

In the Matter of:

Mobile Cramming Roundtable

May 8, 2013
Final Version

Condensed Transcript with Word Index



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1 activity, please let somebody know.
 2 Finally, we really look forward to having a
 3 very productive day today and a great discussion. And
 4 without further ado, I'd like to introduce FTC
 5 Commissioner Maureen Ohlhausen.
 6 (Applause.)
 7 COMMISSIONER OHLHAUSEN: Good morning,
 8 everyone. I'm delighted to welcome all of you here, both
 9 in Washington, DC, and the folks who are watching this
 10 online, to today's roundtable discussion of mobile
 11 cramming, which is the placement of unauthorized charges
 12 on mobile phone bills.
 13 But before I start, I'd like to note that this
 14 is Public Service Recognition Week, and it is an honor
 15 for me to serve as a Commissioner at an agency that is
 16 recognized for its outstanding employees. That our
 17 agency's mission is to protect consumers means that the
 18 American public is especially well served by the skill,
 19 dedication, and perseverance of its employees. And
 20 today's event is an excellent example of the great work
 21 done by the FTC workforce to advocate for consumers.
 22 So, the FTC's interest in mobile cramming stems
 23 from our broad mandate to protect consumers from unfair
 24 and deceptive practices in the marketplace, whatever the
 25 medium. Cramming has been a huge problem on landline

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1 phones for years, and the Commission has brought over two
 2 dozen cases to stop these practices and return money to
 3 consumers. Now the problem is emerging in the mobile
 4 marketplace, and we need to shine a light on this
 5 troubling and growing practice to protect consumers and
 6 to allow innovative mobile services to flourish.
 7 Just recently, we obtained a court order that
 8 halted an alleged mobile cramming operation from placing
 9 unauthorized charges on phone bills and also froze the
 10 defendant's assets for possible refunds to consumers.
 11 So, the FTC complaint alleges that Wise Media and its
 12 principals charged consumers 9.99 a month without their
 13 knowledge or permission for horoscope alerts, flirting
 14 tips, and love tips that were delivered via text message.
 15 This was the FTC's first case against alleged
 16 mobile crammers, but it's likely not to be its last.
 17 Indeed, we are aware of thousands of consumer complaints
 18 about unauthorized charges on wireless bills. And we
 19 believe that these complaints may well under represent
 20 the problem or under report the problem. From surveys
 21 done in the landline cramming context, we know that many
 22 consumers are unaware that third parties can place
 23 charges on their phone bills.
 24 We also know that consumers often fail to spot
 25 unauthorized charges on their bills. They may simply

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1 look at the overall bill amount and pay in full without
 2 doing a line-by-line review; or they may read the bill
 3 and fail to spot the charges because they're buried, you
 4 know, deeply within the bill or listed in generic-
 5 sounding categories, such as premium services. In fact,
 6 in INC21, which was one of our many landline cramming
 7 actions, a survey showed that only 5 percent of consumers
 8 were aware that they had been billed for defendant's
 9 product; and 97 percent said that they had never agreed
 10 to those purchases.
 11 So, we'll keep on bringing cases, but we also
 12 want to explore the problem from a more systematic
 13 perspective. The mobile marketplace is growing rapidly
 14 and offers incredible opportunities for consumers to shop
 15 and make payments through their mobile devices. As the
 16 mobile marketplace grows, we don't want mobile cramming
 17 to grow with it. Therefore, we are taking this
 18 opportunity to assemble key stakeholders to discuss how
 19 mobile cramming occurs and how we can stop it, while
 20 allowing legitimate mobile payment models to develop and
 21 flourish. Some of our staff had the pleasure of
 22 participating in the FCC's workshop on this topic last
 23 month, and we're pleased to continue the discussion here.
 24 We have a diverse and distinguished set of
 25 panelists to help us do that. Our panelists include

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1 consumer advocates, technologists, and industry members.
 2 We are also fortunate to have other law enforcers, staff
 3 from the Senate Commerce Committee, the FCC, and the
 4 international community here to share their perspectives.
 5 I want to thank all of our panelists for being here
 6 today. We've truly assembled an all-star team, and I'm
 7 sure we will all benefit from their knowledge.
 8 There are three panels today, each focusing on
 9 different aspects of the mobile cramming problem. Our
 10 first panel will examine third-party billing in general,
 11 as well as how mobile cramming occurs. In our second
 12 panel, we will discuss current strategies to reduce
 13 mobile cramming. Finally, our third panel will discuss
 14 new strategies that might be deployed to address mobile
 15 cramming.
 16 As the nation's premier consumer protection
 17 agency, the FTC is committed to staying ahead of the
 18 curve by understanding and identifying harm to consumers
 19 from mobile cramming and other emerging technologies
 20 before it becomes more widespread. I hope that after
 21 today we will all have a better grasp of the benefits and
 22 potential harms that can arise from mobile third-party
 23 billing; additional protections that industry might
 24 implement to prevent those harms; and what role
 25 government should play as we move forward.

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1 We really hope to foster an environment that
 2 allows innovation in third-party billing to grow while
 3 minimizing harm to consumers from cramming. And when we
 4 at the FTC see issues arising from mobile third-party
 5 billing, we will continue to act.
 6 So, once again, welcome to our workshop. Thank
 7 you.
 8 (Applause.)
 9 MS. ROSENTHAL: And now we'll get the rest of
 10 the day started. We'd like to have the first panel come
 11 up to the front of the stage. Thank you so much for that
 12 great opening.
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1 on each of these panels about the various layers and
 2 roles different participants in the industry play,
 3 including carriers, aggregators, and content providers
 4 with respect to these premium messages.
 5 We all share the same goal. Nobody wants
 6 unhappy consumers, consumers who have been misled who
 7 haven't consented to the services that they receive and
 8 are charged for. On the other hand, many of these
 9 services we'll be talking about provide some very
 10 valuable services or very popular, and third-party
 11 billing provides a new and competitive choice of billing,
 12 particularly for many unbanked individuals.
 13 MS. MCCABE: Hi, everyone. My name is Kate
 14 Whelley McCabe. I'm an Assistant Attorney General at the
 15 Office of Vermont's Attorney General. And I'm here to
 16 give a consumer perspective. I'd like to thank the FTC
 17 for having me and for gathering us to talk about this
 18 important issue.
 19 And if you haven't noticed already, please
 20 notice that I'm the only person on the panel who's not a
 21 VP or a CEO. So, in case I never get another word in
 22 edgewise, I want to give you my bottom line. And that is
 23 those folks who are trying to gauge the magnitude of this
 24 problem based on complaints are grossly underestimating
 25 the problem, and I'll give you some information to back

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1 PANEL 1
 2 UNDERSTANDING THIRD-PARTY BILLING AND MOBILE CRAMMING
 3 MS. BUNGO: Good morning, everyone. I'm
 4 Larissa Bungo. I'm the Assistant Regional Director in
 5 the East Central Region, which is located in Cleveland,
 6 Ohio. It's my pleasure to be here to co-moderate Panel
 7 1. I'm here with my colleague, Andrew.
 8 MR. SCHLOSSBERG: Hi, I'm Andrew Schlossberg.
 9 I work in our Mobile Technology Unit here at the FTC.
 10 MS. BUNGO: And we're going to be talking about
 11 the third-party billing process. We'll be talking about
 12 how it works and also examining the consumer and industry
 13 perspective about mobile cramming. And with that, I'm
 14 going to turn it over to Andrew.
 15 MR. SCHLOSSBERG: Sure, so just to get started,
 16 each of our panelists would like to give a brief one-to-
 17 two-minute introduction about who you are and why you are
 18 here today. And please speak into the microphones so
 19 everyone can hear you on the webcast. Thank you.
 20 MR. ALTSCHUL: All right, well, I'm Mike
 21 Altschul. I'm the General Counsel of CTIA - The Wireless
 22 Association. And on behalf of the wireless industry, I
 23 want to thank you for inviting us to participate in
 24 today's panel and discussions. As the name suggests,
 25 CTIA represents the wireless industry. We'll be talking

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1 that up.
 2 Vermont, albeit a small state, we have fielded
 3 a couple dozen complaints about wireless cramming over
 4 the last seven years. That's not insignificant, but even
 5 for Vermont that's small. However, I'm happy to announce
 6 that today the office is publishing the Mobile Phone
 7 Third-Party Charge Authorization Study, a systematic
 8 survey -- consumer survey that we conducted in the fall
 9 to determine just how large the problem was.
 10 And I'm going to give you a couple of
 11 statistics. Out of the 802 respondents to 2,400 mail
 12 surveys, we discovered that according to consumers 60
 13 percent of third-party charges in the months of August
 14 and September of 2012 were crammed. That is to say
 15 consumers said they did not authorize those charges.
 16 And an even more startling statistic, close to
 17 80 percent of the consumers reported that they did not
 18 understand until we informed them that they could be
 19 charged for third-party goods and services on their
 20 mobile phone bills. So, my takeaway is you can't know
 21 what the problem is until you talk to consumers. And by
 22 talking to consumers, I mean reaching out proactively,
 23 not just reacting to the complaints.
 24 I read the FTC's complaint and Andrew's
 25 declaration yesterday about the complaints that he was

1 able to find on Wise Media. I believe he used the word
2 “hundreds,” but 2 million phone numbers were crammed by
3 Wise Media, and that is .05 percent. So, let that be
4 your guide in judging the size of the tip of the iceberg
5 and judging the size of the iceberg itself. Thanks.

6 MR. BREYAULT: Hi, I’m John Breyault. I’m the
7 Vice President of Public Policy, Telecommunications and
8 Fraud with the National Consumers League. We’re the
9 nation’s oldest consumer advocacy organization, founded
10 in 1899, and my standard opening joke is that, no, I’m
11 not a founding member.

12 I also direct our fraud.org campaign, which is
13 our comprehensive online education and advocacy campaign
14 for consumers to protect them from fraud. The reason I’m
15 on this panel today is in the FCC’s proceeding and the
16 FTC’s landline cramming, we were one of the leading
17 consumer organizations that was calling for strong action
18 by regulators to address the problem. As was previously
19 mentioned, landline cramming was a huge issue, and we
20 think that many of the crammers who are -- who were
21 active in the landline are simply migrating over to the

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1 MR. SCHLOSSBERG: Thanks, Jim.

2 MR. GREENWELL: Good morning, everyone. My
3 name is Jim Greenwell. I'm the Chief Executive Officer
4 for BilltoMobile, and I'll add to Jim Manis' notion of
5 the good that comes out of mobile billing. So, our
6 company's actually Danal, Inc., and we originally started
7 in Korea. The parent company is a public company in
8 Korea and started what I would call e-commerce mobile
9 payments. And in Korea were transactions -- it's about a
10 \$4 billion market, and we process half of those there.
11 And in the United States, we're processing roughly --
12 almost \$100 million run rate in what I call e-commerce
13 type of mobile payment.

14 So, if you think of match.com or think of a
15 dating site or think of Facebook, if you're on there and
16 you want to purchase credits, you, of course, can charge
17 it to your -- to your mobile account. It's a very
18 appealing way of transacting, especially for the
19 millennial demographics, and will continue to be. Mobile
20 payments has a broad appeal, but specifically, it has an
21 appeal for the younger generation that has grown up
22 mobile-centric.

23 And, you know, the issue of cramming, which
24 from our view is something -- is a burden that we've had
25 to embrace both with the consumer and with the carriers.

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1 It deflects a little bit from the potential and the
2 opportunity that exists in legitimate -- what I would
3 call legitimate mobile payments. And since we've
4 launched, we've actually had zero -- zero tolerance and
5 zero acts of cramming and other what I would call
6 nefarious things on the mobile bill. So, I'm happy to
7 discuss that in a little further detail.

8 MR. SCHLOSSBERG: Thanks.

9 MR. BRYENTON: And good morning, everyone, I'm
10 Larry Bryenton from the Canadian Competition Bureau. And
11 thank you to the FTC for the invitation to allow me to be
12 here today to give, I think, a bit of an international
13 perspective on the issue that we're going to talk about
14 today.

15 Just to give you a bit of an overview, the
16 Canadian Competition Bureau is responsible for the
17 Competition Act in Canada, which is a general law of
18 application that applies to virtually all businesses in
19 Canada and has competition and consumer protection
20 provisions and what our role is in the branch that I'm
21 responsible for is looking at issues relating to false or
22 misleading issues.

23 Our priority focus is in the digital economy
24 area, and as the U.S. experience shows, Canada is
25 similar. There's an explosive growth of the use of

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1 online and mobile platforms and smartphone adoption by
2 Canadian consumers, and while it's bringing a lot of
3 advantage to the Canadian marketplace, it's always --
4 it's already exposing our consumers to risks and harm.
5 And my role today is to talk to you a bit about our
6 Canadian legislation, some of the activity we're taking,
7 but also to give you a bit of a perspective on the
8 international front of how other agencies around the
9 world are seeing this problem and some of the challenges
10 that they're dealing with as well. So, on that point,
11 I'll turn it back to our moderator. Thank you.

12 MR. SCHLOSSBERG: Thanks, Larry.

13 So, just before we get started with questions,
14 I'm going to ask some questions to specific panelists,
15 but if you want to chime in, just go like this with your

| | | | |
|----|--|----|--|
| 21 | <p>1 I'm buying Facebook credits. And those are two distinct 2 types.</p> <p>3 I would say it's probably in the \$300 million 4 -- \$300 million processing volume range, and growing 5 very, very rapidly. It's getting some wide adoption as 6 we go along.</p> <p>7 MR. MANIS: And, you know, Mike might be able 8 to address the premium SMS space better than me at this 9 point of the game, but my view of the premium SMS space 10 is it's actually been shrinking significantly over the 11 last few years. The number of players defined -- players 12 defined by the authorized aggregators who can place a 13 billable event onto your phone bill across all the 14 wireless operators has declined significantly, and I 15 think there's two left in the space today.</p> <p>16 I think that's probably largely due, and maybe 17 if there's other carrier representatives in the room, you 18 might want to address that, but I think that's largely 19 due to a number of measures that industry has taken, both 20 through CTIA, through the MMA, through the individual 21 carrier activity, to constrain that space.</p> <p>22 With respect to mobile giving, there's 23 approximately 2,500 charities that have been vetted. 24 There's a requirement up front to -- that a charity has 25 to meet standards above and beyond just simply being an</p> | 23 | <p>1 use wireless technology as a means to educate 2 individuals; and, frankly, they're trying to get away 3 from the likes of old guys like me and finding younger 4 people who can -- who they can -- who will support their 5 causes over a longer period of time. So, it's been 6 highly beneficial that way.</p> <p>7 MR. SCHLOSSBERG: Kate?</p> <p>8 MS. MCCABE: I'm just wondering, we've heard 9 about the non-PSMS volume. Do you know what the PSMS 10 volume is?</p> <p>11 MR. MANIS: Well, my comments were related to 12 the premium SMS.</p> <p>13 MS. MCCABE: I'm sorry, I was questioning Jim 14 Greenwell.</p> <p>15 MR. GREENWELL: No, thanks for asking. I 16 wanted to expand. So, if I were to guess, I don't -- you 17 know, I've seen some volumes on some carriers. I would 18 say -- I heard the \$1.5 billion number. I think it's 19 still actually bigger. I would put it at between 2 to 3 20 billion, knowing what percentage the carriers still get 21 in revenues and knowing what other premium SMS third- 22 party processors are still out there. So, I think it's a 23 \$2 to \$3 billion market. And as Jim Manis said, it's 24 declining, but still, it's mature.</p> <p>25 MR. MANIS: And I should just make one more</p> |
| 22 | <p>1 authorized 501(c)(3), a public 501(c)(3). So, there's a 2 vetting process. There's probably 2,500 charities that 3 have gone through that vetting process. And the result 4 of that vetting process has enabled probably 8 million, 5 I'm going to give you a ballpark figure here, I didn't 6 have the figure coming in, but it's pretty close, about 8 7 million individuals across this country, less so in 8 Canada.</p> <p>9 So, sorry, I'm going to talk to the U.S., but 10 we also have the Mobile Giving Foundation of Canada, 11 which we -- which is well placed there, doing similar 12 things, and we act in the same fashion up there through a 13 controlled platform. So, we don't see this type of issue 14 in the giving space at all where we are.</p> <p>15 But that's a lot of individuals who've actually 16 used premium SMS to make a donation to a charity. And 17 through that process they've, you know, raised north of, 18 you know, \$70 million in donations over that period of 19 time in \$5 and \$10 increments, right, so that's a lot of 20 activity, if you will.</p> <p>21 And then more important for the charities is 22 that the individuals who contribute through mobile giving 23 tend to be new contributors. So, from a charity's 24 perspective, they're trying to find ways to acquire new 25 supporters of their causes; they're trying to provide --</p> | 24 | <p>1 note on the mobile giving space, relative to the carrier 2 activity, since Jim referenced the revenue share that 3 occurs on the commercial side, the carriers step up to 4 the philanthropic piece of premium SMS on a no-cost 5 basis. So, where the normal transaction would have a 6 revenue share between the content provider, if you will, 7 and the carrier, that does not exist in the philanthropy 8 space. Every dollar that's collected by a wireless 9 operator is passed through us for -- to distribution back 10 to -- back to the beneficiary charity. So, there's zero 11 cost that the carrier captures.</p> <p>12 MR. SCHLOSSBERG: Just let's step back for one 13 second. Just, well, we assume people know the players in 14 this space. Let's just talk about that. Mike, what is 15 the process for placing a third-party charge on a mobile 16 phone bill, and what types of companies are involved? 17 We've mentioned them a little bit, but I just want to 18 make sure everyone understands on the same field here.</p> <p>19 MR. ALTSCHUL: Well, we'll start with the 20 carrier, because that's the company that bills the 21 customer and has the relationship with the customer and 22 who the customer should contact if there are any 23 questions or any unauthorized charges associated with a 24 customer's bill. The carriers have contractual 25 relationships with companies that Jim referred to called</p> |

1 aggregators. These content aggregators have been
2 incentivized by the commercial agreements the carriers
3 have entered into with them.

4 They're rewarded when their -- when the content
5 providers and services that the aggregators work with
6 have satisfied customers, low refunds, low complaints,
7 low questions. And aggregators and content providers can
8 be cut off in the event that the customer experience
9 exceeds a trigger or threshold level. The aggregators
10 have both connectivity with all of the participating
11 carriers who support these services. And then if one is
12 a content provider, the content providers have a
13 relationship with the aggregator, not with the -- not
14 with a carrier directly.

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1 way of the mail survey. So, there were certainly
 2 consumers that noticed the charge that didn't understand
 3 what the origin of the charge was. And I did supply
 4 Andrew with a couple of examples of bills, and I'm not
 5 sure if those made it to a table outside yet.
 6 MR. SCHLOSSBERG: Not yet.
 7 MS. MCCABE: Okay, but they're going to be on
 8 your website.
 9 MR. SCHLOSSBERG: Yes.
 10 MS. MCCABE: Some redacted examples of consumer
 11 bills that will show you how it is that a consumer might
 12 see the charge but not understand where it's coming from.
 13 And if you would like to speak to something Jim Manis
 14 said from -- about, you know, where we're seeing the
 15 problem and where we're not seeing the problem.
 16 And, you know, through this survey, through
 17 another survey that the office conducted, through talking
 18 to consumers that have complained and through collecting
 19 complaints that have gone into other AG offices all over
 20 the country, I have probably seen the stories of about
 21 2,000 consumers, and I have not seen one consumer who has
 22 told me that they have been crammed by a charity, not
 23 one. So, I think, you know, let's not stop paying
 24 attention to that space, but that's not where the problem
 25 is.

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1 I brought a pamphlet that I got at my favorite
 2 coffee shop in Vermont, and because I can't show you a
 3 bill right now, I thought some of you might be interested
 4 in donating \$10 to the Vermont Food Bank and seeing what
 5 it looks like on your bill when it shows up in your next
 6 billing cycle. This pamphlet says, "Hungry to give?
 7 Just \$1 provides three meals to Vermonters in need. Text
 8 foodnow" -- one word -- "to 52000." So to 52000. So, if
 9 you were to take out your phone right now and text to
 10 52000 the word foodnow, you will see on your next phone
 11 bill a \$10 charge. And pay attention to what it looks
 12 like, what section is it in, are you able to understand
 13 what it was given the context.
 14 You'll probably notice it, and you'll probably
 15 understand because you actually did go through this
 16 authorization process, but imagine a consumer who doesn't
 17 know they've opted in or is seeing something on their
 18 bill for the first time. That's where those statistics
 19 came from. That's why we have more people noticing that
 20 there is a charge on their bill than understanding where
 21 it came from.
 22 MS. BUNGO: Thank you, Kate.
 23 Larry, did you have --
 24 MR. BRYENTON: Yeah, I'll just pick up on that
 25 point. And I think, you know, at the very essence of the

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1 issue from the law enforcement side is that complaints
 2 are received from people that don't believe that they
 3 authorized, and certainly they were unwanted charges.
 4 And I think that that's consistent with what we heard
 5 earlier today and what I've read on literature that's
 6 filed by the FTC in different submissions, as well as
 7 cases, and also from international colleagues around the
 8 world that a lot of consumers are uncertain as to how
 9 charges do get on and let alone being able to
 10 differentiate and confirm what the charges are when they
 11 do get their bill.
 12 MS. BUNGO: Okay, I'll go to John and then to
 13 Mike next.
 14 MR. BREYAUULT: Sure. So, I think it's
 15 important to note, I mean, we agree that the charitable
 16 giving space seems to be one area of third-party billing
 17 where there does not seem to be a problem. I mean,
 18 clearly, I think, you look at the Red Cross, for example.
 19 They raised \$46 million for Haiti relief after that
 20 earthquake, so we don't think there's a problem there.
 21 I think our concern from NCL's perspective
 22 really lies in the commercial space. And I think, you
 23 know, relying on consumers to spot these charges assumes
 24 that consumers actually look at their bills. And I think
 25 we know that most consumers don't look at their bills

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1 closely. And to top that off, you have charges that are
 2 often labeled deceptively on bills. I mean, how many
 3 folks in the room actually look at your wireless bill on
 4 a monthly basis? One? A few of you, a few of you,
 5 great.
 6 And, so, and why do we do that? That's because
 7 these bills often are multiple pages. I don't know if
 8 any of you have kids and multiple lines, there are maybe
 9 a dozen pages in a bill. Who's going to look at that?
 10 On top of that, you have carriers who are increasingly
 11 pushing auto bill-pay, paperless billing, so it's even
 12 easier for consumers just not to think about it. It's
 13 just another charge on your credit card bill.
 14 So, this is why mobile cramming has become so
 15 easy and so lucrative for scam artists. Small charges,
 16 misleadingly labeled, on bills that people don't read.
 17 It's almost the perfect scam for them. So, I think we
 18 saw when we were looking at landline cramming this exact
 19 problem. The consumers don't even know that their bills
 20 can be used as a credit card essentially. And what's
 21 worse is mobile bills don't give you the same protections
 22 that credit cards or debit cards do. You can't dispute a
 23 charge and be protected by Reg E, for example. You're
 24 basically at the mercy of your carrier to take your word
 25 for it and take the charge off your bill.

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| 33 | <p>1 So, it's very concerning to us. I think the</p> <p>2 double opt-in that was discussed has its flaws. I think</p> <p>3 you see, for example, companies that are putting negative</p> <p>4 options into the confirmation text messages, where it's</p> <p>5 reply stop or you will be charged. Most people just</p> <p>6 ignore the charge. I think the New York Times did a</p> <p>7 great couple of articles on this last year about Wise</p> <p>8 Media and how they were using negative options.</p> <p>9 So, we think it's a very large problem. We're</p> <p>10 concerned that the countermeasures that the MMA and</p> <p>11 others have in place to protect us aren't actually doing</p> <p>12 what they want them to do. And we think there needs to</p> <p>13 be some serious thought given to what regulators can do</p> <p>14 to address the problem.</p> <p>15 MS. BUNGO: Thank you. I know we'll be</p> <p>16 exploring the measures that have been taken in the second</p> <p>17 panel. But, Mike, if you'd like to respond, industry</p> <p>18 perspective?</p> <p>19 MR. ALTSCHUL: Thank you. We haven't really</p> <p>20 spoken about the double opt-in for premium messages. And</p> <p>21 this is consent, and it's consent at the time of</p> <p>22 purchase. And I just received the Vermont survey last</p> <p>23 night as just being released today, and we received a</p> <p>24 courtesy copy. And there is this statistical quirk where</p> <p>25 twice as many people responded that they remember</p> | 35 | <p>1 available at the point of sale and on carrier websites</p> <p>2 that third-party charges can be placed on their accounts,</p> <p>3 as well as the availability of account blocking for these</p> <p>4 charges.</p> <p>5 MS. BUNGO: Thank you. Go ahead, Jim.</p> <p>6 MR. MANIS: Just real quickly, I did want to</p> <p>7 make a comment that -- follow up on the comment that Mike</p> <p>8 made but also to Kate's point. There is no gap between</p> <p>9 the initial action that a consumer or a donor takes and</p> <p>10 the bill, right? So, to Mike's point, this is a double</p> <p>11 opt-in process, and that double opt-in process is</p> <p>12 designed to ensure not only consumer intent, but it's</p> <p>13 also designed to let that donor know what's taking place</p> <p>14 with their actions.</p> <p>15 So, this notion, the question that you just</p> <p>16 asked, is the consumer ever notified, let me just read</p> <p>17 you two quick little text messages here, because this is</p> <p>18 a standard text message reply that extends beyond the</p> <p>19 philanthropic aspect to it and encompasses best practices</p> <p>20 defined by MMA for every type of premium engagement.</p> <p>21 So, if you initiate a transaction, you will be</p> <p>22 sending a key word to a short code, you will receive an</p> <p>23 immediate text message back asking you to confirm, in</p> <p>24 this case, to confirm your donation to the charity, reply</p> <p>25 with the word "yes," right, and then it states terms and</p> |
| 34 | <p>1 authorizing the charge than responded that they knew that</p> <p>2 they could be charged.</p> <p>3 And the reason they remember it is at the time</p> <p>4 any customer is opting in or selecting a premium message</p> <p>5 charge, that's a message that will be billed in addition</p> <p>6 to the actual message charge, there is a second step that</p> <p>7 the customer has to take to approve that charge. And</p> <p>8 that is to affirmatively text back "yes" after receiving</p> <p>9 a short text message that's displayed all on a single</p> <p>10 screen of a user's wireless device, identifying the</p> <p>11 amount of the charge, identifying whether it's a one-time</p> <p>12 or recurring charge and what the service that's being</p> <p>13 purchased is.</p> <p>14 This double opt-in comes exactly at the time</p> <p>15 the customer is subscribing and making the choice. It's</p> <p>16 immediate; it's current; it's actionable. And without</p> <p>17 the double opt-in there is no premium message charges.</p> <p>18 MS. BUNGO: I'd like to give Jim an opportunity</p> <p>19 to speak, and I have a follow-up for Mike real quick,</p> <p>20 which is as to the placement of the third-party charges,</p> <p>21 did the carriers inform consumers that third-party</p> <p>22 charges can appear on their bill? And, if so, where do</p> <p>23 they receive that information?</p> <p>24 MR. ALTSCHUL: The carriers do provide</p> <p>25 disclosures that -- in the service agreement that's</p> | 36 | <p>1 conditions and we have a little mini URL. Reply help for</p> <p>2 help; stop to cancel; message and data rates may apply.</p> <p>3 You reply yes, and then you receive a thank you</p> <p>4 message back, thanks, and it notes the amount charged,</p> <p>5 right, it can be five, ten, in this case it's a trial for</p> <p>6 \$25 charged to your cell phone bill for this particular</p> <p>7 charity. Info at, again we provide a little mini URL,</p> <p>8 reply help, you know, repeat the standard message.</p> <p>9 So, the notation here and the notion that's</p> <p>10 consistent not just with philanthropy but with any kind</p> <p>11 of premium interaction with the consumer is to provide</p> <p>12 advice of charge, let the consumer know and confirm the</p> <p>13 action that they initiated, to let them know that the</p> <p>14 result of that action will be an appearance on their</p> <p>15 phone bill, and will provide terms and conditions for --</p> <p>16 access for terms and conditions and other means to seek</p> <p>17 additional help and information.</p> <p>18 So, just as a note in terms of the message flow</p> <p>19 that accompanies that transaction, that's an important</p> <p>20 message flow, and that should serve to a link then, to</p> <p>21 your point, Kate, when they receive the bill they can</p> <p>22 identify that charge on their bill.</p> <p>23 MS. BUNGO: I know there's a point that John</p> <p>24 would like to make.</p> <p>25 MR. BREYAUULT: Yeah, I mean, I would just point</p> |

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1 out again that, you know, we're talking about commercial
2 messages here that are the problem with cramming.
3 Charities are different from commercial crammers in the
4 sense that their intent is not to deceive you. A
5 commercial scam artist who is engaging in cramming fraud,
6 their intent is to deceive you.

7 So, to the extent that somebody might opt in
8 and agree to have something charged for a charitable
9 contribution, that's fine, and I think I mentioned in
10 their review of the bills that they did not see a single
11 instance where consumers had a problem with the
12 charitable giving. The problem is that crammers are out
13 there who ask you to put, for example, your cell phone
14 number into a website that would ask -- that said do you
15 want to get free horoscopes or a joke of the day or
16 random fact of the day, and by doing that, that
17 constitutes the first part of the opt-in. And then the
18 consumer then receives the second text message.

19 And, again, it's the negative option there that
20 is the problem, because the consumer often just ignores
21 that. They think it's spam text. People get them all
22 the time. And, so, by ignoring it, they are agreeing to
23 those charges, even though all they thought they were
24 doing was putting in their cell phone number to try to
25 get into a website that they wanted to see.

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1 So, I think you have to be clear the
2 distinction between charitable giving via text messages,
3 which is where the intent is not to deceive, and
4 commercial cramming, where the intent is to deceive. And
5 I think the commercial cramming is a very, very large
6 problem. And I don't think we should minimize it by
7 saying that because charitable giving exists and it's a
8 good business model that we don't have a problem
9 generally with wireless cramming.

10 MS. BUNGO: Thank you. Kate?

11 MS. MCCABE: And I'd like to make another
12 distinction, and that is I think what we're hearing on
13 this panel is that there is a gap between what is
14 supposed to happen and what actually does happen. So,
15 the predominant consumer narrative is, I was charged 9.99
16 on my phone bill, it's been happening for several months;
17 and either, A, I had never seen this company name before
18 or never did any activity that would have opened me up,
19 never put my phone number on the web, wasn't getting spam
20 texts, I have no idea where this is coming from, A; or,
21 B, I remember getting some spam texts, I don't really
22 know what they were about, I deleted them. Or, yeah, I
23 signed up online for some free recipes, but I didn't know
24 I was going to be charged for anything, let alone \$10 a
25 month in perpetuity.

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1 So, I think another distinction, you know,
2 there's the commercial and charitable distinction about
3 the motivations of the actors that are behind the
4 generation of those charges, but there's also a
5 distinction between the rules and the folks that aren't
6 playing by the rules.

7 MS. BUNGO: Mike, I know you'd like to respond.

8 MR. ALTSCHUL: Well, I do want to make clear
9 that that's not playing by the rules. That's with the
10 industry monitoring, looks at every code, crawls the web
11 with web spiders, monitors media, touches every code
12 every month to make sure that things like negative
13 options, like deceptive advertising gets detected and
14 identified and turned off.

15 We're very proud that we also cooperate with
16 federal and state law enforcement agencies and
17 investigative consumer protection agencies in identifying
18 and prosecuting these crimes. These are crimes, and
19 everyone is victimized by them. They're not right. A
20 negative option is not compliant. And as Jim mentioned,
21 as the industry grows and grows in experience, we are
22 seeing that the management of this opt-in process is now
23 moving towards carriers and their aggregators and away
24 ers 0eau21ih-invb spi off.15

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1 And, if the premium space goes away, guess what, we go
2 away, too, right? So, there is a thread, if you will, to
3 us.

4 And mobile apps don't pick that up, because
5 while you as a consumer can engage with all types of
6 content on your smartphone, what you can't do on your
7 smartphone today is to make a donation to a charity using
8 a native in-app billing solution, right? So, it's --
9 take a look at that. Remember, the big addressable
10 audience that you get when you use simple technology like
11 SMS across the reach of virtually every handset, and now
12 you end up breaking that by looking at apps that are
13 designed for IOS, Android, on Windows, others. And now
14 you have to educate the consumer around how do you
15 discover that, how do you download that, how you use
16 that.

17 And then if it's charity related and if you're
18 trying to engage a supporter in your charity, Apple
19 doesn't, nor does any platform, allow for their native
20 in-app billing solution, in Apple's case iTunes, to
21 process a donation, right? So that goes out the window.
22 So, what's the default back on an app for charitable
23 billing? It's carrier-bill premium SMS. Well, like what
24 we do for the Microsoft HelpBridge app, right? So, it
25 all comes back to that as a solution.

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1 So, I do think the apps have had a huge
2 positive impact in terms of changing the way consumer
3 behavior is. But on the billing aspect of it, there's
4 still an issue.

5 MR. AOms ofJCHUL:d tltO5

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1 had a very valuable workshop on deceptive advertising or
2 disclosures violated all sorts of long-existing Federal
3 Trade Commission advertising practices involving the use
4 of the word free and disclosures not being in sufficient
5 size type or contrasting colors and fonts.

6 That's something that the industry does, again,
7 for every code, every month, as well as monitoring the
8 actual message flows. And perhaps most important, each
9 of the carriers, often on a daily basis, will be
10 monitoring the customer calls, inquiries, complaints they
11 receive to quickly identify any particular short codes or
12 campaigns that are generating calls to their customer
13 service representatives so they can act proactively to
14 shut down those programs and proactively reach out,
15 identify other customers who may have charges from that
16 same content provider and remove them from their bills if
17 that's what the investigation, that we're dealing with a
18 real fraudster, determines.

19 MR. SCHLOSSBERG: Let me just jump in one
20 quickly. We have a couple minutes left on the panel
21 before Q&A. If you have any questions, just fill out
22 your card, it should be in your folder. One of our
23 representatives will grab them from you. A couple
24 minutes here before we get to Q&A.

25 MS. BUNGO: Right. And I'll go to Kate and

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1 then to John.

2 MS. MCCABE: Thanks. So, we've had pretty
3 extensive experience in Vermont with landline cramming,
4 and what we've learned is that notification -- that
5 requiring notification to consumers does not work. We
6 had a law on the books for a decade that required
7 landline carriers or the vendors selling -- purportedly
8 selling third-party goods and services through the
9 landline network to notify consumers by mail when they
10 were getting a third-party charge. So, the parallel to
11 that in the wireless space is the text message
12 notification.

13 That law did not stop cramming. I'm not even
14 sure it really slowed cramming down on the landline side
15 in Vermont, such that when we did some consumer surveys
16 in Vermont about landline cramming we found that the
17 numbers of unauthorized charges were more in the 80 to 90
18 percent range, and that was -- that's a matter of public
19 record already through the testimony of my colleague,
20 Elliot Berg, in front of Rockefeller's Senate Commerce
21 Committee last year.

22 So, what we did is we made it unlawful except
23 for in a number of very narrowly tailored circumstances
24 for a third-party charge to even make it to a landline
25 consumer's telephone bill. Now, this is not the same

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1 space, and I think the reason this is not the same space
2 is that we have some good things, some really good
3 things, happening in the mobile space.

4 And, so, I just want to take a moment and
5 recognize that it's a hard place for a regulator to be in
6 because it's PSMS that we're seeing the major complaint
7 volume on. And, in fact, it's the lion's share of the
8 third-party charge market anyway, so but yet it's PSMS
9 we've all just learned that is the sole vehicle for this
10 charitable giving. So, that's a hard place to be in. We
11 need to learn how to live with this premium text
12 messaging, but we need to also protect those consumers
13 that are vulnerable to the commercial crammers.

14 MS. BUNGO: John?

1 you see it elsewhere.

2 MR. BRYENTON: Sure, thank you. I'll just pick
3 up on the point in terms of the self-regulation and sort
4 of the pitfalls or the advantages of that. As I
5 mentioned in my opening comments, the Competition Bureau
6 is an independent law enforcement agency, and we strive
7 to foster competitive and innovative marketplaces and
8 ensure informed consumer choice. What we've seen in the
9 past year or so was that there's been a lot of concerns
10 about -- from consumers about the unwanted and
11 unauthorized charges on their mobile bills in the
12 Canadian context.

13 This led to us filing a court action last fall
14 after a five-month investigation where we filed against
15 three of the major telephone companies in Canada in the
16 Canadian Wireless Telecommunications Association, which
17 is the industry association in Canada, for what we
18 believe is to be misleading conduct relating to the
19 premium text delivery to consumers in Canada. And we're
20 looking for them to do a number of things in terms of the
21 court actions.

22 But what our investigation concluded is that
23 the three mobile carriers that have somewhere in the
24 neighborhood of 93 percent of the Canadian marketplace,
25 along with the wireless association, facilitate the sale

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1 MS. MCCABE: In addition to the numerical
2 statistics that I've been talking about up here, nearly
3 half of the consumers that responded to our complaints
4 also wrote in a space provided their story. And I
5 encourage you -- I want to assure you that this will
6 become a part of the public record, not only through
7 publication by my office, but by submission of this
8 document through the FTC comment process here shortly.

9 So, it was categorized by our experts, and I
10 thought there were some interesting things that I'd like
11 to tell you here. First of all, the most frequent theme
12 of the comments were words of thanks to the AG. And I
13 say that because my AG is here in the office, so I've
14 just scored some points with my boss. But I will say
15 that the phone number affected is used by child is a
16 narrative. It's not always, oh, Johnny went off the
17 reservation and bought something he wasn't -- you know,
18 he didn't get permission. It's often my child didn't
19 understand, they thought they were signing up for
20 something free. You can read the narratives and see for
21 yourself.

22 But that was -- had a frequency of 29. So, you
23 know, received full refund, frequency, 31; received
24 partial refund, 19; provider helpful, 6; provider not
25 helpful, 6. So, take a look at this document, please,

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1 when it's a part of the public record. And you can judge
2 for yourself how consistent are the stories that
3

1 SMS and how does that work?

2 MR. GREENWELL: So, perhaps the best way and
3 the simplest and shortest way to describe it is if
4 there's a short code associated with it, that's typically
5 premium SMS. If it's consumed on the phone, that's
6 premium SMS. You know, we talked about refund rates
7 where we have, for example, on a couple of carriers we
8 have refund rates less than 1 percent.

9 And I think it's a portion of two things. One,
10 it's legitimate merchants; but, two, we have what we call
11 two-factor authentication. You know, we shoot a PIN code
12 for you to input to make sure that you're doing it. So,
13 you know, the refund rates are low, and the way to
14 describe PSMS is short code-based, and e-commerce is
15 more, you know, transacting without a short code, other
16 than a text being delivered for confirmation or for a PIN
17 code.

18 MR. MANIS: But both are carrier-billed.
19

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1 PANEL 2

2 CURRENT STRATEGIES TO REDUCE MOBILE CRAMMING

3 MR. DEITCH: Welcome, everybody. My name is
4 Russell Deitch with the Federal Trade Commission. I'm a
5 veteran of the original cramming forum here at the FTC
6 two years ago. It's almost our anniversary. And we
7 dealt with landline cramming and we raised the issues
8 relating to wireless line cramming.

9 Today we're going to get into current
10 strategies for reducing mobile marketing cramming. We
11 have a lot to talk about, so I'm going to jump right into
12 the panelists and issues. So, take it away, Duane.

13 MR. POZZA: So, I am Duane Pozza. I'm not a
14 panelist; I'm a moderator. I'm at the Federal Trade
15 Commission. We have a lot of great panelists, and
16 they're going to go down the line and introduce
17 themselves. And we've also asked them to give just a
18 brief overview of -- sorry, we have some interference.

19 Sorry about that. So, at the risk of trampling
20 over our panelists, so I am one of the attorneys who's
21 involved in the Wise Media case. We heard that reference
22 various times in the introductory remarks and on the
23 first panel. And this second panel is about the current
24 strategies to combat mobile cramming. So, just as a way
25 of framing this, and rather than going back to it

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1 messages on the lines that were billed. Additionally
2 consumers reported difficulties getting refunds. There
3 is evidence in the record that carriers often sent them
4 to Wise Media to get a refund. Consumers reported that
5 they reached a call center where they were promised a
6 refund by Wise Media representatives; they never got one.

7 Wise Media's monthly refund rates, and this is
8 something we'll talk about on this panel, by short code,
9 reached as high as 30 to 40 percent a month per short
10 code. Carriers reacted in different ways. One carrier
11 in November 2011 saw refunds around 40 percent on
12 different short codes and placed the campaigns on a watch
13 list, meaning if the refund rates persisted for another
14 month, then they would no longer be able to enroll new
15 subscribers. Wise Media continued billing on that
16 carrier through at least the end of 2012.

17 Another carrier also noted in October 2011
18 refunds rates were at 37 to 38 percent and then suspended
19 those short codes, continued billing on some of them for
20 another six months and then cut them off. In May 2012,
21 another carrier terminated all campaigns by Wise Media
22 because it exceeded a refund rate of 8 percent. So, that
23 was the guideline at which they cut them off.

24 Overall, Wise Media was able to collect more
25 than \$6 million in 18 months. The carriers received 30

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1 throughout the questions, I wanted to just point out some
2 of the facts that we learned in that case, because that
3 is a realtime example of a cramming scheme that existed
4 over the last couple of years that sort of caused -- you
5 know, was an issue despite the current efforts to combat
6 mobile cramming.

7 Just as an overview, the FTC sued Wise Media
8 and its two operators in mid April. Wise Media purported
9 to sell recurring subscriptions to regular text messages
10 containing love tips, horoscope tips, billed at 9.99 a
11 month. These are recurring charges.

12 Wise Media claimed that consumers opted in on a
13 website, so the form of double opt-in that they used was
14 consumers go to a website, they input their phone number;
15 Wise Media sends a text message to the consumer with a
16 PIN; and the consumers then input that PIN into the
17 website to complete the sign-up. So, that is what, as we
18 heard on the first panel, would be called a double opt-in
19 -- one version of a double opt-in process.

20 Wise Media then places the charges on
21 consumers' phone bills via arrangements with aggregators.
22 Consumers who noticed the charges widely reported they
23 had never even heard of Wise Media; they'd never been to
24 the website. Some of them reported they don't use text
25 messages. Some reported they were unable to receive text

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1 to 40 percent of the charges. Wise Media was able to
2 place charges on more than 2 million phone bills, and
3 consumers have received, to date, over 190,000 refunds.
4 So, those are some of the numbers as a backdrop of a
5 specific case study of what one of the -- and this is all
6 public information, just to be clear -- this is all
7 public information in the record about what one alleged
8 crammer was able to do.

9 So, with that said, I'd like to turn it back to
10 our panelists, let them introduce themselves and talk
11 about their perspectives on what the current efforts are
12 to address the mobile cramming issue. First up is Jim.

13 MR. CHILSEN: Hi, everybody. I want to thank
14 the Federal Trade Commission for continuing the
15 conversation on mobile cramming. My name is Jim Chilsen.
16 I'm Director of Communications for the Citizens Utility
17 Board or CUB. We are a non-profit consumer watchdog
18 group that has spent the last 30 years fighting for
19 better telecom policy in Illinois. Last year, Governor
20 Pat Quinn used CUB's headquarters to sign one of the
21 nation's toughest laws to combat landline cramming. That
22 bill was championed by Attorney General Lisa Madigan, and
23 it follows in the footsteps of our friends in Vermont.

24 But now that our landline bills are under lock
25 and key, CUB's concern is that scam artists are -- that

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1 scam artists have declared open season on our cell phone
2 bills and that cell phone-related commerce is the new
3 frontier for fraud. And that concern comes out of both
4 experience and analysis. Last December, CUB partnered
5 with wireless research firm Validas to release an
6 analysis of more than 200,000 Illinois cell phone lines.
7 And we found that the number of suspicious charges had
8 nearly doubled on Illinois cell phone bills from one year
9 to the next.

10 Now, Validas took a very conservative approach,
11 only labeling charges as suspicious if it had been -- if
12 it was connected to a company that had been involved in
13 past phone fraud litigation. But our experience at CUB
14 tells us that this analysis may just be the tip of the
15 iceberg. We hold hundreds of phone bill clinics across
16 the State of Illinois and we see these suspicious charges
17 all the time. We see suspicious charges on our cell
18 phone bills.

19 I am not proud to say that I'm a victim of
20 cramming. One of our top lawyers at CUB went three
21 months before she realized she had a 9.99 premium
22 services fee on her bill. It was some type of love tip
23 service called Love Genie. Now, Christie is happily
24 married; she's got a new baby; she had no business and
25 she did not order Love Genie. And by the way, Love Genie

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1 is offered by Wise Media, which the Federal Trade
2 Commission just recently wisely sued.

3 So, it is encouraging to see the steps that the
4 wireless industry has taken to combat cramming, but I do
5 think it's inevitable that we will need tougher
6 regulations to cut down on cramming. And that would
7 include some type of ban on third-party charges with
8 reasonable, common-sense exceptions.

9 Now, no question, there are legitimate third-
10 party charges. I am grateful that I was able to use my
11 cell phone to give to hurricane relief, but I think we
12 need tougher regulations to draw some clear lines between
13 what is appropriate and inappropriate. And I think
14 moving beyond self-regulation is vital, not only to
15 protect customers, but it's vital for the health of the
16 growing cell phone economy. And it's vital for the

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1 a second, I'll get him on the phone.
 2 MR. WITTEMAN: I'm here.
 3 MR. POZZA: You there, Chris?
 4 MR. WITTEMAN: Can you hear me now?
 5 MR. POZZA: Yes. We'll let you know if there's
 6 any feedback, but you might have to mute your webcast.
 7 MR. WITTEMAN: Okay. So, my name is Chris
 8 Witteman. I'm an attorney with the California Public
 9 Utilities Commission, and I should follow immediately
 10 with the same disclaimer that Mr. Singer made. I am here
 11 speaking for myself and not for the California Public
 12 Utilities Commission. I have participated in a number of
 13 proceedings, though, that involve cramming, so I have
 14 some idea about this subject. And I do want to thank the
 15 FTC for having this panel and for having me on the panel.
 16 We, out in California, very much appreciate the FTC's
 17 efforts in the cramming area, particularly the INC21 case
 18 in the Northern District of California was a seminal case
 19 for us out on the West Coast.
 20 The second substantive point I'd make is that
 21 -- is how little we know. As the first -- referenced in
 22 the first panel, the mobile and wireline third-party
 23 billing ecology is a three-legged stool. You have the
 24 billing telephone companies; you have the aggregators;
 25 and you have the service or content providers. And this

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1 dispersion of roles leads to, from my perception, some
 2 lack of accountability on the part of each of the
 3 carriers, and as the Vermont Attorney General said, a gap
 4 between rules and reality.
 5 What we have done in California to address that
 6 issue is a decision in rules issued in 2010 around
 7 cramming and the life motif of that decision is this
 8 sentence: The billing telephone corporation bears
 9 ultimate responsibility for all items presented in a
 10 subscriber's bill. With that principle, we have required
 11 billing telephone companies to conduct a reasonable
 12 inquiry before they sign on a service or content
 13 provider, before they give billing privileges, if you
 14 will, to a service or content provider.
 15 We require the billing telephone corporation to
 16 disclose third-party -- the possibility of blocking
 17 third-party charges. We require the billing telephone
 18 corporation to report refunds to us. And we use refunds
 19 as a proxy for complaints because when we had complaint
 20 reporting we would end up in endless semantic digressions
 21 around the meaning of the world complaint. So, refund is
 22 something a little more tangible and we assume that in
 23 most cases refunds are not made out of the blue but in
 24 relation to some expression of dissatisfaction by the
 25 customer.

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1 And, finally, we require billing telephone
 2 corporations to resolve complaints and to terminate bad
 3 actors. Just in the area of complaint reporting, I
 4 understand that our letter to the Senate Committee
 5 reporting refunds in the wireless space will become part
 6 of the record. And you see there that we're -- what the
 7 carriers are reporting to us is a refund rate in the area
 8 of 12 or 13 percent, so this begs the question of what is
 9 the threshold for terminating bad actors in this space.
 10 Is it 8 percent as we heard in the previous panel, or is
 11 it something else?
 12 The other thing that you can read out of that
 13 letter in the data provided there is how small the
 14 complaint numbers to us an agency are in relation to the
 15 refund rates. And we suspect that the refund rates
 16 themselves are small in relation to the total volume.
 17 I was interested to hear Mr. Singer's
 18 discussion of his recent case. We, in California, have
 19 been litigating and are still in the process of
 20 litigating a case against Telseven and Calling 10. In
 21 that case, there were 2 to 3 million Californians who
 22 were charged \$7.70 roughly for supposedly directory
 23 assistance. We did not find one customer, could not find
 24 one customer, who admitted authorizing that directory
 25 assistance charge. That appeared on bills. There was an

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1 opt-in there or a nominal opt-in by virtue of the
 2 consumer calling supposedly to get this directory
 3 assistance, but we believe that that was induced, you
 4 might say fraudulently or by misleading statements, in
 5 the context of the call.
 6 So, the final thing I'd like to discuss in
 7 terms of strategies to reduce mobile cramming is the bill
 8 blocking option. That is one of the things that we
 9 require of billing telephone corporations, that they
 10 disclose that and that there is that option. The
 11 question then becomes how well do they disclose it, and
 12 our preliminary investigation of this leads us to the
 13 conclusion not very well, at least not in all cases.
 14 In many cases, consumer service reps are

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1 to vet the content providers, and these again are the
2 companies actually providing the horoscope or the content
3 or the ringtones or whatever, you know, and placing the
4 billable event on the bill.

5 So, just to kick off the discussion, how much
6 up-front vetting is really done before a content provider
7 can start billing a consumer and how robust is it? And
8 then, you know, the second half of that is once it goes
9 live, how much follow-up is done. I know on the first
10 panel Mike Altschul wrote -- said something to the effect
11 of that carriers touch every code every month or
12 something, not to misquote you, Mike, but just drill down
13 on, you know, how often and how robust is the vetting
14 once these companies are actually putting charges on the
15 bill. Maybe we could start with John?

16 MR. BRUNER: Sure. I'll stay on the microphone
17 this time. So, to define vetting first, because I think
18 Duane and I when we first started talking vetting, we
19 were using it differently. Vetting is actually doing a
20 background check on the content provider that wishes to
21 come onto a carrier's network or wishes to purchase a
22 short code through CTIA first. The vetting process is
23 essentially a background check, much as you would do a
24 background check on an individual for a credit card. We
25 seek databases that we pay for as a company, but we also

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1 do a number of other data sources, which I'm not going to
2 disclose all those data sources at this time, simply
3 because it is part of the secret sauce of protecting this
4 industry.

5 But, so, up front we do that complete check,
6 and if we find anything that, number one, associates that
7 content provider with any bad behavior in the past
8 related to cramming, any open lawsuits, any kind of
9 articles talking about that company, but in addition any
10 relationships of any of the people within that company
11 that play key roles or any of the other features of that
12 company that they submit, and I'll say very vaguely bank
13 accounts, addresses, at the highest level, we can connect
14 those to people that we've vetted in the past and more
15 importantly people -- companies that we have removed with
16 our carriers from the network.

17 I have a slide that I show sometimes that
18 pictorially shows groupings of bad players, how they come
19 back as different companies and turn bad, but you'll see
20 when we plot them on a point diagram that you have
21 clusters of good players that have relationships to each
22 other, and then you have clusters of bad players. And
23 sometimes what we find is we'll find clusters of bad
24 players and we'll find a few not-yet bad players related
25 to them. And, so, in terms of going beyond the vetting,

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1 that's one of the indicators that we use to more closely
2 monitor those companies that seem to have relationships
3 with other companies that we've found in the past.

4 When Paul talked about the Arizona-based
5 company earlier, they had hundreds of companies
6 associated, and they were playing the shell game. You
7 know, you play bad this week and we'll send it over to
8 another company to play bad next week. For that reason,
9 when we do our vetting, we're looking at all of the
10 doing-business-as names and all of the relationships of
11 all companies that are associated with the company
12 applying. And, again, that's all stored in a relational
13 database and we use it and we leverage that data as
14 another source of identifying bad behavior.

15 MR. POZZA: And how much of the monitoring is
16 ongoing in terms of compliance with the MMA guidelines?
17 And is that the touchstone for monitoring content
18 providers once they go live? And is that enough to
19 ensure that there isn't, you know, that these content
20 providers are not engaged in deceptive or cramming
21 behavior?

22 MR. BRUNER: We actually believe that the full
23 life cycle approach is critical and the ability to join
24 the data across the full life cycle is important. One of
25 the things that I probably failed to mention in the first

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1 answer is that, you know, companies change, so just
2 because you vetted them once to let them onto the network
3 doesn't mean that they acquire a new CEO or they acquire,
4 you know, another company. And, so, revetting is also a
5 very important thing.

6 You know, a couple of things that we will do is
7 we'll put crawlers out looking for changes that are
8 occurring to companies. One of the things that we will
9 do is we will revet on an annual basis. One of the
10 things that we will do is when we find advertising or any
11 sort of information out on the network that tells us that
12 a company is coming to risk because of some change in the
13 company, then we go back to our customers and recommend a
14 revet, just to make sure that, you know, that they stay
15 good players.

16 In terms of jumping into the market, yes, it's
17 very important, because that's the other side of it.
18 Companies, you know, will change potentially after being
19 vetted, and they change all the time. And, so, to say
20 that they can get through and get on the network, you
21 know, and pass the vetting process doesn't mean that they
22 won't then start doing deceptive advertising, stacked
23 marketing or anything they can do to get people to buy
24 their products without them necessarily understanding
25 what they've done.

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1 and I look forward to seeing documentation from Aegis and
2 groups like that, but the documentation we've seen has
3 been a pro forma, boilerplate, check-the-boxes form that
4 the content provider will fill out and provide to the
5 aggregator who then provides it to the billing telephone
6 company.

7 So, I'm skeptical about the up-front vetting
8 and I am skeptical about the refund or complaint
9 threshold required to trigger serious scrutiny.

10 MR. SINGER: I want to say two things real
11 quick about refunds. I mean, one, you obviously have the
12 risk of a Jawa-like situation, right, where you had
13 multiple entities set up in large part to keep refund
14 rates at an incredibly low threshold. And, so, it was
15 very easy for them to just transition the exact same
16 program from one entity, one short code, and, you know,
17 and escalating refund rate to a brand new one, where, you
18 know, you now have this seemingly new entity that's sort
19 of starting from scratch.

20 The other issue, I think, is that refund rate
21 necessarily implies that people are actually successful
22 in getting refunds. And I think that the Vermont survey,
23 consumer complaints, they all reflect a lot of varied
24 experiences on consumers actually obtaining meaningful
25 refunds.

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1 And just one example from our litigation, you
2 know, I'll up Jim a little bit. One of our investigators
3 in our Jawa case, six weeks into the investigation he
4 comes in my office with his head hung low and realized
5 that he'd been crammed for 11 months by them. And it
6 took him that long to even realize it after we had been
7 looking at them.

8 And he had multiple calls with his carrier,
9 attempting to get a refund. First was told, no, he can't
10 get any refund; next, he was given either a two or three-
11 month refund. Ultimately, the only way he got a full
12 refund was to go to Jawa directly, who maintained a
13 money-back -- a full, no-questions-asked, full refund
14 policy and issued him a full refund.

15 MR. POZZA: I'll give Kristy's -- maybe we can
16 get his number and Kristy and him can cry on each other's
17 shoulder.

18 MR. SINGER: They can swap text messages.

19 MR. CHILSEN: It does feel like it's just one

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1 evidence of, you know, their very generous refund policy,
2 there were repeated references from consumers saying,
3 well, I would have never paid for this, why would I pay
4 for this service that's available for free.

5 So, I mean, I think those are legitimate
6 questions to be asking because it's certainly something
7 that happened historically on the landline side.

8 MR. HALLIDAY: And, well, at the same time,
9 that's -- I mean, that's somewhat complicated by the fact
10 that there are so many types of new services that are

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1 look at. And, you know, when we questioned Jawa
 2 representatives about those disclosures, they didn't know
 3 what they were, they had no idea that those were there.
 4 But they certainly knew the detailed auditing
 5 requirements about trying to put a price point 125 pixels
 6 from a cell phone entry field.
 7 I think the other comment I'd like to make
 8 about the rules is that there's always room for
 9 improvement, right? You know, one of the things that we
 10 looked to when we were crafting a final permanent
 11 injunction in our Jawa litigation was how can we take the
 12 rules and make them clearer and more express so that you
 13 don't have companies who can try to use creative
 14 interpretations of those rules to get around them.
 15 And just another quick example, I showed the
 16 text messages that Jawa used. One of the rules says that
 17 the PIN has to be after the price in the text message.
 18 I'm paraphrasing, but that's generally how that's worded.
 19 What it doesn't say is that the PIN can't also be before
 20 the price, which is what Jawa was doing. So, you had PIN
 21 at the start, PIN at the end, and price somewhere buried
 22 in the middle.
 23 So, I mean, those are examples of there's
 24 always sort of room for improvement and sort of looking
 25 at the way companies are creatively interpreting these

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1 rules.
 2 MR. WITTEMAN: And this is Chris Witteman out
 3 in California again with a question for MMA or CTIA, if
 4 that is the body that's enforcing this. Would they
 5 commit to an open-door policy, vis-a-vis state agencies
 6 and the FTC and the FCC, so that we could see where their
 7 concerns were and what their enforcement efforts were?
 8 MS. FREY: Yeah, this is Cara from the MMA, but
 9 the MMA has never been an enforcement body, so I can't
 10 address that.
 11 MR. HALLIDAY: Actually, I wanted to jump in on
 12 this one as well. Sort of as -- you know, from a mobile
 13 standpoint, as someone who is the consumer advocate from
 14 a security and privacy standpoint on consumer devices,
 15 having a clearly established set of guidelines such as
 16 these is immensely important, and having those guidelines
 17 be extremely clear is just as important, because we view
 18 ourselves as somewhat of an opt-in enforcer for some of
 19 these guidelines themselves.
 20 The example that we've been most familiar with
 21 in the past year has been very similar to this but
 22 working with MMA to figure out, you know, what the right
 23 guidelines are for, you know, the collection of PII from
 24 mobile devices. So, I think it's very similar to this
 25 issue. And then it provides a framework for ourselves as

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1 a security company that scans the apps on your phone to
 2 tell you, you know, what you might want to be concerned
 3 about.
 4 And, so, for companies like ourselves that are
 5 there to protect the user and inform them -- and keep
 6 them informed, you know, I think that there's a clear
 7 need for these types of guidelines. That said, I think
 8 it's essential that, you know, a consumer advocate or
 9 watchdog is extremely involved in shaping those
 10 guidelines, so that they're not done in a vacuum, because
 11 certainly you can iterate very quickly at speed on some
 12 of these guidelines all you want, but if you're not
 13 actually addressing the concerns that are facing users
 14 and addressing the right bar of risk for users, you're
 15 not going to get anywhere.
 16 MR. BRUNER: If I could, the carriers that we
 17 represent in the in-market monitoring do also have and
 18 have added rules of their own to that. One that comes to
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 25 MR. FREY: And Paul, es tn yourdpoino that tas

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1 with it? We hear WAP billing, wireless access protocol,
2 premium SMS. And from there, I'd like to get into issues
3 or problems with double opt-in. So, could somebody
4 educate us on exactly what double opt-in is and how it
5 works?

6 MR. BRUNER: All right, the double opt-in, it's
7 the standard -- it's the point at which a consumer
8 commits to a purchase. The process is designed to ensure
9 that the consumer knows exactly what they are purchasing,
10 and there's the second opt-in is to reconfirm, the text
11 message that goes out to the consumer saying you've
12 agreed to purchase this. It's all designed to ensure
13 that the consumer knows what they're doing.

14 To add to that, though, I would say that what
15 we see in the market is not a violation of the double
16 opt-in where it's being skipped necessarily. What we
17 usually see is that consumers are either, through stacked
18 marketing or deceptive advertising, double opting in and
19 not realizing that they had purchased something. And,
20 so, you know, the process, the physical process itself
21 seems to be a very sound process for purchase. It's more
22 the method leading up to getting a consumer to perform
23 that function.

24 MR. DEITCH: All right. Let's follow up on

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1 MR. POZZA: Just following up on that, do
2 consumers have an understanding and is it the case that
3 they can dispute a third-party charge on their bill
4 without having their phone service cut off?

5 MR. CHILSEN: No, I think that is a big -- and
6 we try to educate people about that, that you're not
7 forced, you know, to pay this fee. And I think that's
8 what happens a lot, and it's not just in the cell phone
9 industry, it's across the -- you know, we deal with
10 charges on gas bills, on -- you know, and on landline
11 telephone bills where people think a charge, you know, is
12 a required charge, it's not optional. And they think
13 they have to pay it and then they call us after paying it
14 for, you know, many months. And then it's much more
15 difficult to get a full refund.

16 MR. SINGER: Can I throw out there, I want to
17 back up to a question you asked earlier, because I'm not
18 sure that there's been really a complete answer about the
19 various ways that the double opting can occur. I think
20 it would be really good -- I mean, John, I'm going to
21 sort of turn to you. I mean, do you mind just sort of
22 running through, because the Jawa example, right, is just
23 one of the various mechanisms in which a double opt-in
24 can occur. That was a web-based cell phone/PIN entry
25 process. I mean, I was hoping you could just sort of run

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1 through the different ways that people can be opted in.

2 MR. BRUNER: Okay, thank you.

3 MR. SINGER: You're welcome.

4 MR. BRUNER: I'd really like to, if I may,
5 refer to an expert on the floor. Jen Sizer is a lead
6 analyst in our organization who was very instrumental in

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1 transparency of the message logs of the opt-in records.
 2 Again, the strength of this billing method is that it has
 3 handset authentication comprised of messages to a cell
 4 phone. Those message logs are possessed by the consumer
 5 on their handset; they're possessed by the merchant on
 6 their side; they're possessed by the aggregator that has
 7 the complete set of the exchange of messages; and they're
 8 also possessed by the carrier.

9 So, it's impossible for any one person in the
 10 chain to lie about it if it ever goes into discovery, for
 11 example, in litigation because all of those records are
 12 always identical.

13 MR. DEITCH: Let me follow up on that. Dealing
 14 with authentication, you said there are two parts: what
 15 you know and what you have, in the first answer to the
 16 question. What you know is a phone number, and what you
 17 have includes the PIN that comes back. Couldn't problems
 18 arise because, for example, a child could have the phone
 19 and the PIN comes back to the child who's too young to
 20 contract, or a third-party can have the phone because
 21 here we're talking about what you know and what you have,
 22 but it's not out-of-pocket type questions that only one
 23 person are unique to answer. And I know no method is
 24 perfect, but aren't there some potential holes with what
 25 you're describing?

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1 MR. SEGE: Yes, I believe that, you know, there
 2 are potential holes. I just -- I guess in theory this
 3 method is superior to most other payment methods, which
 4 are single-factor. In terms of a minor using a cell
 5 phone to make charges, you know, this is sort of a larger
 6 phenomenon, which is well accepted in our society in many
 7 aspects of cellular telephone use. Families use phones;
 8 children use phones; and they incur charges when they do
 9 that. And this is not exactly an exception.

10 MR. POZZA: Thanks a lot, Alan. Well, we are
 11 now out of time. It's time for lunch. This interesting
 12 discussion will go on, and I hope everyone comes back
 13 after lunch for the third panel, because there's still
 14 lots to talk about. And thanks again to all of our
 15 panelists. We really appreciate it. It's very
 16 informative.

17 MR. DEITCH: Thank you very much.
 18 (Applause.)
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1 PANEL 3:

2 OTHER POSSIBLE STRATEGIES TO ADDRESS MOBILE CRAMMING

3 MS. MITHAL: Good afternoon. Welcome to the
 4 afternoon session of our mobile cramming workshop. We
 5 are here to discuss a couple strategies to address mobile
 6 cramming, and we're speaking from 1:30 to 2:45. We have
 7 seven panelists, as you can see, so we're going to try to
 8 move quickly through the introductions. I'm Malini
 9 Mithal, and I'm at the FTC.

10 MR. TRILLING: And I'm Jim Trilling, also at
 11 the FTC.

12 MR. ALTSCHUL: Mike Altschul with CTIA.

13 MS. MITHAL: And I'm sorry, before the next
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| 133 | <p>1 these charges from ending up on consumers' wireless 2 bills. To that end, we'd like to thank the FTC for its 3 leadership on this issue and for actively participating 4 in last year's proceeding before the FCC and for bringing 5 its first enforcement action against mobile crammers.</p> <p>6 MS. FOLLANSBEE: Hi, I'm Lynn Follansbee, and 7 I'm an attorney advisor in the Policy Division of the 8 Consumer and Governmental Affairs Bureau of the FCC. The 9 Consumer and Governmental Affairs Bureau is really the 10 branch of the FCC that handles most of the cramming 11 issues. The Commission handles cramming under its truth 12 in billing rules, which since 2005 have required landline 13 and wireless carriers to provide the name of a service 14 provider associated -- with the bill clearly and 15 conspicuously, identify any change in service provider on 16 the bill clearly and conspicuously, provide brief, clear, 17 and non-misleading plain language description on the 18 bill, and for wireline carriers, separate changes have to 19 be separated by service provider and identify amounts 20 that need to be paid to avoid disconnection.</p> <p>21 Last year, we adopted some new rules that 22 essentially required non-carrier third-party charges to 23 be in a separate and distinct section on the bill and for 24 there to be a separate subtotal. At the time, the 25 Commission decided not to require that of wireless</p> | 135 | <p>1 company, and I also am the VP of Customer Support. I 2 come today representing the commercial space, and we are 3 an aggregator of sorts, but a little different from a 4 sort of historical aggregator as you might think about 5 them.</p> <p>6 And I think, you know, one of the things that's 7 really important about our service and the way we operate 8 is we not only do merchant vetting, but we work with 9 merchants who are the likes of Facebook, Sony, EA, 10 Electronic Arts. These are folks who have existing 11 payment methods on their site today, they accept credit 12 cards, they accept checks, they accept those sorts of 13 things, and they want to accept mobile billing as an 14 option. We provide that service to them.</p> <p>15 Why do they want to accept mobile billing as an 16 option is because consumers want to use it. We have done 17 some surveys ourselves, and about 50 percent of the 18 people who use our service don't have other good ways to 19 pay. And about 50 percent of the people who use our 20 service use it because they want to. It is private; it 21 is secure; they like it; and we offer that option to 22 them.</p> <p>23 So, our transactions are always consumer- 24 initiated. These are people looking to buy something. 25 We're not marketing people; we're not Googling -- putting</p> |
| 134 | <p>1 carriers because we didn't see cramming as as big a 2 problem, but we did note a trend and adopted a further 3 notice, and that proceeding is still ongoing.</p> <p>4 Also at the time that we adopted the order in 5 2012, we had a lot of carriers that actually -- telephone 6 companies that came to us and voluntarily agreed to stop 7 third-party billing for non-telecommunication services by 8 the end of 2012. So, we've seen a lot of that curbed by 9 the industry on its own.</p> <p>10 We are still currently handling each cramming 11 complaint individually. They are mediated if 12 appropriate, and the degree of the Commission's 13 involvement essentially depends on whether or not we have 14 jurisdiction over the complaint of company. If the 15 complaint of company is the carrier, then we address the 16 alleged violator and ask them to respond to the FCC and 17 directly to the consumer.</p> <p>18 We are pleased to be participating in this 19 workshop. We had our own cramming and bill-shock 20 workshop a couple of weeks ago, and we heard from a lot 21 of folks that they thought that wireless cramming was 22 under reported. So, we're happy to continue to look at 23 this issue and see what we can do from here. Thank you.</p> <p>24 MS. NIEJADLIK: Hi, I'm Martine Niejadlik with 25 Boku Mobile Billing. I'm the Compliance Officer for our</p> | 136 | <p>1 ourselves in Google search or any of that sort of stuff. 2 They are coming to a website, they want to make a 3 purchase, they're choosing mobile billing as the choice 4 method for making that purchase. And then we are hosting 5 the payment panel and the opt-in.</p> <p>6 So, merchants who -- the Texas case was very 7 enlightening to me this morning. It seems like a clear 8 case of UDAP violations in my mind, but we do that on the 9 merchant's behalf, so merchants can't decide they're 10 going to put a bunch of blank space in the text messages 11 because we are in control of that. So, that's a little 12 bit about our service, I think.</p> <p>13 You know, this morning we heard a lot about 14 charities and commercial cramming, and I want to sort of 15 get everybody to think about the commercial business 16 really having different flavors to it as well. There are 17 the folks out there who are doing the types of billing 18 that are getting classified into cramming. We don't like 19 cramming; we don't condone cramming. We feel like, you 20 know, we're getting mixed up a little bit in some of that 21 because our service is quite different, as I described.</p> <p>22 So, just a little bit about my history quickly, 23 too. My prior three jobs before joining this mobile 24 billing startup thing is I managed the fraud detection 25 function at Paypal, and prior to that ebay, and prior to</p> |

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1 that Amazon. So, I am all about protecting consumers and
2 preventing fraud. It's not an easy job, but I think we
3 need to all work at it. So, we'll talk more about that
4 today. So, thanks very much.

5 MS. TIANO: I'd like to start by thanking the
6 FTC for hosting this workshop and for continuing to focus
7 attention on this issue. Chairman Rockefeller remains
8 very focused on this issue, and I know that he is
9 appreciative of all of your efforts.

10 My name is Melanie Tiano. I'm Investigative
11 Counsel to the Senate Commerce Committee. And in 2009,
12 when Senator Rockefeller took over as Chairman of the
13 Commerce Committee he created an office of oversight and
14 investigations, which is where I work. And he wanted to
15 create an office with a team that was dedicated to
16 identifying and investigating instances of waste, fraud,
17 and abuse in the public sector and also of consumer harm
18 in the private sector. And I think that we can all agree
19 that cramming falls squarely within this mandate.

20 After years of consumers frequently complaining
21 about unauthorized charges on their telephone bills and
22 state and federal law enforcement agencies, especially
23 the FTC, for years had been bringing cases against
24 companies engaged in cramming, but the problem didn't
25 seem to be going away. So, in 2010, Chairman Rockefeller

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1 opened an investigation into cramming on wireline
2 telephone bills. And through that investigation we found
3 that third-party billing on the wireline telephone bills
4 was a multibillion-dollar industry, and a large
5 percentage of the third-party charges that were placed on
6 consumers' telephone bills were, in fact, unauthorized.
7 Further, we saw that the majority of the companies that
8 were providing these so-called services to consumers, and
9 the services I think we all know consisted of enhanced
10 voicemail, email accounts that also sent you weekly
11 emails with fashion tips and celebrity gossip updates,
12 were illegitimate and appeared to be created solely to
13 exploit the third-party billing system.

14 In response to our findings, the major wireline
15 providers did take positive steps to attempt to curtail
16 cramming on the wireline bills. At the time of our
17 investigation, it made sense for us to focus on wireline
18 cramming as opposed to wireline and wireless because
19 there was such an extensive history of cramming on the
20 wireline side and there were distinct differences between
21 the technologies of wireline and wireless.

22 However, throughout and following our
23 investigation, our office saw increasing indications that
24 cramming was affecting wireless consumers as well. So,
25 to examine this issue more closely, Chairman Rockefeller

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1 sent letters to the four major wireless carriers, AT&T,
2 Verizon, Sprint, and T-Mobile, asking them for
3 information about who they allow to place charges on
4 their customers' telephone bills and also any processes
5 and steps that they had in place to curtail cramming on
6 wireless bills.

7 Following continued reports that instances of
8 wireless cramming were increasing, this year the Chairman
9 sent follow-up letters to the carriers, this time asking
10 for information related to consumer complaints and also
11 for the information that they submit to the California
12 Public Utilities Commission concerning charges and also
13 refunds. And he also sent letters to five billing
14 aggregators asking them questions related to their role
15 in the industry and any consumer complaints that they
16 receive.

17 This investigation is currently ongoing. Also,
18 last Congress, Chairman Rockefeller introduced the Fair
19 Telephone Billing Act of 2012, and this bill would have
20 prohibited most third-party charges from being placed on
21 wireline telephone bills and would also require the FCC
22 to impose rules protecting wireless consumers.

23 As I said, the investigation into wireless --
24 cramming on wireless telephone bills is currently
25 ongoing, so I won't be able to comment on the specific

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1 information that we're receiving, but I do look forward
2 to contributing what I can to the questions that will be
3 posed on this panel. And I thank the FTC again for
4 inviting us to participate in this very important
5 discussion.

6 MR. SEGE: My name is Alan Sege. I'm with a
7 company called m-Qube, Inc., and we're one of the --
8 we're one of the predominant messaging and carrier
9 billing aggregators in the United States with direct
10 connections to every single mobile operator, most of whom
11 do enable one form or another of carrier billing for
12 third-party charges.

13 Now, I'm here today -- first of all, I'd like
14 to thank the FTC for inviting us. We're very honored to
15 be here. Consumer protection is most of what we do. We
16 are vendors to the carriers, and enforcing the regimen of
17 two-factor authentication and the marketing rules are
18 really the core part of our jobs to them. At the same
19 time, we also serve merchants, so we actually are the
20 ones who administer and supervise this system on a day-
21 to-day basis. So, we do have quite a bit of information
22 about how it works and, you know, we're quite proud of
23 the strengths of it. If there's any way in which
24 consumer protection can be increased, we definitely
25 always are at the forefront of those ideas.

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1 receives their premium SMS PIN message and the welcome
2 messages, those are times when they ask for refunds, so
3 those are supported by high refund rates. Whereas if
4 they were not to see those or those were not properly
5 configured, one could see lower refund rates.

6 Most of these programs come, like many Internet
7 programs, with a money-back guarantee, in which people
8 are encouraged to essentially try before they buy. Also,
9 other channels for mobile media just do not permit
10 refunds, so purchasing on the various operating system
11 stores, there's no way to get a refund, whereas in our
12 channel refunds are liberally granted.

13 And all of the rules and mechanisms we have are
14 premised on our concept that we offer a payment means,
15 which is much more authentic than other payment means,
16 like a credit card, either credit card not present or
17 credit card present transactions. Our channel is much
18 more authentic. But the problem -- the issue that we
19 must address and which we always try to address is the
20 fact that consumers may not be familiar with the fact
21 that their cell phone bills can be charged for -- you
22 know, for these kinds of purchases. So, that puts us in
23 a position where we always favor much higher, much
24 greater degree of disclosure than a normal online or
25 credit card transaction.

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1 MS. MITHAL: And, actually, Alan, you're
2 bringing up a topic that I think some other panelists
3 want to discuss, that's the topic of refund rates. So,
4 I'm actually going to dive right into that.

5 So, we are, as we know, talking about, you
6 know, general additional strategies that could be used to
7 reduce mobile cramming. And a topic that earlier
8 panelists touched on is the idea of using refund rates to
9 see if it's appropriate to suspend or terminate certain
10 content providers with high refund rates. Does anyone
11 have any comments about that? Mike?

12 MR. ALTSCHUL: Well, I can report, the carriers
13 are doing exactly that. They do monitor the consumer
14 complaints and refunds and use it as a trigger.
15 Different carriers, I understand, have different
16 thresholds, but in talking about refund rates, we also
17 have to remember this is a metric that's uniquely within
18 the carrier's control. A carrier can be very, very
19 generous in providing customers with refunds and
20 extending those refunds over very large numbers of months
21 if charges have been on a bill for some time, increasing
22 the refund rate, being consumer-friendly, having a larger
23 number, a larger refund number than a carrier that is not
24 as generous in providing refunds.

25 Probably the most significant real data that

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1 I've seen is contained in a ex parte letter that the
2 California Public Utilities Commission filed with the FCC
3 earlier this year comparing the refund levels from
4 wireless carriers reported to them under their state
5 rules between 2011 and 2012 calendar years. In 2012, the
6 refund rates had dropped in half.

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1 that month. And the reason that's problematic is because
2 a lot of the people who are using the system to conduct
3 the billing have changes in volumes from month to month.

4 And, so, if my volume is going up, and I'm
5 using volume from, I'll just argue March, and I'm
6 comparing it against refunds for March, which are
7 arguably, many of which from transactions that are in
8 January, I now have an understated refund rate and vice
9 versa if my business is going down, I have an overstated
10 refund rate, which could cause, you know, red flags to go
11 off when it's not warranted. And, so, I think the
12 calculation there also needs a bit of work.

13 Once we fix all that stuff and, you know, and
14 also really educate consumers properly to call, where to
15 call, and how to get a refund and all that sort of stuff,
16 and they get it when it's appropriate. That might be the
17 point at which we consider, you know, what's in
18 inappropriate refund rate. I don't think we're there
19 yet, frankly, to be able to come up with that number.

20 MR. SEGE: I would also say that in terms of
21 refund rate, you know, it definitely is a metric that,
22 you know, an operator, someone who actually conducts the
23 business, can use in conjunction with other data to reach
24 conclusions. There's no doubt about it. However, it's
25 really unregulable, because businesses will make their

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1 own decisions based on any number of factors about their
2 refund polices, so that what it means for one business or
3 one carrier means something entirely different for
4 another business or another carrier.

5 If it were regulable, I don't believe it's
6 something that could be done by government regulation. I
7 think it's the kind of thing that maybe could be with
8 cross-carrier or industry regulation, but even there I
9 wonder whether there will be unfair trade, you know,
10 concerns about the companies collaborating on an economic
11 metric like refund rates.

12 So, yes, we do use it as data in our analysis
13 in our investigations and in our decisions about
14 suspending and terminating and imposing liquidated
15 damages on a commercial level, but it doesn't seem to be
16 useful either for government regulation or for industry
17 self-regulation too much.

18 MS. MITHAL: And Delara?

19 MS. DERAKHSHANI: Sure. So, we actually do
20 think that refund rates do inform the discussion of just
21 how widespread the problem of mobile cramming is. We do
22 think that more needs to be done, but one thing that I
23 will note is that this -- the refund rate mechanism
24 really only identifies the problem after it has occurred.
25 And we really strongly believe that more proactive

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1 measures need to be taken to address the issue before it
2 happens, before consumers are hit with those charges.
3 So, I will put that.

4 MS. MITHAL: And Dave?

5 MR. ASHEIM: In the non-profit space, I think
6 Jim mentioned earlier this morning that refund rates are
7 1 to 1.5 percent. And there are many reasons for that,
8 but one or two reasons that come up, the charities, of
9 course, are trying to maintain a strong relationship with
10 their prospective donor, so they are really going out of
11 their way to make sure everybody knows what this is
12 about. They will put the terms and conditions on their
13 website, on all printed material, and even many live
14 events where they're raising money, they'll actually read
15 this, this long four or five sentences of terms and
16 conditions to make sure that when you get your bill
17 you'll see this on the charge. So, I think one thing
18 that's made them so successful in this is their full
19 disclosure.

20 MS. MITHAL: Okay, and I'm actually going to
21 move on to the next question. Jim, did you want to --

22 MR. TRILLING: We want to continue to talk
23 about refund rates but maybe with a little bit of a
24 different angle. Mike, you've mentioned that the
25 carriers, and Martine alluded to this, different carriers

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1 and different aggregators may have different refund rate
2 thresholds before they take action against a content
3 provider.

4 Once an aggregator or a content provider does
5 terminate billing -- I'm sorry, once a carrier or an
6 aggregator terminates billing for a content provider, do
7 the carriers reach out to the consumers who've been
8 charged in the past to let them know that that's
9 happened? And in doing so, do they offer them a refund
10 for all the months they've been charged? And, if not, is
11 that something that they should be doing?

12 MR. ALTSCHUL: Well, I can't give you an
13 authoritative answer across all the carriers and all the
14 customers, but carriers have reported that when they do
15 detect out-and-out fraudulent cramming, and I mean, can
16 identify the pattern, yes, they do go back, they look at
17 the premium SMS charges on consumers' bills who have not
18 come forward and do proactively, in appropriate cases,
19 act to remove and reverse those charges, not in every
20 case, but in proactive cases.

21 Just one quick word, though, about different
22 carriers and different thresholds. Much as in the retail
23 space, there is competition on refund friendliness.
24 Everybody knows that Nordstrom's and L.L. Bean are very
25 proud of a no-questions-asked refund policy. You hear

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1 this maybe apocryphal story they even take back goods
2 that they've never sold with a smile to keep customers
3 happy.

4 Different carriers use this as a method of
5 competition as well. And a carrier with a very generous
6 refund and a very good consumer-facing policy is going to
7 have a higher refund rate than a carrier that may hold
8 consumers to a higher standard in granting refunds. And
9 you certainly wouldn't want the unintended consequence of
10 making this a key metric in dampening those carriers and
11 those business practices which actually are consumer-
12 friendly but lead to higher refund rates such as what you
13 were suggesting, Jim.

14 MR. TRILLING: And, Melanie, did you have
15 something to add?

16 MS. TIANO: Yeah, and I would just like to
17 quickly go back to the original refund rate discussion
18 that we were having. I know that there's a lot of talk,
19 has been a lot of talk, about percentages, and I know in
20 the last panel someone mentioned that credit cards, once
21 you've exceeded a 1 percent refund rate, that they start
22 to suspect fraud. And, you know, we examined the
23 California data and we saw that around 13 percent of all
24 third-party charges that were being placed were being
25 refunded.

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1 And, you know, everyone argues that they can't
2 say for sure that each one of those is a cramming
3 instance, but, you know, when you look at it as
4 percentages, even 13 percent may not sound that high, but
5 when you look at the actual numbers, hundreds of
6 thousands of complaint -- of refunds were being made each
7 month in one state. And, so, even if you don't think
8 that 13 percent is an alarming percentage, it's a lot of
9 refunds that are being made. And if you look at \$10 per
10 charge, which is the average, that's a lot of money that
11 is being refunded to consumers each month.

12 MR. TRILLING: Alan, did you have something to
13 add?

14 MR. SEGE: Oh, yeah, we should bear in mind
15 that quite a number of these programs in their actual,
16 you know, terms and summary terms very blatantly disclose
17 to consumers is that this is a 30-day or 60-day money-
18 back guarantee kind of situation, and this is, you know,
19 part of how they market. Maybe that marketing could be
20 criticized, but it does give rise to people taking
21 advantage of those offers and availing themselves of the
22 money-back guarantee.

23 Also, I'm not sure about the credit card
24 analogy. And there's different kinds of refunds and
25 chargebacks on credit card bills. But I wonder whether

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1 anyone has looked even at the 13 percent number and
2 compared it to credit card world purchases of software or
3 content or soft goods to determine is 13 percent
4 unusually high in a similar situation through other
5 billing mechanisms. I don't know the answer, but I'm
6 willing to bet that it wouldn't be so very different.

7 MS. MITHAL: And does anyone have any thoughts
8 about whether the credit card industry is a good
9 comparison? I mean, is there a reason that consumers are
10 more or less aware of charges on their credit card bills
11 versus phone bills? Mike?

12 MR. ALTSCHUL: Well, one big difference is
13 there aren't many, you know, teenagers with credit cards
14 that their parents have given them, but there are on
15 family plans authorized users of the family plan account
16 who are in their teens and may not have the same judgment
17 that their parents upon receiving a bill may have in
18 second guessing their children's judgment. That doesn't
19 happen in the credit card world.

20 MS. MITHAL: And Martine.

21 MS. NIEJADLIK: Yeah, I mean, I don't think you
22 can compare the -- people get credit cards because they
23 want to use them as a billing device. That's necessarily
24 the reason why people get their mobile phones. Now, many
25 people may want to use them as a billing device, but it

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1 doesn't necessarily equate. And, so, there's no doubt
2 that consumers are not as aware, certainly today, that
3 their mobile phone is a billing device. And I think
4 there's a lot more consumer education that needs to
5 happen.

6 I also think there's a lot more analysis that
7 needs to happen as I was sort of alluding to before.
8 Another thing that the credit card companies do is they
9 classify merchants into codes, and they look at rates via
10 codes. And there's different expectations if you are,
11 you know, an Internet merchant selling books than if you
12 are a, you know, physical goods merchant and you have a
13 storefront. It's just very different.

14 And I don't think we've really segmented our
15 industry enough. We don't even have enough experience,
16 frankly, yet, but certainly we haven't segmented it
17 enough to really understand that problem well, as I sort
18 of alluded to before. I mean, I think the types of
19 commercial, you know, merchants that we work with, I
20 mean, we're not shutting down Facebook, for example,
21 because they have too many refunds because they're
22 cramming on people's bills. Like that's just not
23 happening.

24 And, so, even if they have refunds that are
25 occurring, which, by the way, to Alan's point, like maybe

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1 a good thing, it would be worse if there were no refunds
2 occurring and people were unhappy with the charges that
3 were on their bills. But I don't think that's necessary
4 -- I mean, I do agree completely. It's a great
5 indicator, and people should be watching it. Anybody in
6 this space should be watching it and should be taking
7 action and at least looking at it as an indicator to
8 whether an investigation needs to be conducted, you know,
9 further than that. But I don't think an automatic, you
10 know, 8 percent or 13 percent or whatever the numbers are
11 we're throwing out there right now would be appropriate

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1 requirements that a non-profit has to go through. There
2 are something like nine or 10 different documents that
3 have to be submitted to the Mobile Giving Foundation.
4 There are carrier rules on who can play and who can't
5 play. So, that does keep a lot of the bad actors out of
6 the whole game.

7 MS. DERAKHSHANI: I was just going to reiterate
8 that we af4(e.75't)TjgG gaaf4Melaniitta So, tha7t

1 rules would be inappropriate. Our experience in the
2 landline context taught us that self-regulatory measures
3 are not enough. And while we recognize that there are
4 very many valuable uses for these third-party services,
5 we at Consumer Reports and Consumers Union believe that a
6 regulatory mechanism is necessary to help distinguish
7 between these services that consumers actually want
8 versus unauthorized charges that consumers did not ask
9 for and may not even be aware of.

10 MS. MITHAL: Okay. And, Alan, if you just want
11 to make one last comment, and then we're going to move to
12 the next topic.

13 MR. SEGE: I did want to comment that, you
14 know, the advantage that we have in industry self-

- 1 MR. ALTSCHUL: Right.
- 2 MS. NIEJADLIK: The block is different.

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1 were abusing the system, it's something the industry went
2 back and did.

3 With respect to the billing again, this is the
4 unintended consequences of people with all the best
5 intentions. I think all of us as consumers and
6 regulators and lawyers who practice in this space are
7 aware of the lengthy history of billing and bill
8 displays, which turns out to be a very highly regulated
9 part of how carriers present their bills to consumers.

10 And already charges are separated from
11 government-mandated fees, which are separated from non-
12 government-regulated fees, such as 911 charges and the
13 like, which are separated from premium content charges,
14 so that when consumers complain that they have a lot of
15 bills and a lot of sections on their bills and their
16 bills run many, many pages, that's true, and it's true
17 because there are regulations that require separating and
18 breaking out each of these charges.

19 Carriers do compete. They spent a fair amount
20 of time with focus groups and designing bills with cover
21 pages that try to display information in a clear and
22 conspicuous way. And then there are all the pages that
23 follow. The better carriers are with the cover page,
24 maybe the less likely consumers are to go back and look
25 at page by page. And we all know again as consumers

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1 the merchant and have it show up on the bill. And
2 that's, again, relatively new functionality that's come
3 out in the past couple years.

4 MS. MITHAL: Okay, we're actually running out
5 of time, but I want to ask a quick question about the
6

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1 there are very many of us who no longer opt to get a
2 paper bill and will use the convenience of getting billed
3 online.

4 And what all this means is that the information
5 is provided to consumers, but there is a responsibility
6 for consumers to monitor their bill, just as we've all
7 learned with credit cards that that's something we need
8 to do.

9 MR. TRILLING: Martine?

10 MS. NIEJADLIK: Yeah, I just want to add, I
11 sort of alluded before to the fact that the industry is,
12 you know, making headway and improvements. One of the
13 things that we've seen also get better over the past few
14 years is the opportunity to put what we call a dynamic
15 billing descriptor out there, and so we want to describe
16 the charge as best as we can, right? Again, we're
17 managing customer support. Our phone number is on the
18 bill. Our phone number is in the SMS messages. It's in
19 our best interest to make sure that the consumer
20 recognizes the charge when they see it and they're not
21 calling up just because it says whatever that thing is
22 you said it said before.

23 So, that's something that we follow, and as an
24 aggregator, if you will, we will always pass through
25 specific descriptions of exactly what they bought from

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