

Prepared Statement of
The Federal Trade Commission on

"CRAMMING"

Before the
Subcommittee on Telecommunications,
Trade and Consumer Protection
of the
Commerce Committee
United States House of Representatives

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achieved by other billing systems that have served multiple vendors since their inception. The urging of Chairman Kennard of the Federal Communications Commission ("FCC"), the LECs recently collaborated on "best practices" voluntary guidelines for third party LEC billing. Announced in late July, the guidelines recommend procedures for LECs to use in screening the products and services to be billed to consumers' monthly telephone statements. The guidelines also recommend, among other things, procedures for scrutinizing providers, verifying that consumers approve of services being charged to their bills, and enabling customers to dispute charges and achieve resolution of their disputes. The FTC views this development as a step in the right direction toward a long-term solution of the problem of cramming.

C. Lessons from Our Experience with Pay-Per-Call Technology

The Commission's appreciation of the potential for both benefit and injury that may result from the new use of the monthly telephone bill as an alternative billing and collection system dates from its experience in the 1980's with pay-call (900-number) technology. The advent of pay-per-call marked the beginning of the use of the telephone billing and collection system as a means for consumers to pay for products or services other than telephone transmissions—namely, audio information or entertainment programs. Moreover, the introduction of this technology meant that for the first time a consumer could make a purchase of these products or services merely by dialing a telephone number. No exchange of paperwork, and not even the oral communication of a credit card account number, was required to complete a transaction. With pay-call technology, anyone with a telephone -- and nearly every U.S. household now has a telephone -- was suddenly able to make an instantaneous purchase of information or entertainment merely by calling a telephone number.⁽⁵⁾ Of course, even though offered over the telephone, and charged to the consumer through his or her monthly telephone bill, these information or entertainment services are not telephone service; i.e., they are not a transmission or transport of communications without regard to content. To the contrary, with these information or entertainment services, the content itself is what is being sold.

Unfortunately, pay-per-call technology and the convenience to the consumer this technological advance affords also presented tempting opportunities to those who sought to exploit technology to defraud consumers. Indeed, shortly after the introduction of 900 numbers, the technology was commandeered by unscrupulous operators who used it to deceive and defraud consumers. Unlike other scams involving the telephone, the 900-number scam artist did not face the task of persuading the consumer to divulge his or her credit card account number to an unknown entity. Scams using 900 numbers needed only to convince consumers to make the call. Once the call was placed, the consumer was billed for the alleged service or information and often had no means to contest the charge. The unwitting victim incurred charges often exorbitant charges not for transmission of the call (as would be the case in a conventional call), but for information or entertainment, just by completing a 900-number telephone call. In many cases, consumers never received the promised information or service.

The Commission responded to the abuse of pay

throughout the country, urging consumers to call a toll-free number. When Online receive a call to its tollfree number, it asked the caller where he was calling from and what sort of

Commission's 900 Number Rule by using toll free numbers in a manner that results in calling party being called back collect for the provision of audio information or simultaneous voice conversation services.

The Commission filed a second lawsuit in July that targeted cramming against another billing aggregator and vendor. The case is FTC v. Hold Billing Services,⁽⁴⁶⁾ Hold Billing Services, Ltd. ("Hold") is a billing aggregator that served, among other clients, Veterans of America Association, Inc. ("VOAA"), a service vendor. VOAA, also a defendant in this action, allegedly induced consumers to enter a purported sweepstakes without adequately disclosing that it construes each completed entry form as an authorization to bill a package of services to the telephone number filled in on the form. Hold allegedly processed the billing data VOAA drew from submitted sweepstakes entry forms into the electronic format required by the LECs, and forwarded this information to the LECs so that charges for VOAA's package of services could be inserted into line subscribers' telephone bills. Hold also allegedly acted as a conduit to VOAA for revenues collected from consumers by the LECs for VOAA's services. The complaint against Hold and VOAA alleges three violations of Section 5: first, that VOAA fails to disclose, in a manner likely to be noticed and understood by consumers, the material fact that VOAA construes sweepstakes entries as authorization to charge consumers for its services; second, that in connection with their billing and collection activities, VOAA and Hold falsely represent that consumers who did not purchase VOAA's services are legally obligated to pay for them merely because the consumers' phone numbers appeared on entry forms; and third, that VOAA and Hold unfairly bill line subscribers for services on their telephone bills solely on the basis of sweepstakes entry forms submitted by third parties, about whom the line subscribers have no knowledge, or who were not authorized by the line subscriber to incur charges. On August 24, 1998, the court entered stipulated preliminary injunctions against both Hold and VOAA that prohibit the unlawful practices alleged in the Commission's complaint. This litigation is continuing.

Unfortunately, the pattern of alleged unlawful conduct targeted in these two cases is by no means unique. The staff of the Commission currently is investigating a number of other billing aggregators and service vendors. Like ITA and Hold, these billing aggregators provide an access point to the telephone billing and collection services for vendors of a multiplicity of services. Some of these vendors are unscrupulous, and employ a variety of ruses to capture consumers' telephone numbers to use for billing charges on their phone bills. For example, some of these vendors use deceptive ads to entice consumers to call a toll-free number, capture callers' phone numbers through ANI, and then, through a billing aggregator, bill recurring monthly charges to consumers' phone bills for "travel club" or "psychic club" memberships. Often the charges are disguised as some other telephone service.

C. Limitations on Enforcement

As mentioned earlier, the common carrier exemption from the Commission's jurisdiction, enacted in 1938, is creating unintended complications for our law enforcement efforts in today's technologically advanced and deregulated telecommunications industry. The

Commission is aware of service vendors who falsely claim to be exempt from FTC jurisdiction as common carriers⁽¹⁷⁾, even when they are selling entertainment or other services over the telephone⁽¹⁸⁾. These vendors, some of whom may have filed tariffs with FCC, purport to sell services th

working group on April 24, 1997.

V. Conclusion

In conclusion, the Commission recognizes that the practice of cramming is causing significant harm to American consumers. The Commission has used and will continue the full range of investigative techniques, targeted law enforcement actions, and consumer education to attack this growing problem. I appreciate the opportunity to provide testimony today on the Commission's efforts against cramming, and I would be pleased to answer any questions.

1. The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own.

2. 15 U.S.C. § 1681(a). The Commission also has responsibilities under 40 additional statutes, including the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq, which establishes important privacy protections for consumer sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 et seq, which provides for the correction of billing errors on credit accounts. The Commission also enforces over 30 rules in specific industries and practices, including the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

3. The exclusions are: "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle 6 of title 49, and persons described in section 11a of the Securities Exchange Act of 1934." 16 C.F.R. § 310.2(b)(1)(i).

codified at 47 C.F.R. §§ 64.1505