FTC WORKSHOP

EXAMINING PHONE BILL CRAMMING:

A DISCUSSION

SESSION 2:

STEPS TO DETECT, MONITOR AND PREVENT CRAMMING

COMMENTS BY AT&T

May 11, 2011

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AT&T is pleased to submit the following comments to the Federal Trade Commission (FTC) in connection with AT&T's participation in the FTC workshop examining phone bill cramming to be held on May 11, 2011.

INTRODUCTION

When the Federal Communications Commission (FCC) detariffed billing and collection services provided by Local Exchange Carriers (LECs) 25 years ago it expected consumers to benefit from the ability to use their LEC telephone bill as a means to pay for products or services unrelated to their phone service. For some consumers this billing option substitutes for a credit card; for most, it is simply a convenient method to pay for a variety of services and products.

History has shown the FCC to be correct and AT&T agrees that third-party billing is a benefit for many of its customers. However, AT&T also takes allegations of unauthorized third-party charges very seriously. "Bill quality" is a major driver of overall customer satisfaction and it is not in AT&T's best interests for its long-term and valued ILEC customers to have unauthorized third-party charges placed on their AT&T bills. As a result, AT&T has devoted significant time and effort to be sure its bills are accurate and recognizes the importance of minimizing opportunities for cramming. Over the years, AT&T has taken a number of steps to address cramming issues. As the problems have evolved, so have the solutions.

As a result of these ongoing efforts and it's established commitment to address new issues as they arise, AT&T has developed a very effective anti-cramming program it would like to now share with this FTC workshop.

HISTORY OF CHANGES IN THIRD PARTY BILLING

"If you want to understand today, you have to search yesterday." -- Pearl S. Buck

It is important to understand the history of LEC third-party billing to understand the "how and why" of AT&T's current third-party billing process. Third party billing services was not a "business" created by AT&T to develop another source of revenue; rather in connection with the AT&T divestiture of the Bell Operating Companies in 1984 the FCC required that any Bell Operating Company (BOC) that continued to provide billing and collection service to AT&T (as all of the BOCs did, since the Bell System's billing capabilities remained with the BOCs) must also provide those services to other interexchange carriers (as well as enhanced service providers). In re Detariffing of Billing and Collection Services, 102 FCC 2d 1150, 1152-53, ¶¶ 2-5 (1986).

In 1986, the FCC detariffed billing and collection services. In doing so, its stated purpose was to encourage competition in the billing services market. Id. at 1170. The Commission also expected consumers would be the beneficiaries of the greater flexibility accorded to billing service providers. 1998 FCC Workshop Opening Letter, April 22, 1998, FCC Chairman, William E. Kennard. In 2007, the federal obligation to bill and collect for third-party interexchange carriers and information service providers was effectively eliminated for AT&T, along with most other divestiture-related equal access obligations, when the FCC granted AT&T relief from the relevant provisions of Section 272 of the Communications Act. Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 ¶ 113 (2007) (Section 272 Sunset Order).

Notwithstanding these changes, AT&T continues to provide billing and collection services for unaffiliated third parties as a benefit to all AT&T customers.

AT&T's ILECs provide third-party billing services to certain Service Providers (including interexchange carriers, which provide products or services directly to the ILEC's customers) and to companies referred to as "Billing Aggregators" or "Clearinghouses" (which do not provide services directly to ILEC customers, but instead perform billing functions for third-party service providers which lack direct relationships with the ILECs). Each of AT&T's Incumbent Local Exchange Carriers (ILECs) provides third-party billing services pursuant to a mostly standardized billing and collection services agreement. When an ILEC provides billing services on behalf of Billing Aggregators, its relationship is exclusively with the Billing Aggregator; it does not have any direct contractual relationship with third-party service providers for whom the Billing Aggregator is acting on behalf. Third-party service providers who bill through Billing Aggregators are often referred to as "subCICs."

ILEC third-party billing as it exists today could not be offered to the consumer without the involvement of Billing Aggregators. AT&T's billing system is not designed to manage the thousands of different accounts that would otherwise be required if it had direct relationships with each individual service provider. Billing Aggregators provide the accounting, record formatting and other services required for billing through AT&T. Billing Aggregators are able to uniformly submit charges on behalf of these multiple billers to AT&T electronically, using industry standard Exchange Message Interface (EMI) billing records. Active involvement of Billing Aggregators is critical to the success of any cramming prevention program.

AT&T'S ANTI-CRAMMING PROGRAM

There is no one simple solution to the cramming phenomenon and nothing short of terminating third-party billing will eliminate cramming completely. Cramming is a complex problem, the causes of which change constantly as methods of sales and marketing evolve and as consumers respond to new opportunities, such as the growing use of the Internet to purchase goods and services. As new problems have developed, AT&T has responded with new solutions.

Considering the evolution of third-party billing services, it is not surprising that an anti-cramming program must employ multiple strategies to be effective. Over time AT&T has developed such a program. Last year alone, as a result of AT&T's responsive actions, cramming complaints by AT&T customers were reduced by 70% over the prior year.

Set forth below are the key elements of this successful anti-cramming program:

I. Approval of Third Party Service Providers (subCICs)

- Only approved and authorized subCICs are allowed to have billings placed on AT&T ILEC bills. The Billing Aggregator is responsible for complying with AT&T's subCIC application process, which requires submission of a multi-page application form, affidavits from both the proposed subCIC and Billing Aggregator, information on the officers and/or principals of the proposed subCIC, description of the services/product to be provided, associated marketing materials, and any required regulatory filings, among other information.

- The application review process includes an investigation to determine prior billing violations by the proposed subCIC or its officers or principals and an analysis of the proposed subCIC's product or service to confirm compliance with all AT&T rules and policies.
- The Billing Aggregator is responsible for ensuring the accuracy of all submissions by the subCIC and to conduct its own review of the proposed subCIC's qualifications. An annual audit of Billing Aggregators (described below) includes a review of the Billing Aggregators' compliance with all processes for initiating billing services for new subCICs.

II. Restrictions Against Deceptive Marketing

- Marketing by any unlawful, unfair, fraudulent, misleading or deceptive means is strictly prohibited.
- The subCIC must comply with all FCC truth-in-billing and similar state provisions.
- Certain types of sales or marketing products that can lead to cramming complaints are strictly prohibited, such as sweepstakes, give-aways or programs relying on coupons, certificates or rebates for the purchase of any product or service other than the one billed for, etc. This prohibition applies even for programs that would otherwise be entirely lawful.

III. Mandatory Authorization Requirements At Time of Purchase

- The AT&T customer must be informed of the nature of the service to be provided, the pricing of the service, and that the service will be billed through the customer's telephone bill.

- The customer must provide explicit consent to the purchase and to have the service billed to the customer's telephone bill.
- The customer's authorization must be documented by either (a) a written document signed and dated by the customer (or an electronic confirmation that is valid under the law of the state in which the customer resides); or (b) a recorded verbal authorization by the customer, which must be obtained by an independent third-party.
- For Internet-based transactions, in addition to the above, the following information must be obtained from the customer:

  a. First and last name;

  b. Billing Telephone Number ("BTN");

  c. Address, including street, city, state and zip code;

  d. Confirmation of legal age and authority to bill to telephone account; and

  e. Some form of "non-public" information, such as date of birth or last four digits of Social Security Number.

  f. The clearinghouse or an independent provider must then verify the accuracy of the customer's information using "an established and reputable database provider" (e.g., LEXIS, Experian).
- A "double opt-in" process is also required for Internet-based transactions. This process requires the customer to confirm each purchase for a second time, after completing the initial purchase process. In the double opt-in process:

a. The customer is sent confirmation of product, price and any term commitment;

b. The customer is asked to confirm purchase; and

c. The customer must affirmatively confirm purchase before billing is allowed.

IV. <u>Required Oversight and Independent Audit of Compliance</u>

- Billing Aggregators are required to actively oversee all sales, marketing, verification, fulfillment and inquiry processes of their subCICs.
- Billing Aggregators are subject to annual independent audits by a major audit firm with relevant experience and expertise, chosen by AT&T, with the focus of the audit primarily on compliance with anti-cramming measures, truth-in-billing, and Billing Aggregator's oversight of subCICs' sales practices, as outlined above.

V. <u>Additional Information Provided to Consumer</u>

- Third party charges are highlighted in a separate page of the customer's telephone bill, and are clearly labeled with the name of the Billing Aggregator and subCIC, as well as a description of the service being billed. In addition, this bill page contains contact information for any billing inquires related to the third-party charges, including both an 800 number and a Web address.
- Customers may contact AT&T directly with any billing questions or concerns or to contact the Billing Aggregator or subCIC with their concerns.

- Self-service Web sites must be provided by Billing Aggregators, through which customers can submit and resolve inquiries or disputes. Minimum requirements of the websites are:

  a. The websites must allow the customer to block billing, either by Clearinghouse or subCIC level.

  b. Resolution of any dispute is required within four (4) business days with confirmation to customer.

  c. The website URLs must be provided by text phrase on the customer bills.

VI. **Bill Blocking**

- AT&T offers third-party bill blocking to its customers. Bill blocking is offered proactively to any AT&T customer that calls AT&T with a cramming complaint, and it is also provided upon request by any AT&T customer. Upon receiving such a request, AT&T's billing and collection customers can no longer submit charges to be billed to those AT&T customers.

VII. **AT&T's Response to Individual Consumer's Allegations of Cramming**

- When an AT&T customer contacts AT&T to dispute the customer's authorization of a third-party charge, AT&T's policy is to adjust the disputed charge, including associated late fees, while the customer is still on the telephone with the AT&T service representative, regardless of the merits of the customer's complaint. AT&T also offers a third-party bill block, as described above, at no charge to the customer.

VIII. Monitoring of Alleged Cramming and Remedial Actions

- The billing and collection agreements with the Billing Aggregator impose a $150 fee for every cramming complaint AT&T receives, regardless of the validity of the complaint.
- AT&T monitors monthly cramming complaint data for all Billing Aggregators and subCICs. The data includes cramming complaints reported by AT&T customers to AT&T's own customer service centers as well as complaints received by Billing Aggregators or subCICs. AT&T reviews this monthly cramming complaint data, by region, for all Billing Aggregators and all subCICs, both by total complaints and by percentage of complaints from bills rendered.
- The contracts also impose cramming complaint thresholds applicable to both Billing Aggregators and sub-CICs. If a Billing Aggregator or sub-CIC exceeds those thresholds, AT&T can impose remedial action or, if necessary, terminate the billing relationship.
- Billing Aggregators are required to self-report cramming complaints they or their sub-CICs receive, so that AT&T can also consider those complaints in evaluating the third-party billers' performance.
- All cramming complaints must be reported – even those that the Billing Aggregator or subCIC believes to be invalid.
- AT&T reports its monthly cramming complaint data to the Billing Aggregators. In addition, if any Billing Aggregator or subCIC exceeds AT&T's cramming complaint thresholds, AT&T also sends a letter to the

appropriate Billing Aggregator, notifying the Billing Aggregator that it must take immediate corrective action to reduce the level of cramming complaints, including any necessary investigation or remedial measures. The Billing Aggregator is then responsible for taking such actions and for reporting any relevant information to AT&T, such as remedial measures or explanations for the reasons for the cramming complaints.

- In subsequent monthly reviews, if the cramming complaint data do not show adequate improvement, AT&T will take additional action which, at AT&T's discretion, may include suspension of new subCIC applications (for Billing Aggregators), suspension of new sales, termination of sales for specific product types, or termination of billing services.

IX. Additional Anti-Cramming Activities by AT&T

- When AT&T investigates individual cramming complaints, such as executive appeals or referrals from state commissions, it frequently reviews the verification materials obtained by the subCIC or other relevant materials (such as subCIC web sites). If those materials reveal potential issues with sales, marketing or verification processes, AT&T addresses those issues with the relevant Billing Aggregator(s).
- In 2010, AT&T suspended billing for new AT&T customer accounts for several types of third-party services (voice mail, e-mail, Web hosting and Internet-based directory assistance) for which cramming complaint rates were notably high relative to total transaction volume.

- AT&T also notified the Billing Aggregators that they may not submit charges for services marketed through so-called “open affiliate networks” -- in which a subCIC permits its services to be marketed by entities with which the subCIC does not have a close relationship and cannot effectively supervise.

CONCLUSION

With the multifaceted program outlined above, last month’s reports show that AT&T has now limited cramming complaints by its ILEC customers to less then 0.2% of all bills that include a third-party charge. AT&T’s commitment to fight against cramming is real and the effectiveness of its anti-cramming program is proven by the results.