

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION ON**

"CRAMMING"

Before the

vendors achieved by other billing systems that have served multiple vendors since their inception.

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-per-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-per-call technology, anyone

has been a significant reduction in complaints regarding 900 numbers.

Our experience to date suggests that the pattern observed with pay-per-call technology may be repeating itself in a broader way, with vendors, not just of information and entertainment services, but a host of other services as well. In the short period since cramming first emerged, complaints about unauthorized charges on consumers' phone bills have climbed to the number five spot among the categories that generate the most complaints received by the Commission's Consumer Response Center.⁽⁹⁾ If unchecked, abuse of access to the telephone billing and collection system by vendors of all sorts of services will likely inflict the same sort of consumer injury as occurred with pay-per-call services before the enactment of TDDRA and promulgation of the FTC and FCC rules that now tightly regulate pay-per-call technology.

In fact, in the Telecommunications Act of 1996,⁽¹⁰⁾ Congress granted the Commission broad authority to expand coverage under the 900-Number Rule. The Commission has initiated a rulemaking proceeding to determine how to fulfill the congressional mandate of the Telecommunications Act.⁽¹¹⁾ The staff of the Commission currently is reviewing the comments and other record evidence amassed to date, including what we have learned about cramming. Once this review has been completed, the Commission will decide how the Rule should be modified, both under existing authority of TDDRA and new authority of the 1996 Act, to reach services not currently covered that are "susceptible to the unfair and deceptive practices" that prompted Congress to enact TDDRA.⁽¹²⁾ If amended to encompass cramming, the 900-Number Rule will add to the FTC's arsenal against that practice, enabling the Commission to obtain civil penalties of up to \$11,000 per violation. In the meantime, the Commission is aggressively pursuing law enforcement actions against cramming under its existing authority under the FTC Act.

III. The FTC's Approach to Cramming

The Commission employs a threefold approach to consumer abuses like cramming. First, the Commission has a mechanism to spot such emerging consumer abuses through systematic collection and analysis of consumer complaint data. Second, using the intelligence afforded by complaint collection and analysis, the Commission identifies appropriate targets for law enforcement action, and files federal district court actions across the country. Through these actions, the Commission seeks and obtains temporary restraining orders, preliminary injunctions, permanent injunctions and other equitable relief, such as asset freezes and appointment of receivers, to halt the targeted unfair or deceptive practices and to preserve assets for consumer redress. Finally, these law enforcement efforts are complemented by consumer education. In all aspects of this strategy, but particularly in the Commission's consumer and business education efforts, we have sought to form new partnerships with private industry and other government agencies.

A. Spotting Trends and Identifying Targets

The Commission's Consumer Response Center (CRC) receives about 3,700 consumer

calls, letters, and e-mails per week. As this information is received, it is added to the FTC's database, which currently contains over 190,000 entries. The database enables staff to spot trends, identify companies that should be targeted for enforcement action, and find witnesses to provide evidence to support such actions. To maximize the effectiveness of

ITA, the "billing aggregator," allegedly played a key role to enable Online to spring this unpleasant surprise on the consumer. ITA received from Online billing information that Online generated when consumers called Online's toll-free numbers. ITA then forwarded this billing data to the LECs to be included on consumers' phone bills. Online used ANI equipment to generate this billing data. ANI technology identifies the telephone number from which the call originates, but cannot identify the caller, and cannot determine whether a caller is the line subscriber for the line from which the call originates. Because of the shortcomings of ANI as a basis for billing, in numerous instances, ITA caused line subscribers to be charged on their phone bills for Online services ordered and received by someone else who had used their telephone, but who did not have authorization to incur charges for those services. Legally, this is as indefensible as it would be for any other retailer to bill a line subscriber for goods or services delivered to some other caller's house, simply because that caller used the line subscriber's telephone to place the order for the goods or services.

According to the Commission's complaint, ITA not only took care of billing for Online, and forwarded to Online consumer payments collected by the LECs, it also handled complaints about charges for Online's services. ITA's name and toll-free number for billing inquiries appeared prominently on the ITA page of the consumer's telephone bill. Many consumers allegedly had difficulty in reaching ITA, and once they succeeded in doing so, found ITA not very responsive. Allegedly, ITA had the contractual authority to forgive Online charges, but often told consumers that only Online could make that decision.

The complaint alleges a number of specific deceptive or unfair practices that violate Section 5 of the FTC Act. First, the complaint alleges that Online falsely represented that its matching service was free, and that it failed to disclose material information about the cost of its audio entertainment services. Second, the complaint alleges that both Online and ITA falsely represented that a line subscriber to a telephone line is legally obligated to pay for audio entertainment services, simply because his telephone was used to call Online's toll-free number. Third, the complaint alleges that both Online and ITA unfairly billed consumers for unauthorized charges. It is an unfair act or practice to bill and collect charges from line subscribers who have not accessed or purchased Online's audio entertainment service and who cannot reasonably avoid these billing and collection efforts because Online's service is accessible through unblockable 800 numbers and is delivered through unblockable return calls. Finally, the complaint alleges that Online violates the Commission's 900-Number Rule by using toll free numbers in a manner that results in the calling party being called back collect for the provision of audio information or simultaneous voice conversation services.

The Commission filed a second lawsuit that targeted cramming this month against another billing aggregator and vendor. The case is **FTC v. Hold Billing Services, Ltd.** ⁽¹⁶⁾ 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 unwittingly 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.

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 system 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

& Piano Movers Ass'n, 102 F.T.C. 1176, 1213, n.7 (1983); but see *FTC v. Miller*, 549 F.2d 452 (7th Cir. 1977). This position is consistent with the courts' long-standing interpretation of "common carrier" under the Communications Act. See *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (definition is activities-based, not status-based). Moreover, in some instances, staff believes that these vendors are sham common carriers that do not have the capacity to provide the basic telecommunications services they purport to sell.

IV. Consumer Education

The third component of the Commission's efforts to address cramming is consumer education. In response to a sudden influx of consumer complaints about cramming in the early part of 1998, the Commission's staff rapidly developed a brochure for consumers entitled, "[Cramming: Mystery Phone Charges](#)." This brochure is part of a larger effort by the Commission to work both on its own and as a partner with private industry and others to educate consumers on emerging issues in the rapidly changing telecommunications market.

The staff of the Commission sponsored a public workshop on March 18, 1997, in response to mounting evidence of consumer confusion about the bewildering array of telecommunication choices exploding on the market. The conference addressed how to empower consumers to make informed decisions about new products, services and billing methods. Workshop participants included representatives from the LECs, the long distance carriers, consumer groups, industry coalitions, and officials from the FCC, the National Association of Attorneys General and other interested executive branch agencies.

A general consensus emerged that consumers were already confused by current telephone-related advertising, marketing, and billing practices, and that this confusion is likely to get worse as competition for local exchange markets intensifies and new players offering new services enter the telecommunications market. A telecommunications working group was formed to develop consumer education publications to combat this confusion. The Commission hosted the first meeting of the telecommunications consumer education working group on April 24, 1997.

The first publication developed by the working group, "It's Your Call: Shopping in the New Telecommunications Marketplace" was released in January 1997. This brochure describes the various services and charges that commonly arise in the purchase of telephone services and guides consumers through the process of comparison-shopping for telephone services. The cramming brochure described above was the second result of these efforts.

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 to use 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.

10. Pub. L. No. 104-