FTC MOBILE CRAMMING ROUNDTABLE
TRANSCRIPT
SEGMENT 1
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STEPHANIE ROSENTHAL: That was great. You ask people to sit down and they listen. So good morning, everybody. Welcome to the Mobile Cramming Roundtable. My name is Stephanie Rosenthal, and I'm the Chief of Staff in the Division of Financial Practices here at the FTC.

We are delighted that you've all been able to join us today. I think today will be a very interesting and thought provoking discussion about mobile cramming and how we can best protect consumers from the problems that stem from mobile cramming.

In your folder, which I hope you all picked up, you'll see several note cards. If you have any comments or questions throughout the day write them on the note cards and hold them up. And one of our team members will come by and pick them up from you and make sure that the moderators get those questions. If you are on Twitter and tweeting about the roundtable, please use the #FTCmobile.

bathrooms are directly across the entrance, past the security desk to the left. Anyone that leaves the building without a security badge will have to go back through security on their way in to get reentry into the conference center.

In the event of a fire or evacuation of the building, leave the building in an orderly fashion. Once you're outside you need to orient yourself to New Jersey Avenue, which is right behind us here. Across from the FTC is Georgetown Law Center. That's where our rallying point is.

Look to the right front of the sidewalk and everyone will get together by floors. You need to check in with the person holding a sign of accounting for the conference center. In the event that it's safer to remain inside, you'll be told where to go inside this building.

This event may be photographed, videotaped, webcast, or otherwise recorded. By participating in the event, you're agreeing to your image and anything you say or submit to be posted indefinitely at ftc.gov or on one of the commission's public websites. Please turn off your cell phones or turn them on to vibrate.

And if you spot any suspicious activity, please let somebody know. Finally we really look forward to having a very productive day today and a great discussion. And without further ado, I'd like to introduce FTC commissioner Maureen Ohlhausen.

MAUREEN OHLHAUSEN: Good morning, everyone. I'm delighted to welcome all of you here - both in Washington DC and the folks who are watching this online to today's roundtable discussion of mobile cramming, which is the placement of unauthorized charges on mobile phone bills. But before I start, I'd like to note that this is public service recognition week.

LARISSA BUNGO: And we're going to be talking about the third party billing process. We'll be talking about how it works, and also examining the consumer and industry perspective about mobile cramming. And with that I'm going to turn it over to Andrew.

ANDREW SCHLOSSBERG: Sure. So just to get started, each of our panelists would like to give a brief one to two minute introduction about who you are and why you're here today. And please speak into the microphone so everyone can hear you on the webcast. Thank you.

MIKE ALTSCHUL: All right. Well, I'm Mike Altschul. I'm the General Counsel of CTIA, the wireless association. And on behalf of the wireless industry I want to thank you for inviting us to participate in today's panel and discussions.

As the name suggests, CTIA represents the wireless industry. We'll be talking on each of these panels about the various layers and roles different participants in the industry play, including carriers, aggregators, and content providers, with respect to these premium messages.

We all share the same goal. Nobody wants unhappy consumers, consumers who've been misled who haven't consented to the services that they receive and are charged for. On the other hand, many of these services, as we'll be talking about, provides some very valuable services, are very popular. And third party billing provides a new and competitive choice of billing, particular-iew a pro-16 on their mobile phone bills. So my takeaway is you can't know what the problem is until you talk to consumers. And by talking to consumers, I mean reaching out proactively not just reacting to the complaints.

I read the FTC's complaint and Andrew's declaration yesterday about the complaints that he was able to find on Wise Media. I believe he used word hundreds. But 2 million phone numbers were crammed by Wise Media, and that is 0.05%. So let that be your guide in judging the size of the tip of the iceberg and judging the size of the iceberg itself. Thanks

JOHN BREYAULT: Hi, I'm John Breyault. I'm the Vice President of Public Policy Telecommunications and Fraud at the National Consumers League. We're the nation's oldest consumer advocacy organization founded in 1899. And my standard opening joke is that no, I'm not a founding member.

I also direct our Fraud.org campaign, which is our comprehensive online education and advocacy campaign for consumers to protect them from fraud. The reason I'm on this panel today is in the FCC's proceeding and the FTC's interest in landline cramming, we were one of the leading consumer organizations that was calling for strong action by regulators to address the problem.

As was previously mentioned, landline cramming was a huge issue. And we think that many of the crammers who were active in a landline are simply migrating over to the wireless side. One of the largest issues that we have in this space is how much is really unknown about both the size of the third party billing network and the size of the wireless cramming problem, generally. However, there is some data out there that is public.

Earlier this year, the California Public Utilities Commission reported that third party charges in California on wireless phone bills was $171 million annual marketplace. And if you take that and extrapolate it nationally to the 300 million or so wireless subscribers, you get a market of around $1.46 billion in wireless third party charges annually.

Even more troubling than that is that if you then take the data from our friends at the Vermont

During which time, we established a consumer best practices as an attempt to continue to put the spotlight on the consumers prominence, if you will, in deriving and interacting with the mobile channel.

And I am one of the founders of one earlier premium aggregators, a company by the name of mCube, which we then sold to VeriSign back in 2006. But the Mobile Giving Foundation really understands how mobile technology applies to philanthropy and doing good. It's an extremely important space.

This issue, I think, demands attention. We appreciate the FTC's spotlight on this. And we also appreciate the opportunity to really kind of close the gap in understanding what this problem is or is not.

From our perspective, we see cramming in the commercial space on a significant decline based on a range of steps that carriers have taken. And we see no cramming in the philanthropy space. Its value to us is tremendous when you stack up how many individuals have mobile devices across the country. 335 million creates an addressable audience for nonprofits to engage citizens and support their causes.

And the simplicity of billing on a carrier network through premium SMS really enables a wide range of individuals who have no other access or means to support causes and charities. This is something that does tremendous good well beyond just the emergency space.

I know most of you probably are familiar with the work that we've done through seeing, call to actions, and response to emergencies whether it's Sandy or Katrina or the Japan tsunami, or pick one. But the fact of the matter is that there are thousands, hundreds, up to a several thousand charities that use Mobile Giving on a day-to-day basis to simply raise and support funds to advance their mission.

And mobile technology allows us to say to those charities to get access to , this, you have to meet standards. You have to account for those funds that are raised. And you have to show how you're using those funds against the mission. So we think this is a tremendous panel and an opportunity to talk and further understand what problems exist and what opportunities exist. Thank you.

JIM GREENWELL: Good morning, everyone. My name is Jim Greenwell. I'm the Chief Executive Officer for BilltoMobile. And I'll add to Jim Manis's notion of the good that comes out of a mobile billing. So our company's actually Danal Inc. and we originally started in Korea. The parent company's a public company in Korea and started what I would call m-commerce mobile payments.

It's a very appealing way of transacting, especially for the millennial demographics, and will continue to be. Mobile payments has a broad appeal, but specifically has an appeal for the younger generation that has grown up mobile centric. And the issue of cramming, which from our view is a burden that we've had to embrace both with the consumer and with the carriers, deflects a little bit from the potential and the there's perhaps a term called gross revenue, which is the revenue you'll take. But then there's a percentage that goes to the carrier, and then the net revenue portion.

So if we start on the Total Processing Volume, it's been an interesting development specifically in North America. Because whereas before you did have a lot of third party intermediaries that process the traffic, we're now seeing large players such as Google, such as Facebook, wanting to have a closer relationship to the carriers.

These content aggregators have been incentivized by the commercial agreements the carriers have entered into with them. They're rewarded when the content providers and services that the aggregators work with have satisfied customers, low refunds, low complaints, low questions. And aggregators and content providers can be cut off in the event that the customer experience exceeds a trigger or threshold level.

The aggregators have both connectivity with all of the participating carriers that support these services. And then if one is a content provider, the content providers have a relationship with the aggregator, not with the carrier directly. The industry through CTIA with respect to premium SMS, which is just one flavor of the charges we've been talking about already this morning, assigns the short code that's used for premium SMS services.

And in the way those codes are administered, any content provider has to go to the registry and agree to terms of service and terms of use that incorporate industry best practices that originally were developed by the Mobile Marketing Association and continue to be followed and enhanced by the industry. These are then monitored by the industry. CTIA has budgeted more than $2 million a year for the monitoring we do on behalf of the entire industry.

Individual carriers do their own vetting and monitoring on top of that. Aggregators monitor their experience with each of the programs and codes that they support, and work closely with their content providers. So those are the different layers in providing these kinds of services.

JIM MANIS: Just one note on the mapping piece of that. That's exactly correct. In the commercial space, the content provider that has that relationship to the aggregator -- and remember, the aggregator has a relationship to the various carriers. The content provider can actually initiate a billable event by passing that acceptance of an opt-in to the aggregator for processing.

Where you've seen cases of cramming, my guess is, is it probably originates at some content provider with remote distance who passes that through. In the charities and to Mike's point, in our observations it dramatically decreased because the carriers really have put some stringent controls in place. For example, it's hard to measure, but one baseline measure is refund rates.

Refund rates exceed a certain amount, something like 8%, that content provider no longer has access to the network. So they really do close that piece down, in addition to the day-to-day monitoring of advertisements that take place around a call to action. That's in the commercial space.

With the Mobile Giving Foundation, that ability for content provider -- in this case, let's call that content provider a charity or an ASP, a marketer to that charity. In the nonprofit space that charity does not have the ability to initiate a billable event. They can't take it and accept an opt-in and then pass that to us for process. That opt-in has to occur on our platform, which we then process directly with the carrier.

And now I understand at least there's two carriers on the commercial side of the business that have put in consent management platforms to grab that initial opt-in away from that content provider to bring it back not to the aggregator, but all the way back to the carrier, I think, as part of the broader attempt at managing this overall space. So the opt-in and the visibility to the consumer's initial action

I have not seen one consumer who has told me that they have been crammed by a charity, not one. So I think let's not stop paying attention to that space, but that's not where the problem is.

I brought a pamphlet that I got at my favorite coffee shop in Vermont. And because I can't show you a bill right now, I thought some of you might be interested in donating $10 to the Vermont food bank and seeing what it looks like on your bill when it shows up in your next billing cycle. This pamphlet says "Hungry to give? Just $1 provides three meals to Vermonters need. Text foodnow," one word, "to 52000." So, to 52000.

So if you were to take out your phone right now and text to 52000 the word foodnow, you will see on your next phone bill a $10 charge. And pay attention to what it looks like. What section is it in? Are you able to understand what it was given the context?

You'll probably notice it. And you'll probably understand, because you actually did go through this authorization process. But imagine a consumer who doesn't know they've opted in or is seeing something on their bill for the first time. That's where these statistics came from. That's why we have more people noticing that there is a charge on their bill than understanding where it came from.

LARISSA BUNGO: Thank you, Kate. Larry, did you have a--?

LARRY BRYENTON: Yeah. I'll just pick up on that point. And I think the very essence of the issue from the law enforcement side is complaints are received from people they don't believe that they authorized, and certainly they were unwanted, charges.

And I think that that's consistent with what we heard earlier today, and what I've read on literature that's filed by the FTC in different submissions as well as cases, and also from international colleagues around the world. A lot of customers are uncertain as to how charges do get on it, let alone being able to differentiate and confirm what the charges are when they do get their bill.

LARISSA BUNGO: I'll go to John, and then to Mike next.

JOHN BREYAULT: So I think it's important to note we agree that the charitable giving space seems to be one area of third party billing where there does not seem to be a problem. You look at the Red Cross, for example. They raised $46 million for Haiti relief after that earthquake. So we don't think there's a problem there.

I think our concern from NCL's perspective really lies in the commercial space. And I think relying on consumers to spot these charges assumes that consumers actually look at their bills. And I think we know that most consumers don't look at their bills closely.

And to top that off, you have charges that are often labeled deceptively on bills. How many folks in the room actually look at your wireless bill on a monthly basis? One. One. A few of you.

This double opt-in comes exactly at the time the customer is subscribing and making the choice. It's immediate. Its current. It's actionable. And without the double opt-in there's no premium message charges.

LARISSA BUNGO: I'd like to give Jim an opportunity to speak. And I have a followup for Mike real quick, which is as to the placement of third party charges, did the carriers inform consumers that third party charges can appear on their bill? And if so, where do they receive that information?

MIKE ALTSCHUL: The carriers do provide disclosures, in the service agreement that's available at the point of sale and on carrier websites, that third party charges can be placed on their accounts as well as the availability of account blocking for these charges.

LARISSA BUNGO: Thank you. Go ahead, Jim.

JIM MANIS: Just real quickly, I did want to follow on the comment that Mike made, but also the case in point. There is no gap between the initial action that a consumer or a donor takes and the bill. So to Mike's point, this is a double opt-in process.

And that doubling opt-in process is designed to ensure not only consumer intent, but it's also designed to let that donor know what's taking place with our actions. So this notion, the question that you just asked, is the consumer ever notified -- let me just redo two little quick text messages here. Because this is a standard text message reply that extends beyond the philanthropic aspect to it and encompasses best practices defined by MMA for any type of premium engagement.

LARISSA BUNGO: I know there's a point that John would like to make.

JOHN BREYAULT: Yeah. I would just point out again that we're talking about commercial

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

MIKE ALTSCHUL: Well, I do want to make clear that that's not playing by the rules. That's with the industry monitoring, looks at every code, crawls the web with web spiders, monitors, media, touches every code every month to make sure that things like negative options, like deceptive advertising gets detected, and identified, and turn off. And we're very proud that we also cooperate with federal and state law enforcement agencies and investigative consumer protection agencies in identifying and prosecuting these crimes.

These are crimes. And everyone is victimized by them. They're not right. A negative option is not compliant. And as Jim mentioned, as the industry grows and grows in experience, we are seeing that the management of this opt-in process is now moving towards carriers and their aggregators and away from the content of providers.

ANDREW SCHLOSSBERG: I'd just like to shift gears for one second. Jim, I'll definitely get to you, because this question is probably directed to you as well. I want to talk about mobile apps.

A lot of apps offer sort of the same products that a lot of short code premium SMS, horoscopes, ringtones-- you can get a lot of those products free in mobile apps. So I'm curious, Jim and Mike, talk about the emergence of smartphones and apps and how that's affected the premium SMS space, the commercial space, if at all. Jim Manis? Or Jim Greenwell? One of the Jims.

JIM MANIS: Jim Greenwell may jump in, too. A couple quick comments. It has changed the way in which consumers engage with content on their phones. And I think that's actually been-- if you take what the carriers have done in order to suppress bad behavior, and if you take new market developments like smartphones and the thousands and thousands of applications that go around that. I do think that that has had a net positive effect in terms of customer interaction.

And then if it's charity related, and if you're trying to engage a supporter in your charity, Apple doesn't, nor does any platform, allow for their native in-app billing solutions --

And that's a matter of public record already through the testimony of my colleague Elliot Burg in front of Rockefeller Senate Commerce Committee last ye

issue. It's an issue that transcends jurisdictions around the world with agencies having this issue on top of mind to deal with protecting their consumers.

LARISSA BUNGO: Mike, a quick response?

MIKE ALTSCHUL: I just wanted to underscore that the double-opt-in which is required for initiating any kind of premium SMS, does require disclosure as to whether the premium charge is one time or recurring. It does require disclosure of the cost. And unlike a lot of the software shrink wrap contracts where you just click Accept or go to the next page, also requires an affirmative response by the customer sending text back with a yes.

Or in some of the cases, for the kind of products that Jim's company does, an actual pin to confirm the intent to go ahead with the transaction. That's something that the industry does monitor pervasively-- again, every code, every month for compliance. It's saying we subscribe to these campaigns. We also require, as part of the industry best practices for subscriptions, a reminder every 30 days to consumers that they are subscribed to a premium SMS subscription, that it's recurring, what the charge is, and to end it they should text end.

LARISSA BUNGO: Thank you, Mike. I know we'll be talking about some of the procedures that are in place in the next panel. I'd like to ask the industry members on the panel what you think about the scope of the cramming problem.

MIKE ALTSCHUL: I'm an industry member. And we have read, with some interest, the reporting from the Federal Trade Commission in your Consumer Sentinel Report from the Federal Communications Commission, which has a docket in this area, as well as the California Public Utilities Commission. And we have not seen a spike or a trend in complaints to these agencies that reflects that this is a growing problem.

And I'm not here to say that every person who has received an unintended charge finds their way to one of these agencies. But it does make sense that if that's 1 in 1,000 who finds their way to a federal or state Consumer Protection Agency, that's going to be fairly constant over months and years. We're not seeing any more complaints to these agencies in 2012 than we have in 2010, even though we know the adoption of smartphones and these kinds of services have soared during that period.

ANDREW SCHLOSSBERG: You want to respond?

KATE WHELLEY MCCABE: I mean, the first point that I made when I got up here is that complaints are very informative, but they're the wrong place to look when you want to know really what's going on here. And that is because consumers don't understand this is even happening. Consumer complaints always, always underreport the problem.

But I suspect that this is even more egregiously so with respect to this problem. 1 in 1,000 may be fairly constant, but that doesn't mean that it hasn't been fairly constant that it's been a big problem. I have also understood that the PSMS market in particular probably peaked in around 2011.

And I do recognize that the carriers in particular and CTIA in particular have stepped up their mechanisms for catching some of these bad actors. So I think 1 in 1,000 being constant as more and more people go mobile and as more of us pay attention and more industry players pay attention, it may be perfectly reasonable for a complete rate to stay constant while there's still being a fairly large underlying problem. T 12 72ks.

LARISSA BUNGO: T ank you, John.

JOHN BREYAULT: Ye12 7h. Just on the complaint question, I think we need to realize, too, that consumers are getting the message that if you do see a suspicious charge, the place to complain is not the FCC or the FTC. It's to your carrier. And I think you've seen case after case that consumers who do complain to their carrier oftentimes they will get a refund, not always for the entire time that they were seeing these suspicious charges on their bills but for some of it.

But we do see anecdotal instances where consumers are told by the c12 7rriers, well, you have to go to the third party biller or you have to go to the billing aggregator. So consumers are getting mixed messages about where they need to go to get resolution and to file a complaint when they do identify suspicious charges. I think we also realize, too, that the interesting thing about cramming it that it's actually a cross-jurisdictional problem.

So the carriers are regul1ted by the FCC. And then the FTC is responsible for the billing aggregators and the third party service providers under their UDAP statute. So I think relying only on a complaint volume, or a lack of rise in compliant volume to say that there's not a problem, is a little bit misleading.

So I would also caution, too, that if you actually look at the FTC's Consumer Sentinel data on wireless cramming complaints, I don't believe that there is a specific category broken out in that Sentinel data for wireless cramming. And I also don't believe that the FCC's complaint data does that either. So I think, again, saying that because we don't see a rise FTC or FCC complaint data that there is not really a big problem, or that we're addressing the problem already, isn't a very accur1te response.

MIKE ALTSCHUL: Just to be clear, what I was looking at at the FTC Consumer Sentinel reports, the most recent one was released in March, 2013, there's a category called mobile unauthorized charges.

ANDREW SCHLOSSBERG: I'll just add briefly, having look at the data, that's actually a c1tegory that we recently introduced. There are six or seven other c1tegories that we've found mobile cramming complaints. It's something on our end that we have to sort of go in and look at. So we are finding the complaints, but I'll leave it at that.

LARISSA BUNGO: Did you want to-- I think we might switch to some of the questions. Oh, Kate, did you-- go ahead.

KATE WHELLEY MCCABE: I have a question. I noticed that the question on what proportion of consumers have third party charges that you posed at the beginning of the panel hasn't been answered. And I'm wondering if anybody knows on the panel what that number might be.

LARISSA BUNGO: Can anyone speak to that?

MIKE ALTSCHUL: I have no visibility into that. No.

JIM MANIS: I don't know that number.

JOHN BREYAULT: Yeah, I don't know that there's necessarily a number of the percentage of people who have the charge on their bills. I think what we do know is, for example, that out of 34.89 million wireless subscribers in California in 2011 the carriers reported $171 million in third party charges. So you can do the math on that. I think it works out to around $4 per subscriber in third party charges.

KATE WHELLEY MCCABE: I think it would be an interesting number to know from a consumer perspective because it helps people understand how likely it is that they are affected by this problem. And so if the FTC is able to get to the bottom of that, I'd be very interested to know what that number is.

JIM MANIS: Well, I think you do have to paint the landscape. It does define what the overall picture is. I'm not sure that I would define that -- the problem isn't third party billing. The problem is that billing that occurs outside of the real very stringent standards and practices and technology that has been put in place to actually control that.

And Mike, I think we have a shared objective over a long period of time. If we're trying to build something that's sustainable, it has to be based on good consumer trust and response. So to define that is critical.

I've heard refund rates throw out as kind of a measure of unwanted billing, and I'm not sure that that's even the right number, right? So I know within carriers, oftentimes they look at refund rates as a measure of good content providers. But I can tell you at the Mobile Giving Foundation, we have kind of a standard refund rate that you see on almost every transaction, or kind of a group of transactions, and ours average something a little less than 1% in everyday giving.

So I don't know what that means when someone still calls back and asks for a refund on a donation that they've made. And I know that that refund rate blips up a little bit in terms of high volume traffic in response to emergency relief activities, right? And when I say blip up, it may go from less than 1% to about maybe less than 1.5%.

But so from a consumer behavior standpoint, that tells me something, right? And I've personally taken calls that have come to us, particularly during the Haiti situation, to understand when a consumer calls with a refund request, we try to capture that information. So I want to know what it is that they're saying. Why are they asking for the money back? And that's an interesting process.

KATE WHELLEY MCCABE: I agree with you about the limitations of the refund rate as a metric to measure the problem. And part of the reason is that part of that fraction is how much money consumers are getting back. And even in Wise Media, we learned from the FTC filing, that consumers only got back 30% to 40% of their money.

And so if that were 100%, what would that refund rate have looked like? Would it have been so high that Wise Media would've been cut off before they were?

JIM MANIS: Yeah. Again, not to mix commercial or philanthropy, but in our case we would advise the carrier, of course, not to refund a charitable donation. Carriers will always refund that when the request comes in. I think it's probably close to 100%.

And if they ask us as a foundation to also refund, we will refund it right to them directly. So in essence, the consumer not only do they get back the original donation, but they've made $10 on top of it.

JOHN BREYAULT: And I would just add to that in the California PUC's report, I believe the number they found was something on the order of 25% refund rate for third party charges. So take that for what you will.

MIKE ALTSCHUL: But again, the refund rate, an awful lot of goodwill goes into that. Carriers have announced a very generous policy. As was mentioned earlier, it's important for consumers to review their bills and to call their carriers if there are any charges they don't identify.

And we haven't mentioned that family plans in this country are a very popular way for subscribers to obtain service. And unlike some other financial instruments, like for example credit cards, you don't have a lot of teenagers running around with credit cards but you do have them using smartphones. And there is an opportunity and a responsibility for parents to supervise all the authorized account holders on an account.

KATE WHELLEY MCCABE: So Mike, I'm glad you said that. I've been waiting for you to say that. In addition to the numerical statistics that I've been talking about up here, nearly half of the consumers that responded to our complaints also wrote, in a space provided, their story. And I want to ensure you that this will become a part of the public record, not only through publication by my office, but by submission of this document through the FTC comment process here shortly. So it was categorized by our experts, and I thought there were some interesting things that I'd like to tell you here.

First of all, the most frequent theme of the comments were words of thanks to the AG. And I say that because my AG's here in the office. So I've just scored some points with my boss.

But I will say that the phone number affected is used by child is a narrative. It's not always, oh, Johnny went off the reservation and bought something and he didn't get permission. It's often, my child didn't understand. They thought they were signing up for something free.

Because the carriers would take, I think, 35% of that. The aggregators would take, I think 10% of that. And he and his company received the rest. And it was all incremental margin. I mean, the music was already produced. It was just dissemination. He made a fortune off of that.

And I think that's the legacy that we continue in. And it's interesting that Kate mentioned 2011 as a decline in some of the PSMS. Well, it happens to coincide also with the app stores coming in, and legitimate storefronts being established, Apple, Google. And so where perhaps you had on-deck type of content being delivered in the past, you now have these legitimate, mainstream, content providers giving consumers access to that.

ANDREW SCHLOSSBERG: Another question here, what kind of third party charges are not premium SMS? And how does that work?

JIM GREENWELL: So perhaps the best way, and the simplest, shortest way to describe it is if there's a short code associated with it, that's typically premium SMS. If it's consumed on the phone, that's premium SMS. We talked about refund rates where we have, for example, on a