice*").

### **III. Third-Party Billing for Services Unrelated to the Underlying Wireline Telecommunications Service Should Be Prohibited**

In early 2012, the three largest local exchange carriers (“LEC’s”) – AT&T, CenturyLink and Verizon – voluntarily agreed to cease providing third-party billing for products and services unrelated to the underlying telecommunications service.<sup>2</sup> Despite these voluntary actions by some carriers, we believe a regulatory prohibition on third-party billing for unaffiliated non-telecommunications-related services would be the most effective protection against cramming on wireline (which includes voice-over-IP or “VoIP”) telephone bills. While the actions of the large LEC’s will protect many, millions of consumers are not subscribers of these three carriers and remain vulnerable to cramming fraud. Therefore, a Commission prohibition on third-party billing by LEC’s and VoIP carriers for non-telecommunications services would protect all consumers, not simply the customers of the three largest LECs. Indeed, numerous commenters in this proceeding have noted that a prohibition on third-party billing on wireline telephone bills would be an effective solution to the problem of cramming.<sup>3</sup>

Specifically, the Commission should adopt rules that are broadly modeled on successful state legislation in Vermont that prohibits wireline third-party billing with certain exceptions.<sup>4</sup> This would entail a prohibition of third-party billing

---

<sup>2</sup> See Letter from Timothy McKone, Executive Vice President, Federal Relations, AT&T Services, Inc., to The Honorable John D. Rockefeller, Chairman, Committee on Commerce, Science & Transportation, United States Senate (Mar. 28, 2012) attaching letter from Mark A. Kerber, General Attorney, AT&T Services, Inc., to All AT&T Billing Solutions Services Customers (Mar. 28, 2012); Letter from Ian Dillner, Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC (Mar. 23, 2012); News Release, Klobuchar: CenturyLink Joins AT&T and Verizon in Putting a Stop to Cramming on Phone Bills (Apr. 3, 2012), available at [http://klobuchar.senate.gov/inthenews\\_detail.cfm?id=336476&](http://klobuchar.senate.gov/inthenews_detail.cfm?id=336476&).

<sup>3</sup> See *e.g.*, Comments of the Federal Trade Commission. CG Docket 11-116 (filed Oct. 24, 2011) at 5; Comments of Attorneys General of Illinois, Nevada and Vermont, CG Docket 11-116 (filed Oct. 24, 2011) at 11; Reply Comments of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, CG Docket No. 11-116 (Filed Dec. 5, 2011) at 13.

<sup>4</sup> See 9 V.S.A. § 2466(f) (as amended by 52 Vermont Laws § 78 (2011)), <http://www.leg.state.vt.us/docs/2012/bills/Passed/H-287.pdf> at 105.

services by all wireline carriers to service providers whose products and services are not under the jurisdiction of the Commission. Such a prohibition would cover so-called “enhanced” services that bear little, if any, relation to the underlying telephone service. Services mentioned in the record which could fall into this category would include, but not be limited to, electronic facsimile, enhanced voicemail, website hosting, web design, search engine optimization, identity theft protection and “technical support.”

Such a prohibition should not apply to services that are related to the underlying telephone service. Examples of such services are dial-1 and dial-around long distance calling, collect calling, directory assistance, operator-assisted telephone calls and inmate calling services. In addition, a prohibition on third-party billing should not apply to service providers who have a direct contractual relationship with the underlying wireline service provider (as opposed to an indirect relationship via a billing aggregator) and which are marketed to consumers as part of a bundled service package. Service providers covered by this exemption would include, but not be limited to satellite television providers, competitive DSL providers and certain dial-up Internet service providers.

#### **IV. Wireless Cramming Fraud Costs Consumers Millions of Dollars Annually**

Cramming on wireless telephones is a serious and growing threat that costs consumers millions of dollars annually. The FTC estimated that there were 400,000 instances of fraud involving “Games or Other Programs Delivered to a Cell Phone or Other Mobile Device,” in 2011 alone.<sup>5</sup> Given the prevalence of mobile malware being

---

<sup>5</sup> Federal Trade Commission. *2011 FTC Fraud Survey*. Pg. 28. April 2013. Online: <http://www.ftc.gov/os/2013/04/130419fraudsurvey.pdf>.

used to commit premium SMS toll fraud, we believe that this number includes a significant number of instances of cramming fraud.<sup>6</sup>

More specifically, the FTC has also reported receiving more than 1,800 complaints of unauthorized charges on wireless bills since 2010.<sup>7</sup> The FTC has also stated that this number also likely understates the true scale of wireless cramming fraud.<sup>8</sup>

The FCC reported that cramming complaints related to wireless service appears to have “nearly doubled” from 2008-2010 to 2011.<sup>9</sup> This significant and worrying increase demonstrates the growing threat of wireless cramming.

While these statistics are alarming enough, consumer complaint data likely understates the scope of wireless cramming fraud. As the FCC has noted, cramming charges are intentionally for small amounts, may have misleading labels and may be buried in multi-page wireless bills. In addition, consumers often are unaware of how to file complaints disputing such charges. Therefore, the number of cramming complaints reported to agencies such as the FCC and FTC likely substantially understates the true extent of the problem.

Anecdotal evidence suggests that wireless cramming fraud is extremely lucrative for its perpetrators. For example, in its complaint against Wise Media, the FTC alleges that the company made “millions of dollars” through its mobile

---

<sup>6</sup> For additional discussion of mobile malware-enabled cramming, *See* Lookout, Inc. *State of Mobile Security 2012*. Figure 7 (“How Premium SMS Works”). September 6, 2012. Online: <https://www.lookout.com/resources/reports/state-of-mobile-security-2012>

<sup>7</sup> Reply Comments of the Federal Trade Commission. FCC CG Docket 11-116, at 5. (Filed July 20, 2012). Online: <http://www.ftc.gov/os/2012/07/120723crammingcomment.pdf>

<sup>8</sup> *Ibid* at 25 (Footnote 50). “Consumers can only tell an interviewer that they have received an unauthorized bill if they noticed it. Consumers would not know that they had been victims of this type of fraud if unauthorized charges were placed, for example, on their credit card or telephone bills but were not noticed and just paid.”

<sup>9</sup> Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42. pps 20-21, 47. 77 Fed. Reg. 30972 (May 24, 2012).

cramming scam.<sup>10</sup> In May 2012, JAWA settled with the state of Texas for \$2 million as a result of that state's allegation of cramming fraud.<sup>11</sup> The proceeds from JAWA's alleged cramming operation were evidently sufficient for JAWA CEO Jason Hope to pay for a \$500,000 party for his employees featuring paid celebrity appearances.<sup>12</sup> We strongly believe that Wise Media and JAWA are just the tip of the iceberg. Given the proliferation of mobile phones and the lucrative nature of cramming fraud, scam artists are undoubtedly operating many other schemes similar to these.

There is very little publicly available industry data on the size of the third-party billing market overall. However, based on data collected by the California Public Utilities Commission ("CPUC"), the FCC, and others, it is possible to estimate the size of the third-party billing market and the cost of cramming fraud to U.S. consumers.

The 2013 CPUC *Cramming Report*<sup>13</sup> states that in 2011, wireless carriers in California reported billing \$171 million for third-party products and services and refunded \$24.9 million to consumers – a refund rate of 14.6 percent. According to the FCC's *Wireless Competition Report*,<sup>14</sup> there were an estimated 34,892,000 wireless subscribers in California and 298,293,000 wireless subscribers nationally in 2011. Extrapolating the California data to a national scale therefore yields an estimated \$1.46 billion in third-party charges assessed on consumers' bills nationally in 2011 of which \$211.97 million was refunded.

---

<sup>10</sup> See *FTC v. Wise Media, LLC et al* (N.D. Georgia, 2013) at 5. Case No. 1:13-CV-1234. FTC File No. 122 3182. Online: <http://www.ftc.gov/os/caselist/1223182/130417wisemediacmpt.pdf>

<sup>11</sup> O'Grady, Patrick. "Jawa, Jason Hope agree to \$2M settlement with Texas," *Phoenix Business Journal*. May 10, 2012. Online: [http://www.bizjournals.com/phoenix/morning\\_call/2012/05/jawa-jason-hope-agree-to-2m.html?page=all](http://www.bizjournals.com/phoenix/morning_call/2012/05/jawa-jason-hope-agree-to-2m.html?page=all)

<sup>12</sup> O'Connor, Maureen. "The Party King of Scottsdale's \$500,000 Christmas Fete," *Gawker*. December 22, 2010. Online: <http://gawker.com/5715684/the-party-king-of-scottsdales-500000-christmas-fete>

<sup>13</sup> See generally: California Public Utilities Commission. *January 2013 Cramming Report* ("CPUC Cramming Report"). Online: <http://www.cpuc.ca.gov/NR/rdonlyres/640BBC76-0B2F-4C6A-8A44-22B79C8D776C/0/CrammingReportreD10100341113final.doc>

<sup>14</sup> See generally: Federal Communications Commission. 16<sup>th</sup> Annual Mobile Wireless Competition Report ("Wireless Competition Report"). Table B-2. March 21, 2013. Online: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0321/FCC-13-34A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0321/FCC-13-34A1.pdf)

The non-profit Illinois Citizens Utility Board (“CUB”) estimates that wireless cramming fraud could cost American consumers up to \$59 million annually.<sup>15</sup> The analysis, by CUB and the Houston-based mobile intelligence firm Validas, found that the percentage of charges on consumers’ wireless bills that appear to be fraudulent grew from 39% for the twelve-month period ending July 2011 to 44% for the twelve-month period ending July 2012.

If anything, the CUB data should be considered a best-case scenario as to the true extent of cramming fraud. Beginning in late 2012, on behalf of the Vermont Attorney General’s office, the Center for Rural Studies at the University of Vermont reached out to nearly 1,000 consumers in that state who had third-party charges placed on their mobile phone bills. Those consumers reported that 60.8 percent of the third-party charges placed on their bills were unauthorized. More than 55 percent of the consumers reported that they were not aware that the charges had been placed on their mobile phone bills. More than three-quarters (78.9 percent) of Vermont consumers were unaware that it was even possible for third-party service providers to charge them in this manner.<sup>16</sup>

Multiplying the \$1.46 billion annual wireless third-party market size estimate by the 44-60.8 percent fraudulent charge rate ranges of CUB and the Vermont Attorney General, respectively, results in an annual estimated cost to American consumers from wireless cramming of between \$642 -\$887 million per year.

Given the decision by major wireline carriers to cease billing for non-telecom third-party services as well a new anti-cramming laws and regulations initiated by

---

<sup>15</sup> Citizens Utility Board. “Analysis: Frequency of cellphone ‘cramming’ scam doubles in Illinois, CUB concerned wireless customers targeted as landline law tightens,” Press Release. December 4, 2012. Online: [http://www.citizensutilityboard.org/pdfs/NewsReleases/20121204\\_CellPhoneCramming.pdf](http://www.citizensutilityboard.org/pdfs/NewsReleases/20121204_CellPhoneCramming.pdf)

<sup>16</sup> Kolodinsky, Jane. *Mobile Phone Third-Party Authorization Study*. Center for Rural Studies at the University of Vermont. May 5, 2013. Online: <http://www.atg.state.vt.us/assets/files/Mobile%20Phone%20Third-Party%20Charge%20Authorization%20Study.pdf>



the states and the FCC, we believe that more cramming fraud operators will migrate their schemes from the wireline billing platform to the wireless billing platform.

## **V. The Wireless Third-Party Billing Platform is the Chokepoint for Cramming Fraud**

As has been the case with wireline cramming, wireless cramming fraud is largely the result of an insecure third-party billing platform made up of three distinct stakeholders:

- Wireless carriers who maintain direct billing relationships with their customers;
- Billing aggregators who contract with wireless carriers to bill on behalf of multiple third-party service providers; and
- Third-party service providers who can charge for a near-limitless variety of products and services.

Each of the three sets of stakeholders benefit when a third-party charge is placed on a consumer's wireless bill. The wireless carrier physically bills the end user, processes payment, and remits the third-party service charge – minus a fee – to the billing aggregator (or, less often, directly to the third-party service provider). The billing aggregator accepts payment from the wireless carrier and remits the remainder of the charge – again, minus a fee – to the third-party service provider. The third-party service provider, the ultimate originator of the product or service the consumer paid for is then compensated.

While the wireless billing ecosystem may be mutually beneficial for these three sets of actors, it is unfortunately an inherently insecure billing platform. Typically, a third-party service provider only needs a consumer's wireless phone number and a confirmation by the wireless customer (most often via text message) to commence

billing. The record is abundantly clear that this method of verification is prone to deception and outright fraud. For example, the FTC's complaint against Wise Media, found that consumers were billed for services whether they responded to confirmatory text messages or simply ignored them.<sup>17</sup> In the Texas Attorney General's complaint against JAWA, consumer "authorization" for charges was obtained through deceptive websites and confusing confirmation text messages.<sup>18</sup>

An added danger for consumers is that the wireless billing ecosystem lacks many important consumer protections. The Fair Credit Billing Act<sup>19</sup> and Electronic Funds Transfer Act<sup>20</sup> limit consumers' liability for unauthorized charges on their credit or debit cards. By comparison, while wireless third-party billing in many ways resembles debit or credit card billing, it offers none of the protections from fraud. In essence, consumers are at the mercy of their wireless carriers to agree to credit their accounts for fraudulent charges.

## **VI. Wireline Cramming Experience Demonstrates That Industry Self-Regulation Is Unlikely to Sufficiently Reduce Wireless Cramming Rates**

Beginning in the 1990's, Congress and state and federal regulators -- including the Commission -- investigated the growing incidence of cramming fraud on wireline telephone bills.<sup>21</sup> In response, the Commission and the largest LECs developed voluntary industry guidelines to address the problem.<sup>22</sup> The LECs later urged Congress to avoid legislative action and allow the industry to implement the

---

<sup>17</sup> Federal Trade Commission. *Wise Media Complaint* at 8. Online: <http://www.ftc.gov/os/caselist/1223182/130417wisemediacmpt.pdf>

<sup>18</sup> See e.g. Presentation of Paul Singer, Assistant Attorney General, Consumer Protection Division, Attorney General's Office of Texas before the FTC Mobile Cramming Roundtable. May 8, 2013. Online: <http://www.ftc.gov/bcp/workshops/mobilecramming/State%20of%20Texas%20v%20%20Eye%20Level%20Holdings%20et%20al.ppt>

<sup>19</sup> 15 U.S.C. § 1601 *et seq.*

<sup>20</sup> 15 USC 1693 *et seq.*

<sup>21</sup> See e.g. Federal Trade Commission Report, *Fighting Against Fraud: The Case Against Cramming*. June 1999. Online: <http://www.ftc.gov/reports/Fraud/3rd/fightingconsumerfraud.shtm>

<sup>22</sup> See e.g. Federal Communications Commission. *Anti-Cramming Best Practices Guidelines*. July 1998. Online: [http://www.fcc.gov/Bureaus/Common\\_Carrier/Other/cramming/cramming.html](http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html)

voluntary guidelines.<sup>23</sup> To date, the only mandatory federal cramming protections available to wireline subscribers are the FCC's "Truth-in-Billing" rules. These regulations require LECs to provide bills that contain "full and non-misleading descriptions" of third-party products and services and a clear indication of the company responsible for the charge.<sup>24</sup>

For more than a decade, the LECs relied on their voluntary industry guidelines and the Commission's "Truth-in-Billing" regulations to address the continuing threat of cramming on landline telephones. This strategy proved to be singularly insufficient to controlling cramming fraud on wireline telephone bills. In June 2011, the Commission estimated that 15 to 20 million households were affected by cramming annually.<sup>25</sup> Dozens of law enforcement actions have been brought against cramming fraud operators by state and federal regulators. By late 2011, it was clear to many, including consumer advocates,<sup>26</sup> nearly two-dozen state attorneys general<sup>27</sup> and the FTC<sup>28</sup> that self-regulation by the LECs and the Commission's "Truth-in-Billing" rules were not significantly reducing cramming fraud.

---

<sup>23</sup> See 1998 Senate Cramming Hearing, *supra*, note 3; Subcommittee on Telecommunications, Trade, and Consumer Protection for the House Committee on Commerce, *Hearing on Protecting Consumers Against Cramming and Spamming*, 105th Cong. Sep. 23, 1998.

<sup>24</sup> Federal Communications Commission, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order, 14 FCC Rcd. 7492. May 11, 1999.

<sup>25</sup> Federal Communications Commission. *Cramming Infographic*. June 22, 2011. Online: <http://transition.fcc.gov/cgb/cramminggraphic.pdf>

<sup>26</sup> See *e.g.* Comments of the National Consumers League. FCC CG Docket 11-116 at 4 (filed October 24, 2011) ("The evidence of substantial and widespread consumer harm from cramming is conclusive and strongly suggests that existing anti-cramming measures have failed to control the problem.").

<sup>27</sup> See *e.g.* Comments of New York State Attorney General et al. FCC CG Docket 11-116 at 6 (filed October 24, 2011) ("In recent years, the Attorneys General have seen a dramatic rise in the number of cramming complaints;").

<sup>28</sup> See *e.g.* Comments of the Federal Trade Commission. CG Docket 11-116 (filed October 24, 2011) ("The evidence gathered by the staff of the Senate Commerce Committee in its cramming investigation demonstrated the pervasive nature of the cramming problem on the third-party telephone billing platform.")

In 2012, as they faced the threat of action by Congress and the Commission,<sup>29</sup> the major LECs elected to discontinue offering wireline third-party billing for “enhanced” services. As the Commission examines existing wireless anti-cramming protections, it should be mindful that for more than a decade, reliance on industry self-regulation and the “Truth-in-Billing” rules resulted in tens of millions of consumers being defrauded via their wireline telephone bills.

## **VII. Current Wireless Anti-Cramming Strategies Are Flawed And Unlikely To Prevent Increasing Fraud Rates**

The wireless third-party billing ecosystem relies on a variety of strategies to prevent cramming fraud. Unfortunately, given the significant number of consumers who are being defrauded, these counter-measures do not appear to sufficiently address the problem. We believe that this is because anti-fraud measures rely a great deal on consumers spotting and reporting suspicious charges on their wireless bills.

Wireless carriers encourage their subscribers to contact their customer service departments when they spot a potentially unauthorized charge on their bills. All of the major wireless carriers have adopted a policy known as “one and done.”<sup>30</sup> Under this policy, wireless carrier customer service representatives are empowered to address a consumer’s concern about unauthorized charges. Unfortunately, there is plentiful evidence in the record that when consumers call their wireless carrier to

---

<sup>29</sup> U.S. Senate Committee on Commerce, Science & Transportation. “Rockefeller Introduces Telephone Bill Anti-Cramming Legislation,” Press Release. June 14, 2012. Online: [http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=866363cc-26e0-4243-8ec2-8b7916b99336](http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=866363cc-26e0-4243-8ec2-8b7916b99336)

<sup>30</sup> Statement of Mike Atschul, CTIA Senior Vice President and General Counsel, at the FTC Mobile Cramming Roundtable. May 8, 2013. Available online: [http://www.ftc.gov/video-library/transcripts/130508mobilecramming\\_sess3.pdf](http://www.ftc.gov/video-library/transcripts/130508mobilecramming_sess3.pdf)

report an unauthorized charge, the carriers may deny responsibility to refund the charges.<sup>31</sup>

According to the Vermont Attorney General's survey more than three-quarters of consumers in that state were unaware that their wireless bills could be used to bill for unrelated services.<sup>32</sup> Given that consumers are generally unaware that they should even look for these types of unauthorized charges, industry anti-cramming protections based on consumers' self-reporting of suspicious charges will generally be of limited usefulness.

The Mobile Marketing Association ("MMA") maintains its own guidelines<sup>33</sup> that are intended to serve as best practices for wireless carriers, billing aggregators and third-party service providers. The core consumer protections in the MMA guidelines include a requirement that third-party marketers obtain a consumer's consent via a double opt-in prior to billing commencing, include various disclosures, and provide clear opt-out opportunities. While these guidelines provide a roadmap for legitimate third-party service providers, there are of limited efficacy to preventing cramming fraud, as the Wise Media and JAWA cases illustrate. In addition, the growing prevalence of mobile malware that actively circumvents the double opt-in process to enable cramming fraud threatens to undermine this protection.<sup>34</sup>

---

<sup>31</sup> See e.g. Segal, David. "To Stop Cellphone Cramming, Don't Let It Start," *The New York Times*. April 7, 2012. ("Mr. Wall wrote. 'Anyway, I called AT&T and was initially told that the company has no responsibility for the charges — eight months of HoroscopeGenie from Wise Media. I was offered a credit for two months of payments, which prompted me to threaten to drop my service and join a lawsuit.'") Online: [http://www.nytimes.com/2012/04/08/your-money/cellphone-cramming-gets-a-second-look.html?\\_r=0](http://www.nytimes.com/2012/04/08/your-money/cellphone-cramming-gets-a-second-look.html?_r=0)

<sup>32</sup> Kolodinsky, Jane. *Mobile Phone Third-Party Authorization Study*. Center for Rural Studies at the University of Vermont. Pg. 8. May 5, 2013. Online: <http://www.atg.state.vt.us/assets/files/Mobile%20Phone%20Third-Party%20Charge%20Authorization%20Study.pdf>

<sup>33</sup> Mobile Marketing Association. *U.S. Consumer Best Practices for Messaging, v. 7.0*. ("MMA Guidelines"). October 16, 2012. Online: <http://www.mmaglobal.com/uploads/Consumer-Best-Practices.pdf>

<sup>34</sup> For additional discussion of mobile malware-enable cramming, See Lookout, Inc. *State of Mobile Security 2012*. Figure 7 ("How Premium SMS Works"). September 6, 2012. Online: <https://www.lookout.com/resources/reports/state-of-mobile-security-2012>

In addition to “one and done” complaint resolution and double opt-in protections a third consumer protection offered by wireless carriers is third-party bill blocking. This protection is also of limited benefit to consumers. As the Vermont Attorney General’s survey indicates, consumers are not aware that their wireless phone bills can be used to bill for unrelated charges. They are therefore unlikely to know to request third-party bill blocking prior to being crammed. Absent a requirement that wireless carriers offer third-party bill blocking by default, this reactive countermeasure is unlikely to prevent cramming in any significant way.

#### **VIII. The FCC Should Consider Sensible Regulations to Reduce Cramming Fraud While Protecting Legitimate Commerce**

We believe that a continued reliance on voluntary industry self-regulation will result in millions of consumers being victims of wireless cramming fraud. It is clear from the experience in wireline cramming that absent government intervention, the actors in the third-party billing ecosystem are unlikely to adequately address the threat of cramming fraud on their own.

In the case of wireline cramming, there was clear evidence that very little legitimate commerce was occurring via the third-party billing platform for “enhanced” services.<sup>35</sup> The clear solution was for the LECs to simply cease providing third-party billing for services unaffiliated with the underlying wireline telephone service. This change was correctly implemented by three major LECs in 2012.

Wireless third-party billing is markedly different from wireline third-party billing in that there is clearly legitimate commerce occurring over the wireless third-

---

<sup>35</sup> Federal Communications Commission, *Cramming Infographic*. June 22, 2011. (“One FCC investigation found only 20 of 17,384 consumers used the third-party service they were billed for. Another found that just 22 of 18,571 consumers charged for dial-around long distance actually used the service. Usage in both cases: roughly 0.1 percent.”) Online: <http://transition.fcc.gov/cgb/cramminggraphic.pdf>

party billing platform. Text-to-donate services as well as ringtone, wallpaper and game downloads are all examples of services authorized by consumers to be billed on their wireless bills. For example, charities raised more than \$50 million in mobile donations as of May 2012, according to the Mobile Giving Association.<sup>36</sup> Clearly, any solutions to cramming fraud should protect these and other legitimate uses of the wireless third-party billing platform. However, the mere fact that there are legitimate uses of the wireless third-party billing platform should not dissuade the Commission from considering common-sense regulations that would better protect consumers from cramming.

Given the Commission's limited authority to regulate the practices of billing aggregators and third-party service providers, we recommend that the FCC focus its regulatory attention on wireless carriers. There are a number of regulatory requirements that the Commission should consider to strengthen anti-cramming protections, including:

- Requiring wireless carriers to implement the MMA's *Best Practices* guidelines regarding double opt-in prior to providing third-party billing services to billing aggregators or directly to third-party service providers while the Commission develops a stronger authentication process;
- Requiring wireless carriers to be solely responsible for investigating consumer cramming complaints (as opposed to referring complaints to billing aggregators or third-party service providers);
- Prohibiting wireless carriers from discontinuing service for failure to pay a third-party charge that a subscriber disputes as fraudulent;

---

<sup>36</sup> Manis, Jim. "Catching Up: Mobile Technology Keeps on Giving," *Wireless Week Official Show Daily*. May 8, 2012. Pg. 32. Online: [http://www.advantagebusinessmedia.com/ims/pdf/WW\\_CTIAShowDaily1.pdf](http://www.advantagebusinessmedia.com/ims/pdf/WW_CTIAShowDaily1.pdf)

- Requiring wireless carriers to report consumer cramming complaints to the FCC;
- Initiating a cross-agency working group with the FTC to determine whether billing aggregators and third-party service providers should be required to implement additional anti-cramming protections.

This should not be considered a comprehensive list of actions that the Commission could consider to address cramming fraud. Indeed, the Commission should actively reach out to stakeholders from industry, government and the public interest community to solicit recommendations for additional actions.

## **IX. Conclusion**

Wireless cramming is clearly a threat to millions of American consumers. There is abundant evidence in the public record that existing efforts to address it – voluntary industry guidelines combined with federal and state enforcement – are insufficient to control the growth of this fraud. The FCC should consider whether it will again rely on promises from stakeholders with vested interests in the third-party billing ecosystem to address this problem as it did for more than a decade in the 1990's and 2000's. We strongly believe that only through regulatory intervention will consumers be effectively protected from cramming fraud.


We greatly appreciate the Commission's attention the issue of wireless cramming fraud and look forward to engaging with FCC staff on this important topic.

Sincerely,





Amalia Deloney  
Associate Director  
Center for Media Justice



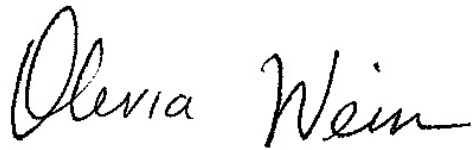
David Kolata  
Executive Director  
Citizens Utility Board



Linda Sherry  
Director, National Priorities  
Consumer Action



Susan Grant  
Director of Consumer Protection  
Consumer Federation of America



Olivia Wein  
Staff Attorney  
National Consumer Law Center, *on  
behalf of its low-income clients*



John D. Breyault  
Vice President of Public Policy,  
Telecommunications and Fraud  
National Consumers League



Irene Leech  
President  
Virginia Citizens Consumer Council