

June 24, 2013

VIA ELECTRONIC FILING

Federal Trade Commission
Office of the Secretary
Room H-113
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FTC Mobile Cramming Roundtable, Project No. P134803

Consumers Union, the policy and advocacy arm of *Consumer Reports*,¹ welcomes the opportunity to submit the below comments as a follow-up to the Federal Trade Commission (“FTC”) Mobile Cramming Roundtable held on May 8, 2013.

I. Introduction

Unauthorized charges on a consumer’s telephone bill by third parties, or “cramming” has cost consumers millions of dollars. Our organization has been actively involved in the issue of cramming since it first emerged as a problem in the 1990s. For years, our subscribers have told us about third-party fees appearing on their landline and wireless phone bills. And for years, we alerted readers to the practice of cramming and advised them to be extra vigilant in reviewing their landline and mobile phone bills for unexplained fees. We were glad that the Federal Communications Commission (“FCC”) moved forward to address cramming on landline phones last year. However, we believe that more proactive measures are necessary on the part of both the FCC and FTC in order to prevent these charges from ending up on consumers’ wireless bills. To that end, we’d like to thank the FTC for its leadership on this issue and for its recent decision to file its first enforcement action against mobile crammers – as well as for its participation in last year’s cramming proceeding before the FCC.

Wireless cramming protections are especially important in light of the high rate of cell phone adoption among consumers. Many consumers have decided to “cut the cord” and replace their landline service with wireless voice service: thirty-four

¹ *Consumer Reports* is the world’s largest independent, not-for-profit product testing organization with a mission to ensure a fair and just marketplace for consumers. We rate thousands of products and services annually, provide overviews and comparisons, conduct customer satisfaction surveys, and publish tips on how consumers can save money and protect themselves against abusive practices.

percent of adults lived in wireless-only households by the second half of 2012.² Perhaps more astounding, according to Pew Research Studies, 91% of American adults now own some kind of cell phone. Cell phone adoption rates are especially high among certain segments of the population. For example, according to Pew research, 88% of Latinos and 93% of Black Americans own cell phones. Pew has also found that 86% of low-income Americans (with a household income of less than \$30,000) own a cell phone.³

II. Evidence of Wireless Cramming

Our discussions with consumers have indicated that cramming does occur on consumers' wireless bills. A 2012 survey by *Consumer Reports* looked at subscribers in twenty-three metro areas and found that 5% of respondents said that they had found an unauthorized third-party charge on their bill within the past year. To that end, we have alerted readers to the practice of cramming and advised them to be extra vigilant in reviewing their mobile phone bills for unexplained charges. Furthermore, we have advised readers to guard their cell phone numbers as they would a credit card, demand refunds from their providers when they suspect unauthorized charges, block third-party billing charges on their accounts, and carefully check previous bills for cramming charges. Unfortunately, many wireless consumers remain unaware of unauthorized charges on their bills. We strongly believe more needs to be done to help consumers identify third-party charges and to keep unauthorized charges from ending up on their bills in the first place.

Numerous federal and state agencies, the Senate Commerce Committee, and the Federal Trade Commission itself, have also found evidence of cramming on consumers' wireless bills. For example, sixteen percent of the cramming complaints received by the FCC between 2008 and 2010 came from wireless consumers. Between 2009 and 2010, the California Public Utilities Commission received 5% of its cramming complaints from wireless consumers.⁴ From 2006 to 2011, the Florida Attorney General's Office received 24% of its cramming complaints from wireless consumers.⁵ Finally, from 2005 to 2011, the Vermont Attorney General's Office received 16% of its cramming complaints from wireless consumers.⁶

² See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34 (rel. Mar. 21, 2013).

³ See Lee Rainie, *Cell Phone Ownership Hits 91 Percent of Adults*, PEW RESEARCH CENTER, June 6, 2013, <http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults/> (last visited June 21, 2013).

⁴ *Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose, Hearing Before the S. Comm. On Commerce, Science, and Transportation*, 112th Cong. 127 (2011).

⁵ *Id.*

⁶ *Id.*

Unfortunately, these numbers only reflect the tip of the iceberg. As we've explained in *Consumer Reports*, consumers may not be aware of charges in the first place because they can be as small as 99 cents or described in a way that makes them sound like legitimate phone-related charges. For this reason, we do not believe that the available data on complaints reflect the true scope of the problem. These numbers are likely vastly underreported.

III. How Wireless Cramming Occurs

To initiate their unauthorized billing of mobile devices, crammers locate consumers' cell phone numbers and then make contact to confirm that the mobile device's telephone number is active. Crammers typically do this in two ways: by text spamming or individually acquiring a consumer's cell phone number.

Text Spamming: "Premium" text message horoscopes are one way by which cramming can occur on a consumer's wireless bill. Many times, text spam will include a message like: "HoroscopeGenie Alert: 3 horoscopes/wk for \$9.99/mo Reply HELP for help, STOP to cancel. Msg&data rates may apply."⁷ If a consumer does not reply "STOP," then the crammer assumes that the consumer wants the service and bills the consumer despite never receiving any affirmative consent. Sometimes, even when a consumer tells the crammer to stop, the crammer will continue to charge the consumer. Unfortunately, any response by the consumer confirms that the number is active and can lead to further text messaging by the crammer or others to whom the crammer sells the consumer's confirmed active number.

Deceptive Websites: Crammers may also learn of a consumer's active mobile number through the actions of the consumer. Crammers sometimes use websites to lure consumers into providing their cell phone number in exchange for participating in online contests or auctions, or in exchange for free giveaways. These deceptive websites fail to provide customers with a clear and conspicuous disclosure that consumers will be charged for a subscription service. In this way, the simple act of entering a phone number can result in the placement of a monthly recurring charge directly on the consumer's bill.⁸

Mobile Payments: The FTC has correctly recognized that "the mobile carrier billing platform raises a unique challenge with regard to third parties placing fraudulent

⁷ See e.g., David Segal, *What's Your Sign? It Could Be a Cram*, NY TIMES, Mar. 24, 2012, <http://www.nytimes.com/2012/03/25/your-money/beware-of-cramming-on-your-cellphone-bill-the-haggler.html> (last visited June 21, 2013).

⁸ *Beware of Bogus Phone-Bill Fees*, CONSUMER REPORTS, Aug. 2012, <http://www.consumerreports.org/cro/magazine/2012/08/beware-of-bogus-phone-bill-fees/index.htm> (last visited June 21, 2013) (explaining the case of one *Consumer Reports* staffer who entered her phone number on an auction website in order to place a bid, resulting in a \$9.99 recurring subscription charge on her next wireless bill).

charges onto consumers' mobile carrier bills.”⁹ This method of billing charges for third-party services directly to phone bills.¹⁰ According to *Consumer Reports*, the rights in this area are unclear for consumers who allow for direct-to-phone bill charges on wireless devices. Any protections that exist are based on the wireless carrier's contract and vary widely. Consumers may have some rights under state laws or public utility agency rules, but those also vary from state to state. Some analysts project that by 2017, mobile payments in the U.S. will reach \$90 billion.¹¹ For this reason, the Commission must act now to protect consumers from potentially billions in financial harm in this rapidly expanding industry.

IV. Existing Protections are Insufficient to Protect Consumers

Our experience in the landline context taught us that self-regulatory measures are not enough. While we recognize that there are many valuable third-party services, we believe that a regulatory mechanism is necessary to help distinguish between services that consumers actually want and unauthorized charges that consumers did not ask for and may not even be aware of. Wireless carriers claim that their “double opt-in process” prevents most unauthorized charges from occurring; supposedly, it takes two separate conscious actions to initiate any third party charges. However, as indicated in the examples below, wireless cramming can still occur, despite such safeguards. For example:

- Monique Eigenbauer, a 21-year-old attending the University of Central Florida, was charged nearly \$60 over the course of five months for “long life love tips,” a service she never requested or authorized. After contacting AT&T, who credited her account for the amount, the third-party vendor resumed charging her one month later for an additional four months. “AT&T took care of everything, but it was a hassle,” she said. “My problem is not specifically with the carrier, but with the practice. How many people are being defrauded by these third-party companies and not even know about it?”¹²
- Janie Smoter of Bonney Lake, Washington immediately started receiving text messages after she went to a coupon website that required her cell phone

⁹ See FTC Staff Report, *Paper, Plastic...or Mobile?: An FTC Workshop on Mobile Payments*, Mar. 6, 2013, <http://www.ftc.gov/os/2013/03/130306mobilereport.pdf>.

¹⁰ See Michelle Jun, Senior Attorney, Consumers Union, *Mobile Pay or Mobile Mess: Closing the Gap Between Mobile Payment Systems and Consumer Protections*, <http://www.consumersunion.org/pdf/Mobile-Pay-or-Mobile-Mess.pdf> (last visited June 21, 2013).

¹¹ See Michelle Jun, Senior Attorney, Consumers Union, *2013: A Pivotal Year for Mobile Payments?*, <http://defendyourdollars.org/posts/2584-2013-a-pivotal-year-for-mobile-payments> (last visited June 24, 2013) (citing to a Forrester Research report on expected mobile payment trends from 2013 to 2017).

¹² See Walter Pacheco, *Mysterious ‘Cramming’ Charges Anger Cellphone Users*, ORLANDO SENTINEL, Feb. 24, 2012, http://articles.orlandosentinel.com/2012-02-24/business/os-cramming-cellphone-20120227_1_third-party-charges-carriers-verizon-wireless (last visited June 21, 2013).

- number. The texts ranged from daily horoscopes to love lines. Smoter declined every single offer of service from the texts. Nevertheless, when she checked her wireless bill, she found a “premium text message” charge of \$9.95 for that day. “It’s infuriating,” Smoter said. “I spent hours trying to get this resolved. And I was lucky because I caught it right away. I was reading stories of people online and some of them had hundreds of dollars on their bills from this company and they weren’t able to get any resolution.”¹³
- Senator Tom Udall of New Mexico described how one of his constituents from Santa Fe contacted him after finding \$170 in fraudulent, unauthorized premium text message charges on his wireless bill for a trivia game he did not want and did not sign up to receive. The founders of the company billing the constituent had previously been involved in a class action lawsuit for a separate landline cramming scam. After receiving a refund, the constituent told the Senator, “My main goal [is] to get this practice stopped. It was nice to get the money back, but the bigger deal by far is to put these scams out of business.”¹⁴
 - A resident of Port St. Lucie, Florida found an unauthorized charge from Voicemail Solutions for \$13.97 on her AT&T phone bill. After getting no results from AT&T, she called the third party billing company, Enhanced Services Billing, Inc., who said that her husband had ordered the services over the Internet on a given date. She responded that it was impossible; her husband had died three months before the date.¹⁵
 - Richard Mooney, an AT&T subscriber from Oklahoma, found \$9.99 charges on his wireless bill after he replied to a text message asking users if they knew why flamingos are pink.¹⁶
 - Hamid Shoajae of Scottsdale, Arizona was billed \$9.99 per month for ten months after he failed to respond to text messages from a service he was

¹³ See Herb Weisbaum, *FCC Proposes Crackdown on Phone-Bill Cramming*, MSNBC.COM, July 12, 2011, www.msnbc.msn.com/id/43728825/ns/business-consumer_news/t/fcc-proposes-crackdown-phone-bill-cramming/#.T3yOPdkZm9s (last visited June 21, 2013).

¹⁴ *Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose, Hearing Before the S. Comm. on Commerce, Science, and Transportation*, 112th Cong. 127 (2011) (statement of Sen. Tom Udall).

¹⁵ See Keith Vanden Dooren, *Florida Cramming: Solutions*, Florida Office of Attorney General, slide 2, available at www.ftc.gov/bcp/workshops/cramming/FloridaCrammingSolutionsToFTC.pps.

¹⁶ See Sarah Stewart, *Cramming raising Your Cell Phone Bill?*, KFOR-TV, May 22, 2012, <http://kfor.com/2012/05/22/cramming-raising-your-cell-phone-bill/>.



POLICY & ACTION FROM CONSUMER REPORTS

unfamiliar with and never authorized. “I don’t expect charges on my cell phone bill that I did not authorize,” said Shojaee.¹⁷

We thank the FTC for its continued leadership on this issue and look forward to working with the Commission to craft a solution that benefits consumers.

Sincerely,



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¹⁷ See Joe Ducey, *FTC Goes After Bogus Cramming Charges on Phone Bills*, KNXV-TV, ABC15.COM, May 28, 2012, <http://www.abc15.com/dpp/money/consumer/alerts/ftc-goes-after-bogus-cramming-charges-on-phone-bills>.