

In the Matter of:

Mobile Cramming Roundtable

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Final Version

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5	<p>1 activity, please let somebody know. 2 Finally, we really look forward to having a 3 very productive day today and a great discussion. And 4 without further ado, I'd like to introduce FTC 5 Commissioner Maureen Ohlhausen. 6 (Applause.) 7 COMMISSIONER OHLHAUSEN: Good morning, 8 everyone. I'm delighted to welcome all of you here, both 9 in Washington, DC, and the folks who are watching this 10 online, to today's roundtable discussion of mobile 11 cramming, which is the placement of unauthorized charges 12 on mobile phone bills. 13 But before I start, I'd like to note that this 14 is Public Service Recognition Week, and it is an honor 15 for me to serve as a Commissioner at an agency that is 16 recognized for its outstanding employees. That our 17 agency's mission is to protect consumers means that the 18 American public is especially well served by the skill, 19 dedication, and perseverance of its employees. And 20 today's event is an excellent example of the great work 21 done by the FTC workforce to advocate for consumers. 22 So, the FTC's interest in mobile cramming stems 23 from our broad mandate to protect consumers from unfair 24 and deceptive practices in the marketplace, whatever the 25 medium. Cramming has been a huge problem on landline</p>	7	<p>1 look at the overall bill amount and pay in full without 2 doing a line-by-line review; or they may read the bill 3 and fail to spot the charges because they're buried, you 4 know, deeply within the bill or listed in generic- 5 sounding categories, such as premium services. In fact, 6 in INC21, which was one of our many landline cramming 7 actions, a survey showed that only 5 percent of consumers 8 were aware that they had been billed for defendant's 9 product; and 97 percent said that they had never agreed 10 to those purchases. 11 So, we'll keep on bringing cases, but we also 12 want to explore the problem from a more systematic 13 perspective. The mobile marketplace is growing rapidly 14 and offers incredible opportunities for consumers to shop 15 and make payments through their mobile devices. As the 16 mobile marketplace grows, we don't want mobile cramming 17 to grow with it. Therefore, we are taking this 18 opportunity to assemble key stakeholders to discuss how 19 mobile cramming occurs and how we can stop it, while 20 allowing legitimate mobile payment models to develop and 21 flourish. Some of our staff had the pleasure of 22 participating in the FCC's workshop on this topic last 23 month, and we're pleased to continue the discussion here. 24 We have a diverse and distinguished set of 25 panelists to help us do that. Our panelists include</p>
6	<p>1 phones for years, and the Commission has brought over two 2 dozen cases to stop these practices and return money to 3 consumers. Now the problem is emerging in the mobile 4 marketplace, and we need to shine a light on this 5 troubling and growing practice to protect consumers and 6 to allow innovative mobile services to flourish. 7 Just recently, we obtained a court order that 8 halted an alleged mobile cramming operation from placing 9 unauthorized charges on phone bills and also froze the 10 defendant's assets for possible refunds to consumers. 11 So, the FTC complaint alleges that Wise Media and its 12 principals charged consumers 9.99 a month without their 13 knowledge or permission for horoscope alerts, flirting 14 tips, and love tips that were delivered via text message. 15 This was the FTC's first case against alleged 16 mobile crammers, but it's likely not to be its last. 17 Indeed, we are aware of thousands of consumer complaints 18 about unauthorized charges on wireless bills. And we 19 believe that these complaints may well under represent 20 the problem or under report the problem. From surveys 21 done in the landline cramming context, we know that many 22 consumers are unaware that third parties can place 23 charges on their phone bills. 24 We also know that consumers often fail to spot 25 unauthorized charges on their bills. They may simply</p>	8	<p>1 consumer advocates, technologists, and industry members. 2 We are also fortunate to have other law enforcers, staff 3 from the Senate Commerce Committee, the FCC, and the 4 international community here to share their perspectives. 5 I want to thank all of our panelists for being here 6 today. We've truly assembled an all-star team, and I'm 7 sure we will all benefit from their knowledge. 8 There are three panels today, each focusing on 9 different aspects of the mobile cramming problem. Our 10 first panel will examine third-party billing in general, 11 as well as how mobile cramming occurs. In our second 12 panel, we will discuss current strategies to reduce 13 mobile cramming. Finally, our third panel will discuss 14 new strategies that might be deployed to address mobile 15 cramming. 16 As the nation's premier consumer protection 17 agency, the FTC is committed to staying ahead of the 18 curve by understanding and identifying harm to consumers 19 from mobile cramming and other emerging technologies 20 before it becomes more widespread. I hope that after 21 today we will all have a better grasp of the benefits and 22 potential harms that can arise from mobile third-party 23 billing; additional protections that industry might 24 implement to prevent those harms; and what role 25 government should play as we move forward.</p>

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1 We really hope to foster an environment that
 2 allows innovation in third-party billing to grow while
 3 minimizing harm to consumers from cramming. And when we
 4 at the FTC see issues arising from mobile third-party
 5 billing, we will continue to act.
 6 So, once again, welcome to our workshop. Thank
 7 you.
 8 (Applause.)
 9 MS. ROSENTHAL: And now we'll get the rest of
 10 the day started. We'd like to have the first panel come
 11 up to the front of the stage. Thank you so much for that
 12 great opening.
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1 PANEL 1
 2 UNDERSTANDING THIRD-PARTY BILLING AND MOBILE CRAMMING
 3 MS. BUNGO: Good morning, everyone. I'm
 4 Larissa Bungo. I'm the Assistant Regional Director in
 5 the East Central Region, which is located in Cleveland,
 6 Ohio. It's my pleasure to be here to co-moderate Panel
 7 1. I'm here with my colleague, Andrew.
 8 MR. SCHLOSSBERG: Hi, I'm Andrew Schlossberg.
 9 I work in our Mobile Technology Unit here at the FTC.
 10 MS. BUNGO: And we're going to be talking about
 11 the third-party billing process. We'll be talking about
 12 how it works and also examining the consumer and industry
 13 perspective about mobile cramming. And with that, I'm
 14 going to turn it over to Andrew.
 15 MR. SCHLOSSBERG: Sure, so just to get started,
 16 each of our panelists would like to give a brief one-to-
 17 two-minute introduction about who you are and why you are
 18 here today. And please speak into the microphones so
 19 everyone can hear you on the webcast. Thank you.
 20 MR. ALTSCHUL: All right, well, I'm Mike
 21 Altschul. I'm the General Counsel of CTIA - The Wireless
 22 Association. And on behalf of the wireless industry, I
 23 want to thank you for inviting us to participate in
 24 today's panel and discussions. As the name suggests,
 25 CTIA represents the wireless industry. We'll be talking

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1 on each of these panels about the various layers and
 2 roles different participants in the industry play,
 3 including carriers, aggregators, and content providers
 4 with respect to these premium messages.
 5 We all share the same goal. Nobody wants
 6 unhappy consumers, consumers who have been misled who
 7 haven't consented to the services that they receive and
 8 are charged for. On the other hand, many of these
 9 services we'll be talking about provide some very
 10 valuable services or very popular, and third-party
 11 billing provides a new and competitive choice of billing,
 12 particularly for many unbanked individuals.
 13 MS. MCCABE: Hi, everyone. My name is Kate
 14 Whelley McCabe. I'm an Assistant Attorney General at the
 15 Office of Vermont's Attorney General. And I'm here to
 16 give a consumer perspective. I'd like to thank the FTC
 17 for having me and for gathering us to talk about this
 18 important issue.
 19 And if you haven't noticed already, please
 20 notice that I'm the only person on the panel who's not a
 21 VP or a CEO. So, in case I never get another word in
 22 edgewise, I want to give you my bottom line. And that is
 23 those folks who are trying to gauge the magnitude of this
 24 problem based on complaints are grossly underestimating
 25 the problem, and I'll give you some information to back

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1 that up.
 2 Vermont, albeit a small state, we have fielded
 3 a couple dozen complaints about wireless cramming over
 4 the last seven years. That's not insignificant, but even
 5 for Vermont that's small. However, I'm happy to announce
 6 that today the office is publishing the Mobile Phone
 7 Third-Party Charge Authorization Study, a systematic
 8 survey -- consumer survey that we conducted in the fall
 9 to determine just how large the problem was.
 10 And I'm going to give you a couple of
 11 statistics. Out of the 802 respondents to 2,400 mail
 12 surveys, we discovered that according to consumers 60
 13 percent of third-party charges in the months of August
 14 and September of 2012 were crammed. That is to say
 15 consumers said they did not authorize those charges.
 16 And an even more startling statistic, close to
 17 80 percent of the consumers reported that they did not
 18 understand until we informed them that they could be
 19 charged for third-party goods and services on their
 20 mobile phone bills. So, my takeaway is you can't know
 21 what the problem is until you talk to consumers. And by
 22 talking to consumers, I mean reaching out proactively,
 23 not just reacting to the complaints.
 24 I read the FTC's complaint and Andrew's
 25 declaration yesterday about the complaints that he was

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1 able to find on Wise Media. I believe he used the word
 2 "hundreds," but 2 million phone numbers were crammed by
 3 Wise Media, and that is .05 percent. So, let that be
 4 your guide in judging the size of the tip of the iceberg
 5 and judging the size of the iceberg itself. Thanks.
 6 MR. BREYAULT: Hi, I'm John Breyault. I'm the
 7 Vice President of Public Policy, Telecommunications and
 8 Fraud with the National Consumers League. We're the
 9 nation's oldest consumer advocacy organization, founded
 10 in 1899, and my standard opening joke is that, no, I'm
 11 not a founding member.
 12 I also direct our fraud.org campaign, which is
 13 our comprehensive online education and advocacy campaign
 14 for consumers to protect them from fraud. The reason I'm
 15 on this panel today is in the FCC's proceeding and the
 16 FTC's landline cramming, we were one of the leading
 17 consumer organizations that was calling for strong action
 18 by regulators to address the problem. As was previously
 19 mentioned, landline cramming was a huge issue, and we
 20 think that many of the crammers who are -- who were
 21 active in the landline are simply migrating over to the
 22 wireless side.
 23 You know, one of the largest issues that we
 24 have in this space is that how much is really unknown
 25 about both the size of the third-party billing network

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1 and the size of the wireless cramming problem generally.
 2 However, there is some data out there that is public.
 3 Earlier this year, the California Public Utilities
 4 Commission reported that third-party charges in
 5 California on wireless phone bills was a \$171 million
 6 annual marketplace. And if you take that an extrapolate
 7 it nationally to the 300 million or so wireless
 8 subscribers, you get a market of around 1.46 billion in
 9 wireless third-party charges annually.
 10 Even more troubling than that is that if you
 11 then take the data from our friends at the Vermont
 12 Attorney General's Office and also data from the Illinois
 13 Consumer Utility Board, you look at they found between 40
 14 percent and now more than 50 percent of charges are
 15 potentially fraudulent. And, so, by our estimate, we're
 16 looking at a problem of between \$643 and more than \$730
 17 million annually in potentially fraudulent charges on
 18 wireless phone bills.
 19 So, we think it's a very big problem. We're
 20 very happy that that FTC is looking at it today, and
 21 we're happy to be here.
 22 MR. MANIS: My name's Jim Manis. I'm the
 23 Founder and CEO of the Mobile Giving Foundation, now
 24 known as the BBB Mobile Giving Foundation, now that we're
 25 in partnership with the Council of Better Business

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1 Bureaus and the primary charity watchdog, the BBB Wise
 2 Giving Alliance.
 3 I'm here to talk about, I think, how wireless
 4 technology applies to doing good, but I'm also here
 5 because I think I have a little bit of background that's
 6 relevant. Previously I also reset the Mobile Marketing
 7 Association, served as its global chairman for three
 8 years, during which time we established the consumer best
 9 practices as an attempt to continue to put the spotlight
 10 on the consumer's prominence, if you will, in deriving
 11 and interacting with the mobile channel. And I am one of
 12 the founders of one of the earlier premium aggregators, a
 13 company by the name of m-Qube, which we then sold into
 14 Verisign back in 2006.
 15 But the Mobile Giving Foundation really
 16 understands how mobile technology applies to philanthropy
 17 and doing good. It's an extremely important space. This
 18 issue is -- I think demands attention. We appreciate the
 19 FTC's spotlight on this. And we also appreciate the
 20 opportunity to really kind of close the gap in in
 21 understanding what this problem is or is not.
 22 From our perspective, we see cramming in the
 23 commercial space on a significant decline based on a
 24 range of steps that carriers have taken, and we see no
 25 cramming in the philanthropy space. Its value to us is

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1 tremendous when you stack up how many individuals have
 2 mobile devices across the country, 335 million, it
 3 creates an addressable audience for non-profits to engage
 4 citizens in support of their causes, and the simplicity
 5 of billing on a carrier network through premium SMS
 6 really enables a wide range of individuals who have no
 7 other access or means to support causes and charities.
 8 This is something that does tremendous good,
 9 well beyond just the emergency space. I know most of you
 10 probably are familiar with the work that we've done
 11 through seeing call-to-actions in response to
 12 emergencies, whether it's Sandy or Katrina or the Japan
 13 tsunami or pick one. But the fact of the matter is is
 14 that there are thousands, hundreds, up to several
 15 thousand, charities that use mobile giving on a day-to-
 16 day basis to simply raise and support funds to advance
 17 their mission.
 18 And mobile technology allows us to say to those
 19 charities, to get access to this, that you have to meet
 20 standards, you have to account for those funds that are
 21 raised, and you have to show how you're using those funds
 22 against the mission. So, we think this is a tremendous
 23 panel and an opportunity to talk and further understand
 24 what problems exist and what opportunities. So, thank
 25 you.

17	<p>1 MR. SCHLOSSBERG: Thanks, Jim.</p> <p>2 MR. GREENWELL: Good morning, everyone. My</p> <p>3 name is Jim Greenwell. I'm the Chief Executive Officer</p> <p>4 for BilltoMobile, and I'll add to Jim Manis' notion of</p> <p>5 the good that comes out of mobile billing. So, our</p> <p>6 company's actually Danal, Inc., and we originally started</p> <p>7 in Korea. The parent company is a public company in</p> <p>8 Korea and started what I would call e-commerce mobile</p> <p>9 payments. And in Korea were transactions -- it's about a</p> <p>10 \$4 billion market, and we process half of those there.</p> <p>11 And in the United States, we're processing roughly --</p> <p>12 almost \$100 million run rate in what I call e-commerce</p> <p>13 type of mobile payment.</p> <p>14 So, if you think of match.com or think of a</p> <p>15 dating site or think of Facebook, if you're on there and</p> <p>16 you want to purchase credits, you, of course, can charge</p> <p>17 it to your -- to your mobile account. It's a very</p> <p>18 appealing way of transacting, especially for the</p> <p>19 millennial demographics, and will continue to be. Mobile</p> <p>20 payments has a broad appeal, but specifically, it has an</p> <p>21 appeal for the younger generation that has grown up</p> <p>22 mobile-centric.</p> <p>23 And, you know, the issue of cramming, which</p> <p>24 from our view is something -- is a burden that we've had</p> <p>25 to embrace both with the consumer and with the carriers.</p>	19	<p>1 online and mobile platforms and smartphone adoption by</p> <p>2 Canadian consumers, and while it's bringing a lot of</p> <p>3 advantage to the Canadian marketplace, it's always --</p> <p>4 it's already exposing our consumers to risks and harm.</p> <p>5 And my role today is to talk to you a bit about our</p> <p>6 Canadian legislation, some of the activity we're taking,</p> <p>7 but also to give you a bit of a perspective on the</p> <p>8 international front of how other agencies around the</p> <p>9 world are seeing this problem and some of the challenges</p> <p>10 that they're dealing with as well. So, on that point,</p> <p>11 I'll turn it back to our moderator. Thank you.</p> <p>12 MR. SCHLOSSBERG: Thanks, Larry.</p> <p>13 So, just before we get started with questions,</p> <p>14 I'm going to ask some questions to specific panelists,</p> <p>15 but if you want to chime in, just go like this with your</p> <p>16 table tent card, and I will call on you.</p> <p>17 So, just to get started, just for a level</p> <p>18 setting, this may be for Jim Greenwell or Jim Manis, how</p> <p>19 large is the third-party wireless billing ecosystems in</p> <p>20 terms of revenue, and what proportion of consumers who</p> <p>21 get third-party charges -- what proportion of consumers</p> <p>22 get third-party charges on their bills? Either one of</p> <p>23 the Jims want to take that?</p> <p>24 MR. GREENWELL: Want me to take the first --</p> <p>25 MR. MANIS: Go for it.</p>
18	<p>1 It deflects a little bit from the potential and the</p> <p>2 opportunity that exists in legitimate -- what I would</p> <p>3 call legitimate mobile payments. And since we've</p> <p>4 launched, we've actually had zero -- zero tolerance and</p> <p>5 zero acts of cramming and other what I would call</p> <p>6 nefarious things on the mobile bill. So, I'm happy to</p> <p>7 discuss that in a little further detail.</p> <p>8 MR. SCHLOSSBERG: Thanks.</p> <p>9 MR. BRYENTON: And good morning, everyone, I'm</p> <p>10 Larry Bryenton from the Canadian Competition Bureau. And</p> <p>11 thank you to the FTC for the invitation to allow me to be</p> <p>12 here today to give, I think, a bit of an international</p> <p>13 perspective on the issue that we're going to talk about</p> <p>14 today.</p> <p>15 Just to give you a bit of an overview, the</p> <p>16 Canadian Competition Bureau is responsible for the</p> <p>17 Competition Act in Canada, which is a general law of</p> <p>18 application that applies to virtually all businesses in</p> <p>19 Canada and has competition and consumer protection</p> <p>20 provisions and what our role is in the branch that I'm</p> <p>21 responsible for is looking at issues relating to false or</p> <p>22 misleading issues.</p> <p>23 Our priority focus is in the digital economy</p> <p>24 area, and as the U.S. experience shows, Canada is</p> <p>25 similar. There's an explosive growth of the use of</p>	20	<p>1 MR. GREENWELL: I'll take the first stab. So,</p> <p>2 you know, revenue is a relative term, right, so we break</p> <p>3 down the financials typically in our space from TPV,</p> <p>4 total processing volumes, and there's perhaps a term</p> <p>5 called gross revenue, which is the revenue you'll take,</p> <p>6 but then there's a percentage that goes to the carrier</p> <p>7 and then the net revenue portion.</p> <p>8 So, if we start, you know, if we start on the</p> <p>9 total processing volume and -- it's been an interesting</p> <p>10 development, specifically in North America because</p> <p>11 whereas before you did have a lot of third-party</p> <p>12 intermediaries that processed the traffic, we're now</p> <p>13 seeing large players such as Google, such as Facebook,</p> <p>14 wanting to have a closer relationship with the carriers.</p> <p>15 Now, of course, the carriers don't want too large a</p> <p>16 number of players within their network. They're</p> <p>17 obviously very protective of the network, that's their</p> <p>18 core value, so they are letting some big players on.</p> <p>19 So, if you mean independent third-party</p> <p>20 processing volumes, right now in the United States I</p> <p>21 would say -- I would venture to guess, and this is non-</p> <p>22 PSMS, and so I distinguish between PSMS, which is on</p> <p>23 deck, so think, you know, you're getting horoscope,</p> <p>24 you're getting music, a ringtone, some sort of wallpaper,</p> <p>25 versus, hey, I'm signing up for, you know, match.com or</p>

21	<p>1 I'm buying Facebook credits. And those are two distinct 2 types.</p> <p>3 I would say it's probably in the \$300 million 4 -- \$300 million processing volume range, and growing 5 very, very rapidly. It's getting some wide adoption as 6 we go along.</p> <p>7 MR. MANIS: And, you know, Mike might be able 8 to address the premium SMS space better than me at this 9 point of the game, but my view of the premium SMS space 10 is it's actually been shrinking significantly over the 11 last few years. The number of players defined -- players 12 defined by the authorized aggregators who can place a 13 billable event onto your phone bill across all the 14 wireless operators has declined significantly, and I 15 think there's two left in the space today.</p> <p>16 I think that's probably largely due, and maybe 17 if there's other carrier representatives in the room, you 18 might want to address that, but I think that's largely 19 due to a number of measures that industry has taken, both 20 through CTIA, through the MMA, through the individual 21 carrier activity, to constrain that space.</p> <p>22 With respect to mobile giving, there's 23 approximately 2,500 charities that have been vetted. 24 There's a requirement up front to -- that a charity has 25 to meet standards above and beyond just simply being an</p>	23	<p>1 use wireless technology as a means to educate 2 individuals; and, frankly, they're trying to get away 3 from the likes of old guys like me and finding younger 4 people who can -- who they can -- who will support their 5 causes over a longer period of time. So, it's been 6 highly beneficial that way.</p> <p>7 MR. SCHLOSSBERG: Kate?</p> <p>8 MS. MCCABE: I'm just wondering, we've heard 9 about the non-PSMS volume. Do you know what the PSMS 10 volume is?</p> <p>11 MR. MANIS: Well, my comments were related to 12 the premium SMS.</p> <p>13 MS. MCCABE: I'm sorry, I was questioning Jim 14 Greenwell.</p> <p>15 MR. GREENWELL: No, thanks for asking. I 16 wanted to expand. So, if I were to guess, I don't -- you 17 know, I've seen some volumes on some carriers. I would 18 say -- I heard the \$1.5 billion number. I think it's 19 still actually bigger. I would put it at between 2 to 3 20 billion, knowing what percentage the carriers still get 21 in revenues and knowing what other premium SMS third- 22 party processors are still out there. So, I think it's a 23 \$2 to \$3 billion market. And as Jim Manis said, it's 24 declining, but still, it's mature.</p> <p>25 MR. MANIS: And I should just make one more</p>
22	<p>1 authorized 501(c)(3), a public 501(c)(3). So, there's a 2 vetting process. There's probably 2,500 charities that 3 have gone through that vetting process. And the result 4 of that vetting process has enabled probably 8 million, 5 I'm going to give you a ballpark figure here, I didn't 6 have the figure coming in, but it's pretty close, about 8 7 million individuals across this country, less so in 8 Canada.</p> <p>9 So, sorry, I'm going to talk to the U.S., but 10 we also have the Mobile Giving Foundation of Canada, 11 which we -- which is well placed there, doing similar 12 things, and we act in the same fashion up there through a 13 controlled platform. So, we don't see this type of issue 14 in the giving space at all where we are.</p> <p>15 But that's a lot of individuals who've actually 16 used premium SMS to make a donation to a charity. And 17 through that process they've, you know, raised north of, 18 you know, \$70 million in donations over that period of 19 time in \$5 and \$10 increments, right, so that's a lot of 20 activity, if you will.</p> <p>21 And then more important for the charities is 22 that the individuals who contribute through mobile giving 23 tend to be new contributors. So, from a charity's 24 perspective, they're trying to find ways to acquire new 25 supporters of their causes; they're trying to provide --</p>	24	<p>1 note on the mobile giving space, relative to the carrier 2 activity, since Jim referenced the revenue share that 3 occurs on the commercial side, the carriers step up to 4 the philanthropic piece of premium SMS on a no-cost 5 basis. So, where the normal transaction would have a 6 revenue share between the content provider, if you will, 7 and the carrier, that does not exist in the philanthropy 8 space. Every dollar that's collected by a wireless 9 operator is passed through us for -- to distribution back 10 to -- back to the beneficiary charity. So, there's zero 11 cost that the carrier captures.</p> <p>12 MR. SCHLOSSBERG: Just let's step back for one 13 second. Just, well, we assume people know the players in 14 this space. Let's just talk about that. Mike, what is 15 the process for placing a third-party charge on a mobile 16 phone bill, and what types of companies are involved? 17 We've mentioned them a little bit, but I just want to 18 make sure everyone understands on the same field here.</p> <p>19 MR. ALTSCHUL: Well, we'll start with the 20 carrier, because that's the company that bills the 21 customer and has the relationship with the customer and 22 who the customer should contact if there are any 23 questions or any unauthorized charges associated with a 24 customer's bill. The carriers have contractual 25 relationships with companies that Jim referred to called</p>

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1 aggregators. These content aggregators have been
 2 incentivized by the commercial agreements the carriers
 3 have entered into with them.
 4 They're rewarded when their -- when the content
 5 providers and services that the aggregators work with
 6 have satisfied customers, low refunds, low complaints,
 7 low questions. And aggregators and content providers can
 8 be cut off in the event that the customer experience
 9 exceeds a trigger or threshold level. The aggregators
 10 have both connectivity with all of the participating
 11 carriers who support these services. And then if one is
 12 a content provider, the content providers have a
 13 relationship with the aggregator, not with the -- not
 14 with a carrier directly.
 15 The industry, through CTIA, with respect to
 16 premium SMS, which is just one flavor of the charges
 17 we've been talking about already this morning, assigns
 18 the short code that's used for premium SMS services. And
 19 in the way those codes are administered, any content
 20 provider has to go to a registry and agree to terms of
 21 service and terms of use that incorporate industry best
 22 practices that originally were developed by the Mobile
 23 Marketing Association and continue to, you know, be
 24 followed and enhanced by the industry.
 25 These are then monitored by the industry. CTIA

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1 has budgeted more than \$2 million a year for the
 2 monitoring we do on behalf of the entire industry.
 3 Individual carriers do their own vetting and monitoring
 4 on top of that. Aggregators monitor their experience
 5 with each of the programs and codes that they support and
 6 work closely with their content providers. Those are the
 7 different layers in providing these kinds of services.
 8 MR. MANIS: Just one note on the mapping piece
 9 of that, so in the commercial space, that's exactly
 10 correct. In the commercial space the content provider
 11 that has that relationship to the aggregator, right, and
 12 remember the aggregator has a relationship to the various
 13 carriers, the content provider can actually initiate a
 14 billable event by passing that acceptance of an opt-in to
 15 the aggregator for processing, right?
 16 Where you've seen cases of cramming, my guess
 17 is it probably originates at some content provider with
 18 remote distance who passes that through, right? In the
 19 charities, and to Mike's point, that has, in our
 20 observations, dramatically decreased because the carriers
 21 really have put some stringent controls in place. For
 22 example, if you -- it's hard to measure, but one baseline
 23 measure is refund rates. Refund rates exceed a certain
 24 amount, something like 8 percent, that content provider
 25 no longer has access to the network. So, you know, they

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1 really do close that piece down, in addition to the day-
 2 to-day monitoring of advertisements that take place
 3 around a called action. And that's in the commercial
 4 space.
 5 In the non-profit space, with the Mobile Giving
 6 Foundation, that ability for content provider, in this
 7 case let's call it a content provider a charity or one of
 8 -- an ASP, right, a marketer to that charity. And that
 9 -- in the non-profit space, that charity does not have
 10 the ability to initiate a billable event, right? They
 11 can't take it and accept an opt-in and then pass that to
 12 us for processing. That opt-in has to occur on our
 13 platform, which we then process directly with the
 14 carrier.
 15 And now I understand that at least there's two
 16 carriers on the commercial side of the business that have
 17 put in consent management platforms to grab that opt-in,
 18 right, that initial opt-in, away from the content
 19 provider to bring it back, not to the aggregator, but all
 20 the way back to the carrier, I think, as part of the
 21 broader attempt at managing this overall space.
 22 So, the opt-in and the invisibility to the
 23 consumer's initial action and intent is critical to
 24 making sure that we have full transparency to what their
 25 objective is.

28

1 MR. SCHLOSSBERG: Larissa?
 2 MS. BUNGO: Thank you. I'd like to ask a few
 3 questions, just introducing the topic of mobile cramming.
 4 First I'd like to ask Kate and John and Larry if you
 5 could talk about whether you think consumers know third-
 6 party charges can appear on the phone bill.
 7 MS. MCCABE: I'm sorry, what is the question?
 8 MS. BUNGO: Whether you think consumers are
 9 aware that third-party charges can appear on the phone
 10 bill.
 11 MS. MCCABE: So, one of my initial statistics
 12 was about just that question. We asked a number of
 13 questions of our consumers, and two of them are
 14 interesting and go to that point. But the first was a
 15 question about did you understand that third-party
 16 charges could appear on your phone bill. And we had a
 17 response rate for no in the range of 80 percent. So, 80
 18 percent of the consumers that we surveyed said that they
 19 did not realize they could be billed on their mobile
 20 phones for third-party goods and services.
 21 Another statistic that goes to that question in
 22 a different way is that 55 percent of the consumers that
 23 we surveyed that they did not recognize that the charge
 24 was on their bill, any charge at all, for \$9.99 was on
 25 their bill until we asked them to look at their bills by

29	<p>1 way of the mail survey. So, there were certainly</p> <p>2 consumers that noticed the charge that didn't understand</p> <p>3 what the origin of the charge was. And I did supply</p> <p>4 Andrew with a couple of examples of bills, and I'm not</p> <p>5 sure if those made it to a table outside yet.</p> <p>6 MR. SCHLOSSBERG: Not yet.</p> <p>7 MS. MCCABE: Okay, but they're going to be on</p> <p>8 your website.</p> <p>9 MR. SCHLOSSBERG: Yes.</p> <p>10 MS. MCCABE: Some redacted examples of consumer</p> <p>11 bills that will show you how it is that a consumer might</p> <p>12 see the charge but not understand where it's coming from.</p> <p>13 And if you would like to speak to something Jim Manis</p> <p>14 said from -- about, you know, where we're seeing the</p> <p>15 problem and where we're not seeing the problem.</p> <p>16 And, you know, through this survey, through</p> <p>17 another survey that the office conducted, through talking</p> <p>18 to consumers that have complained and through collecting</p> <p>19 complaints that have gone into other AG offices all over</p> <p>20 the country, I have probably seen the stories of about</p> <p>21 2,000 consumers, and I have not seen one consumer who has</p> <p>22 told me that they have been crammed by a charity, not</p> <p>23 one. So, I think, you know, let's not stop paying</p> <p>24 attention to that space, but that's not where the problem</p> <p>25 is.</p>	31	<p>1 issue from the law enforcement side is that complaints</p> <p>2 are received from people that don't believe that they</p> <p>3 authorized, and certainly they were unwanted charges.</p> <p>4 And I think that that's consistent with what we heard</p> <p>5 earlier today and what I've read on literature that's</p> <p>6 filed by the FTC in different submissions, as well as</p> <p>7 cases, and also from international colleagues around the</p> <p>8 world that a lot of consumers are uncertain as to how</p> <p>9 charges do get on and let alone being able to</p> <p>10 differentiate and confirm what the charges are when they</p> <p>11 do get their bill.</p> <p>12 MS. BUNGO: Okay, I'll go to John and then to</p> <p>13 Mike next.</p> <p>14 MR. BREYHAULT: Sure. So, I think it's</p> <p>15 important to note, I mean, we agree that the charitable</p> <p>16 giving space seems to be one area of third-party billing</p> <p>17 where there does not seem to be a problem. I mean,</p> <p>18 clearly, I think, you look at the Red Cross, for example.</p> <p>19 They raised \$46 million for Haiti relief after that</p> <p>20 earthquake, so we don't think there's a problem there.</p> <p>21 I think our concern from NCL's perspective</p> <p>22 really lies in the commercial space. And I think, you</p> <p>23 know, relying on consumers to spot these charges assumes</p> <p>24 that consumers actually look at their bills. And I think</p> <p>25 we know that most consumers don't look at their bills</p>
30	<p>1 I brought a pamphlet that I got at my favorite</p> <p>2 coffee shop in Vermont, and because I can't show you a</p> <p>3 bill right now, I thought some of you might be interested</p> <p>4 in donating \$10 to the Vermont Food Bank and seeing what</p> <p>5 it looks like on your bill when it shows up in your next</p> <p>6 billing cycle. This pamphlet says, "Hungry to give?</p> <p>7 Just \$1 provides three meals to Vermonters in need. Text</p> <p>8 foodnow" -- one word -- "to 52000." So to 52000. So, if</p> <p>9 you were to take out your phone right now and text to</p> <p>10 52000 the word foodnow, you will see on your next phone</p> <p>11 bill a \$10 charge. And pay attention to what it looks</p> <p>12 like, what section is it in, are you able to understand</p> <p>13 what it was given the context.</p> <p>14 You'll probably notice it, and you'll probably</p> <p>15 understand because you actually did go through this</p> <p>16 authorization process, but imagine a consumer who doesn't</p> <p>17 know they've opted in or is seeing something on their</p> <p>18 bill for the first time. That's where those statistics</p> <p>19 came from. That's why we have more people noticing that</p> <p>20 there is a charge on their bill than understanding where</p> <p>21 it came from.</p> <p>22 MS. BUNGO: Thank you, Kate.</p> <p>23 Larry, did you have --</p> <p>24 MR. BRYENTON: Yeah, I'll just pick up on that</p> <p>25 point. And I think, you know, at the very essence of the</p>	32	<p>1 closely. And to top that off, you have charges that are</p> <p>2 often labeled deceptively on bills. I mean, how many</p> <p>3 folks in the room actually look at your wireless bill on</p> <p>4 a monthly basis? One? A few of you, a few of you,</p> <p>5 great.</p> <p>6 And, so, and why do we do that? That's because</p> <p>7 these bills often are multiple pages. I don't know if</p> <p>8 any of you have kids and multiple lines, there are maybe</p> <p>9 a dozen pages in a bill. Who's going to look at that?</p> <p>10 On top of that, you have carriers who are increasingly</p> <p>11 pushing auto bill-pay, paperless billing, so it's even</p> <p>12 easier for consumers just not to think about it. It's</p> <p>13 just another charge on your credit card bill.</p> <p>14 So, this is why mobile cramming has become so</p> <p>15 easy and so lucrative for scam artists. Small charges,</p> <p>16 misleadingly labeled, on bills that people don't read.</p> <p>17 It's almost the perfect scam for them. So, I think we</p> <p>18 saw when we were looking at landline cramming this exact</p> <p>19 problem. The consumers don't even know that their bills</p> <p>20 can be used as a credit card essentially. And what's</p> <p>21 worse is mobile bills don't give you the same protections</p> <p>22 that credit cards or debit cards do. You can't dispute a</p> <p>23 charge and be protected by Reg E, for example. You're</p> <p>24 basically at the mercy of your carrier to take your word</p> <p>25 for it and take the charge off your bill.</p>

33	<p>1 So, it's very concerning to us. I think the</p> <p>2 double opt-in that was discussed has its flaws. I think</p> <p>3 you see, for example, companies that are putting negative</p> <p>4 options into the confirmation text messages, where it's</p> <p>5 reply stop or you will be charged. Most people just</p> <p>6 ignore the charge. I think the New York Times did a</p> <p>7 great couple of articles on this last year about Wise</p> <p>8 Media and how they were using negative options.</p> <p>9 So, we think it's a very large problem. We're</p> <p>10 concerned that the countermeasures that the MMA and</p> <p>11 others have in place to protect us aren't actually doing</p> <p>12 what they want them to do. And we think there needs to</p> <p>13 be some serious thought given to what regulators can do</p> <p>14 to address the problem.</p> <p>15 MS. BUNGO: Thank you. I know we'll be</p> <p>16 exploring the measures that have been taken in the second</p> <p>17 panel. But, Mike, if you'd like to respond, industry</p> <p>18 perspective?</p> <p>19 MR. ALTSCHUL: Thank you. We haven't really</p> <p>20 spoken about the double opt-in for premium messages. And</p> <p>21 this is consent, and it's consent at the time of</p> <p>22 purchase. And I just received the Vermont survey last</p> <p>23 night as just being released today, and we received a</p> <p>24 courtesy copy. And there is this statistical quirk where</p> <p>25 twice as many people responded that they remember</p>	35	<p>1 available at the point of sale and on carrier websites</p> <p>2 that third-party charges can be placed on their accounts,</p> <p>3 as well as the availability of account blocking for these</p> <p>4 charges.</p> <p>5 MS. BUNGO: Thank you. Go ahead, Jim.</p> <p>6 MR. MANIS: Just real quickly, I did want to</p> <p>7 make a comment that -- follow up on the comment that Mike</p> <p>8 made but also to Kate's point. There is no gap between</p> <p>9 the initial action that a consumer or a donor takes and</p> <p>10 the bill, right? So, to Mike's point, this is a double</p> <p>11 opt-in process, and that double opt-in process is</p> <p>12 designed to ensure not only consumer intent, but it's</p> <p>13 also designed to let that donor know what's taking place</p> <p>14 with their actions.</p> <p>15 So, this notion, the question that you just</p> <p>16 asked, is the consumer ever notified, let me just read</p> <p>17 you two quick little text messages here, because this is</p> <p>18 a standard text message reply that extends beyond the</p> <p>19 philanthropic aspect to it and encompasses best practices</p> <p>20 defined by MMA for every type of premium engagement.</p> <p>21 So, if you initiate a transaction, you will be</p> <p>22 sending a key word to a short code, you will receive an</p> <p>23 immediate text message back asking you to confirm, in</p> <p>24 this case, to confirm your donation to the charity, reply</p> <p>25 with the word "yes," right, and then it states terms and</p>
34	<p>1 authorizing the charge than responded that they knew that</p> <p>2 they could be charged.</p> <p>3 And the reason they remember it is at the time</p> <p>4 any customer is opting in or selecting a premium message</p> <p>5 charge, that's a message that will be billed in addition</p> <p>6 to the actual message charge, there is a second step that</p> <p>7 the customer has to take to approve that charge. And</p> <p>8 that is to affirmatively text back "yes" after receiving</p> <p>9 a short text message that's displayed all on a single</p> <p>10 screen of a user's wireless device, identifying the</p> <p>11 amount of the charge, identifying whether it's a one-time</p> <p>12 or recurring charge and what the service that's being</p> <p>13 purchased is.</p> <p>14 This double opt-in comes exactly at the time</p> <p>15 the customer is subscribing and making the choice. It's</p> <p>16 immediate; it's current; it's actionable. And without</p> <p>17 the double opt-in there is no premium message charges.</p> <p>18 MS. BUNGO: I'd like to give Jim an opportunity</p> <p>19 to speak, and I have a follow-up for Mike real quick,</p> <p>20 which is as to the placement of the third-party charges,</p> <p>21 did the carriers inform consumers that third-party</p> <p>22 charges can appear on their bill? And, if so, where do</p> <p>23 they receive that information?</p> <p>24 MR. ALTSCHUL: The carriers do provide</p> <p>25 disclosures that -- in the service agreement that's</p>	36	<p>1 conditions and we have a little mini URL. Reply help for</p> <p>2 help; stop to cancel; message and data rates may apply.</p> <p>3 You reply yes, and then you receive a thank you</p> <p>4 message back, thanks, and it notes the amount charged,</p> <p>5 right, it can be five, ten, in this case it's a trial for</p> <p>6 \$25 charged to your cell phone bill for this particular</p> <p>7 charity. Info at, again we provide a little mini URL,</p> <p>8 reply help, you know, repeat the standard message.</p> <p>9 So, the notation here and the notion that's</p> <p>10 consistent not just with philanthropy but with any kind</p> <p>11 of premium interaction with the consumer is to provide</p> <p>12 advice of charge, let the consumer know and confirm the</p> <p>13 action that they initiated, to let them know that the</p> <p>14 result of that action will be an appearance on their</p> <p>15 phone bill, and will provide terms and conditions for --</p> <p>16 access for terms and conditions and other means to seek</p> <p>17 additional help and information.</p> <p>18 So, just as a note in terms of the message flow</p> <p>19 that accompanies that transaction, that's an important</p> <p>20 message flow, and that should serve to a link then, to</p> <p>21 your point, Kate, when they receive the bill they can</p> <p>22 identify that charge on their bill.</p> <p>23 MS. BUNGO: I know there's a point that John</p> <p>24 would like to make.</p> <p>25 MR. BREYAUULT: Yeah, I mean, I would just point</p>

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1 out again that, you know, we're talking about commercial
2 messages here that are the problem with cramming.
3 Charities are different from commercial crammers in the
4 sense that their intent is not to deceive you. A
5 commercial scam artist who is engaging in cramming fraud,
6 their intent is to deceive you.

7 So, to the extent that somebody might opt in
8 and agree to have something charged for a charitable
9 contribution, that's fine, and I think I mentioned in
10 their review of the bills that they did not see a single
11 instance where consumers had a problem with the
12 charitable giving. The problem is that crammers are out
13 there who ask you to put, for example, your cell phone
14 number into a website that would ask -- that said do you
15 want to get free horoscopes or a joke of the day or
16 random fact of the day, and by doing that, that
17 constitutes the first part of the opt-in. And then the
18 consumer then receives the second text message.

19 And, again, it's the negative option there that
20 is the problem, because the consumer often just ignores
21 that. They think it's spam text. People get them all
22 the time. And, so, by ignoring it, they are agreeing to
23 those charges, even though all they thought they were
24 doing was putting in their cell phone number to try to
25 get into a website that they wanted to see.

38

1 So, I think you have to be clear the
2 distinction between charitable giving via text messages,
3 which is where the intent is not to deceive, and
4 commercial cramming, where the intent is to deceive. And
5 I think the commercial cramming is a very, very large
6 problem. And I don't think we should minimize it by
7 saying that because charitable giving exists and it's a
8 good business model that we don't have a problem
9 generally with wireless cramming.

10 MS. BUNGO: Thank you. Kate?

11 MS. MCCABE: And I'd like to make another
12 distinction, and that is I think what we're hearing on
13 this panel is that there is a gap between what is
14 supposed to happen and what actually does happen. So,
15 the predominant consumer narrative is, I was charged 9.99
16 on my phone bill, it's been happening for several months;
17 and either, A, I had never seen this company name before
18 or never did any activity that would have opened me up,
19 never put my phone number on the web, wasn't getting spam
20 texts, I have no idea where this is coming from, A; or,
21 B, I remember getting some spam texts, I don't really
22 know what they were about, I deleted them. Or, yeah, I
23 signed up online for some free recipes, but I didn't know
24 I was going to be charged for anything, let alone \$10 a
25 month in perpetuity.

39

1 So, I think another distinction, you know,
2 there's the commercial and charitable distinction about
3 the motivations of the actors that are behind the
4 generation of those charges, but there's also a
5 distinction between the rules and the folks that aren't
6 playing by the rules.

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

8 MR. ALTSCHUL: Well, I do want to make clear
9 that that's not playing by the rules. That's with the
10 industry monitoring, looks at every code, crawls the web
11 with web spiders, monitors media, touches every code
12 every month to make sure that things like negative
13 options, like deceptive advertising gets detected and
14 identified and turned off.

15 We're very proud that we also cooperate with
16 federal and state law enforcement agencies and
17 investigative consumer protection agencies in identifying
18 and prosecuting these crimes. These are crimes, and
19 everyone is victimized by them. They're not right. A
20 negative option is not compliant. And as Jim mentioned,
21 as the industry grows and grows in experience, we are
22 seeing that the management of this opt-in process is now
23 moving towards carriers and their aggregators and away
24 from the content providers.

25 MR. SCHLOSSBERG: I'd just like to shift gears

40

1 for one second, Jim, and I'll definitely get to you
2 because this question is probably directed to you as
3 well. I want to talk about mobile apps. A lot of apps
4 offer sort of the same products that a lot of short code
5 premium SMS, you know, horoscopes, ringtones, you can get
6 a lot of those products free in mobile apps. So, I'm
7 curious, Jim and Mike, talk about the emergence of
8 smartphones and apps and how that's affected this space,
9 the premium SMS space, the commercial space, if at all.

10 Jim Manis? Or Jim Greenwell? One of the Jims.

11 MR. MANIS: Jim Greenwell may jump in, too. A
12 couple of quick comments. It has changed the way in
13 which consumers engage with content on their phones. And
14 I think that's actually been not -- if you take what the
15 carriers have done in order to suppress bad behavior, and
16 if you take new market developments like smartphones and
17 the thousands and thousands of applications to go around
18 that, I do think that that has had a net positive effect
19 in terms of consumer interaction.

20 From a profit standpoint, and I appreciate and
21 highly value the distinction that everybody on the panel
22 is making between commercial and philanthropy, the
23 connection that I'm making between the two is just simply
24 trying to understand the overall space because I don't
25 want the philanthropic piece to be negatively tainted.

41	<p>1 And, if the premium space goes away, guess what, we go 2 away, too, right? So, there is a thread, if you will, to 3 us. 4 And mobile apps don't pick that up, because 5 while you as a consumer can engage with all types of 6 content on your smartphone, what you can't do on your 7 smartphone today is to make a donation to a charity using 8 a native in-app billing solution, right? So, it's -- 9 take a look at that. Remember, the big addressable 10 audience that you get when you use simple technology like 11 SMS across the reach of virtually every handset, and now 12 you end up breaking that by looking at apps that are 13 designed for IOS, Android, on Windows, others. And now 14 you have to educate the consumer around how do you 15 discover that, how do you download that, how you use 16 that. 17 And then if it's charity related and if you're 18 trying to engage a supporter in your charity, Apple 19 doesn't, nor does any platform, allow for their native 20 in-app billing solution, in Apple's case iTunes, to 21 process a donation, right? So that goes out the window. 22 So, what's the default back on an app for charitable 23 billing? It's carrier-bill premium SMS. Well, like what 24 we do for the Microsoft HelpBridge app, right? So, it 25 all comes back to that as a solution.</p>	43	<p>1 reluctant to put the burden of fighting cramming on the 2 consumer. We need to protect the consumer, right? 3 It's interesting that, you know, by our own 4 admission we said, hey, I received these texts as 5 consumers. I just thought it was a spam text, so I just 6 deleted it. It's a burden to the consumer to have to 7 navigate through some of these rather complicated texts. 8 And while cramming and other types of things haven't 9 occurred on the philanthropic front yet, I would say that 10 the possibility is always there because of the intent 11 behind somebody's, you know, purpose to whether it's app, 12 whether it's the workhorse of premium SMS, it's all the 13 intent behind the merchant. 14 You know, the old stories were a merchant would 15 set up, cram the phone bill, make a couple million 16 dollars, they'd get caught, they'd go up, set up Company 17 Y next. You know, a lot of things have changed, but 18 what's really turning out to be effective now is having 19 -- most cramming occurs where there's subscription, I 20 believe. And if you put the burden of monitoring that 21 subscription either to the carrier or to the third-party 22 provider, you put ownership there, then I think things 23 decrease dramatically. 24 But it's all about the intent of the merchant 25 or the content provider. And it's the ownership of the</p>
42	<p>1 So, I do think the apps have had a huge 2 positive impact in terms of changing the way consumer 3 behavior is. But on the billing aspect of it, there's 4 still an issue. 5 MR. ALTSCHUL: Although Jim is talking about 6 the charitable side, on the commercial side in-app 7 purchases of downloadable apps are something that is 8 increasingly popular, particularly for games and tokens 9 used with games or for a lot of other innovative 10 services. And they are not billed by the carrier, but 11 they are billed to the customer's iTunes account or some 12 other account that's been associated through the app 13 store and an app provider. And, you know, it's up to the 14 app store and the way they curate the apps and the 15 charges they process to protect consumers in that space. 16 MR. SCHLOSSBERG: Jim Greenwell? 17 MR. GREENWELL: Sure. Well, just a couple of 18 observations. Jim, I think, if Kate ever leaves law, 19 you've got a chief marketing officer there with the 20 opening there on the Vermont giving. Secondly, the 21 native apps versus HTML5, yeah, we're actually processing 22 some high volumes for a major, you know, storefront, and 23 it goes back to, you know, something John said resonated 24 with me. It's really the intent. Right now from a 25 commercial -- as a head of a commercial entity, I'm</p>	44	<p>1 responsibility is my take. 2 MS. BUNGO: Thank you. I have a follow-up 3 question along the lines of where you were headed. What 4 have we learned? You talked a little bit about landline 5 and the wireless cramming. What have we learned? What 6 lessons have we learned from landline cramming that are 7 applicable as we look at the marketplace now, the mobile 8 space? 9 MR. ALTSCHUL: I'm happy to take a stab here. 10 MS. BUNGO: Okay. 11 MR. ALTSCHUL: We've learned sometimes 12 proactively, sometimes the hard way, the importance of 13 vetting the person or entity behind the content up front 14 so that to obtain a short code in the first instance that 15 enables this kind of marketing and service. CTIA, on 16 behalf of the industry, actually vets and confirms the 17 identity and legitimacy of the company that's applying to 18 provide the content before any short code is ever issued. 19 So, first, we have to know who we're doing business with, 20 know they're a legitimate business, they have a real 21 address, real people, real entity, know how to find them. 22 Second, we found the importance of media 23 monitoring as well as message flow monitoring, media 24 monitoring to make sure that there aren't deceptive 25 claims. A few years ago, the Federal Trade Commission</p>

45	<p>1 had a very valuable workshop on deceptive advertising or 2 disclosures violated all sorts of long-existing Federal 3 Trade Commission advertising practices involving the use 4 of the word free and disclosures not being in sufficient 5 size type or contrasting colors and fonts. 6 That's something that the industry does, again, 7 for every code, every month, as well as monitoring the 8 actual message flows. And perhaps most important, each 9 of the carriers, often on a daily basis, will be 10 monitoring the customer calls, inquiries, complaints they 11 receive to quickly identify any particular short codes or 12 campaigns that are generating calls to their customer 13 service representatives so they can act proactively to 14 shut down those programs and proactively reach out, 15 identify other customers who may have charges from that 16 same content provider and remove them from their bills if 17 that's what the investigation, that we're dealing with a 18 real fraudster, determines. 19 MR. SCHLOSSBERG: Let me just jump in one 20 quickly. We have a couple minutes left on the panel 21 before Q&A. If you have any questions, just fill out 22 your card, it should be in your folder. One of our 23 representatives will grab them from you. A couple 24 minutes here before we get to Q&A. 25 MS. BUNGO: Right. And I'll go to Kate and</p>	47	<p>1 space, and I think the reason this is not the same space 2 is that we have some good things, some really good 3 things, happening in the mobile space. 4 And, so, I just want to take a moment and 5 recognize that it's a hard place for a regulator to be in 6 because it's PSMS that we're seeing the major complaint 7 volume on. And, in fact, it's the lion's share of the 8 third-party charge market anyway, so but yet it's PSMS 9 we've all just learned that is the sole vehicle for this 10 charitable giving. So, that's a hard place to be in. We 11 need to learn how to live with this premium text 12 messaging, but we need to also protect those consumers 13 that are vulnerable to the commercial crammers. 14 MS. BUNGO: John? 15 MR. BREYAULT: Yeah, I mean, I think what we 16 could learn from the landline experience essentially is 17 that relying on the industry to correct the problem is 18 probably not going to work. I think if you -- well, if 19 you look back at the Senate Commerce Committee's hearing 20 on landline cramming last year, Senator Rockefeller said 21 it best. He said, you know, you guys were in here 10 22 years ago telling us you would fix the problem. I mean, 23 the landline cramming is a problem that began in sort of 24 the late '90s, early 2000s. And under pressure, the 25 industry said we're going to fix this, let us do this</p>
46	<p>1 then to John. 2 MS. MCCABE: Thanks. So, we've had pretty 3 extensive experience in Vermont with landline cramming, 4 and what we've learned is that notification -- that 5 requiring notification to consumers does not work. We 6 had a law on the books for a decade that required 7 landline carriers or the vendors selling -- purportedly 8 selling third-party goods and services through the 9 landline network to notify consumers by mail when they 10 were getting a third-party charge. So, the parallel to 11 that in the wireless space is the text message 12 notification. 13 That law did not stop cramming. I'm not even 14 sure it really slowed cramming down on the landline side 15 in Vermont, such that when we did some consumer surveys 16 in Vermont about landline cramming we found that the 17 numbers of unauthorized charges were more in the 80 to 90 18 percent range, and that was -- that's a matter of public 19 record already through the testimony of my colleague, 20 Elliot Berg, in front of Rockefeller's Senate Commerce 21 Committee last year. 22 So, what we did is we made it unlawful except 23 for in a number of very narrowly tailored circumstances 24 for a third-party charge to even make it to a landline 25 consumer's telephone bill. Now, this is not the same</p>	48	<p>1 ourselves. 2 Ten years later, we still see billions of 3 dollars in landline cramming charges. And it wasn't 4 until the -- there was legislation proposed and the 5 carriers finally were convinced that there was something 6 serious going to happen to them that they take the right 7 step and they decided -- most of the landline carriers 8 decided they would just stop doing third-party billing 9 for non-telecom related, so-called enhanced, services. 10 And I think you've seen that that action has 11 actually had demonstrable impact in reducing landline 12 cramming complaint volumes. So, I would just caution to 13 say if that relying on industry self-regulation to 14 address wireless cramming, I think runs the risk that 15 we're going to have another 10 years of cramming fraud 16 that are going to affect consumers. So, I would just say 17 that, you know, I think it's important that we try and 18 nip this in the bud. I think the Wise Media case is 19 really just the tip of the iceberg, and I think it 20 demands, I think, more aggressive action by regulators to 21 address the problem that we had in the landline space. 22 MS. BUNGO: Thank you, John. I'd like to give 23 Larry an opportunity to respond, and also, Larry, I was 24 hoping you could talk about the global perspective. Let 25 us know whether this is only an issue in the U.S. or if</p>

49	<p>1 you see it elsewhere.</p> <p>2 MR. BRYENTON: Sure, thank you. I'll just pick</p> <p>3 up on the point in terms of the self-regulation and sort</p> <p>4 of the pitfalls or the advantages of that. As I</p> <p>5 mentioned in my opening comments, the Competition Bureau</p> <p>6 is an independent law enforcement agency, and we strive</p> <p>7 to foster competitive and innovative marketplaces and</p> <p>8 ensure informed consumer choice. What we've seen in the</p> <p>9 past year or so was that there's been a lot of concerns</p> <p>10 about -- from consumers about the unwanted and</p> <p>11 unauthorized charges on their mobile bills in the</p> <p>12 Canadian context.</p> <p>13 This led to us filing a court action last fall</p> <p>14 after a five-month investigation where we filed against</p> <p>15 three of the major telephone companies in Canada in the</p> <p>16 Canadian Wireless Telecommunications Association, which</p> <p>17 is the industry association in Canada, for what we</p> <p>18 believe is to be misleading conduct relating to the</p> <p>19 premium text delivery to consumers in Canada. And we're</p> <p>20 looking for them to do a number of things in terms of the</p> <p>21 court actions.</p> <p>22 But what our investigation concluded is that</p> <p>23 the three mobile carriers that have somewhere in the</p> <p>24 neighborhood of 93 percent of the Canadian marketplace,</p> <p>25 along with the wireless association, facilitate the sale</p>	51	<p>1 around the world, and the issue of mobile billing and</p> <p>2 bill-shock is certainly an issue that is impacting a</p> <p>3 number of jurisdictions. Our colleagues in Australia are</p> <p>4 spending a lot of time and effort looking at premium-rate</p> <p>5 issues, the United Kingdom, as well, as well as the</p> <p>6 European Union. There's a number of different agencies</p> <p>7 as well.</p> <p>8 One point that I'd like to draw to is that</p> <p>9 there's a presentation that was brought before the</p> <p>10 organization of economic and cooperative development last</p> <p>11 file by a group called the London Action Plan, which is a</p> <p>12 group of 28 law enforcement agencies that deal with</p> <p>13 consumer protection issues in cyber-type problems, did a</p> <p>14 fairly comprehensive report related to online and mobile</p> <p>15 best practices. And they looked at a number of different</p> <p>16 issues impacting on consumers in that space, but one</p> <p>17 significant area that they spent time working on was</p> <p>18 related to mobile and mobile devices. And they</p> <p>19 identified the risks associated with mobile and premium</p> <p>20 text-type scams.</p> <p>21 So, it's a good document, sort of outlines a</p> <p>22 bit of the structure, the conduct, and the problems that</p> <p>23 emanate from that and just underscores the point that</p> <p>24 it's not just an American issue, it's not just a Canadian</p> <p>25 issue, it's an issue that transcends jurisdictions around</p>
50	<p>1 to their customers of premium-rate digital content such</p> <p>2 as quizzes, horoscopes, things of that nature as we've</p> <p>3 already heard today for fees that weren't adequately</p> <p>4 disclosed to their customers.</p> <p>5 And in our view, the customers were misled into</p> <p>6 believing the content was free when invariably the case</p> <p>7 was the consumers were ultimately charged, sometimes for</p> <p>8 a one-time fee or, in a number of cases, for ongoing</p> <p>9 subscription or subscription-trap type situations where</p> <p>10 it could be significant charges to them.</p> <p>11 What we're looking for in terms of relief</p> <p>12 through the process is we're looking for full restitution</p> <p>13 to consumers as part of our ongoing court action. We're</p> <p>14 looking for the companies to stop making any</p> <p>15 representations that don't clearly disclose the price and</p> <p>16 other terms and conditions applicable to premium-rate</p> <p>17 digital content. And we're also looking for significant</p> <p>18 administrative monetary penalties in the neighborhood of</p> <p>19 \$31 million as a relief from the court, as well as</p> <p>20 substantial corrective notice in the public domain to</p> <p>21 identify the problem and the corrective actions that have</p> <p>22 taken place.</p> <p>23 Now, just sort of building on that, what's</p> <p>24 happening outside of Canada, what's outside of the U.S.,</p> <p>25 we participate in international law enforcement fora</p>	52	<p>1 the world with agencies having this issue on top of mind</p> <p>2 to deal with protecting their consumers.</p> <p>3 MS. BUNGO: Mike, a quick response?</p> <p>4 MR. ALTSCHUL: I just wanted to underscore that</p> <p>5 the double opt-in which is required for initiating any</p> <p>6 kind of premium SMS does require disclosure as to whether</p> <p>7 the premium charge is one time or recurring. It does</p> <p>8 require disclosure of the cost.</p> <p>9 And unlike a lot of the software shrink-wrapped</p> <p>10 contracts where you just click accept or go to the next</p> <p>11 page also requires an affirmative response by the</p> <p>12 customer sending the text back with a yes, or in some of</p> <p>13 the cases, for the kind of products that Jim's companies</p> <p>14 does, an actual PIN to confirm the intent to go ahead</p> <p>15 with the transaction. And that's something that the</p> <p>16 industry does monitor pervasively, again, every code,</p> <p>17 every month, for compliance. It's saying we subscribe to</p> <p>18 these campaigns.</p> <p>19 And we also require as part of the industry</p> <p>20 best practices for subscriptions a reminder every 30 days</p> <p>21 to consumers that they are subscribed to a premium SMS</p> <p>22 subscription, that it's recurring, what the charge is,</p> <p>23 and to end it, they should text "end."</p> <p>24 MS. BUNGO: Thank you, Mike. I know we'll be</p> <p>25 talking about some of the procedures that are in place in</p>

53	<p>1 the next panel.</p> <p>2 I'd like to ask the industry members on the</p> <p>3 panel what you think about the scope of the cramming</p> <p>4 problem.</p> <p>5 MR. ALTSCHUL: Well, I'm an industry member,</p> <p>6 and we have read with some interest the reporting from</p> <p>7 the Federal Trade Commission in your Consumer Sentinel</p> <p>8 report; from the Federal Communications Commission, which</p> <p>9 has a docket in this area; as well as the California</p> <p>10 Public Utilities Commission. And we have not seen a</p> <p>11 spike or a trend in complaints to these agencies that</p> <p>12 reflects that this is a growing problem.</p> <p>13 Now, I'm not here to say that every person who</p> <p>14 has received an unintended charge finds their way to one</p> <p>15 of these agencies, but it does make sense that if it's</p> <p>16 one in a thousand who finds their way to a federal or</p> <p>17 state consumer protection agency, that's going to be</p> <p>18 fairly constant over months and years. We're not seeing</p> <p>19 any more complaints to these agencies in 2012 than we</p> <p>20 have in 2010, even though we know the adoption of</p> <p>21 smartphones and these kinds of services have soared</p> <p>22 during that period.</p> <p>23 MR. SCHLOSSBERG: Kate, do you want to respond?</p> <p>24 MS. MCCABE: I think, I mean, the first point</p> <p>25 that I made when I got up here is that complaints are</p>	55	<p>1 It's to your carrier. And I think you've seen case after</p> <p>2 case the consumers who do complain to their carrier</p> <p>3 oftentimes they will get a refund, not always for the</p> <p>4 entire time that they were seeing these suspicious</p> <p>5 charges on their bills, but for some of it.</p> <p>6 But we do see anecdotal instances where</p> <p>7 consumers are told by their carriers, well, you have to</p> <p>8 go to the third-party biller or you have to go to the</p> <p>9 billing aggregator. So, consumers are getting mixed</p> <p>10 messages about where they need to go to get restitution</p> <p>11 and to file a complaint when they do identify suspicious</p> <p>12 charges.</p> <p>13 I think we also need to realize, too, that</p> <p>14 there are -- that the interesting thing about cramming is</p> <p>15 that it actually crosses across a jurisdictional problem.</p> <p>16 So, the carriers are regulated by the FCC. And then the</p> <p>17 FTC is responsible for the billing aggregators and the</p> <p>18 third-party service providers under their UDAP statute.</p> <p>19 So, I think relying only on the complaint</p> <p>20 volume to say or a lack of rise in complaint volume to</p> <p>21 say that there's not a problem is a little bit</p> <p>22 misleading. So, I would also caution, too, that if you</p> <p>23 actually look at the FTC's Consumer Sentinel data on</p> <p>24 wireless cramming complaints, I don't believe that there</p> <p>25 is a specific category broken out in that Sentinel data</p>
54	<p>1 very informative, but they're the wrong place to look</p> <p>2 when you want to know really what's going on here, and</p> <p>3 that is because consumers don't understand that this is</p> <p>4 even happening. And, so, I suspect, you know, consumer</p> <p>5 complaints are always -- always under report the problem.</p> <p>6 But I suspect that this is even more egregiously so with</p> <p>7 respect to this problem.</p> <p>8 One in one thousand may be fairly constant, but</p> <p>9 that doesn't mean that it hasn't been fairly constant</p> <p>10 that it's been a big problem. I have also understood</p> <p>11 that the PSMS market, in particular, probably peaked in</p> <p>12 around 2011. And I do recognize that the carriers, in</p> <p>13 particular, and CTIA, in particular, have stepped up</p> <p>14 their mechanisms for catching some of these bad actors.</p> <p>15 So, I think, you know, one in a thousand being</p> <p>16 constant as more and more people go mobile and as more of</p> <p>17 us pay attention and more industry players pay attention,</p> <p>18 it may be perfectly reasonable for a complaint rate to</p> <p>19 stay constant while there still being a fairly large</p> <p>20 underlying problem. Thanks.</p> <p>21 MS. BUNGO: Thank you. John?</p> <p>22 MR. BREYAULT: Yeah, just on the complaint</p> <p>23 question, I think we need to realize, too, that consumers</p> <p>24 are getting the message that if you do see a suspicious</p> <p>25 charge, the place to complain is not the FCC or the FTC.</p>	56	<p>1 for wireless cramming. And I also don't believe that the</p> <p>2 FCC's complaint data does that either.</p> <p>3 So, I think, you know, again, saying that</p> <p>4 because we don't see a rise in FTC or FCC complaint data</p> <p>5 that there is not really a big problem or that we're</p> <p>6 addressing the problem already isn't a very accurate</p> <p>7 response.</p> <p>8 MR. BREYAULT: Just to be clear, what I was</p> <p>9 looking at at the FTC Consumer Sentinel reports, the most</p> <p>10 recent one was released in March 2013, there's a category</p> <p>11 called mobile unauthorized charges.</p> <p>12 MR. SCHLOSSBERG: I will just add briefly,</p> <p>13 having looked at the data, that's actually a category</p> <p>14 that we recently introduced. There are six or seven</p> <p>15 other categories that we've found mobile cramming</p> <p>16 complaints. It's something on our end we have to sort of</p> <p>17 go in and look at, so we are finding the complaints, but</p> <p>18 I'll leave it at that.</p> <p>19 MS. BUNGO: Did you want to -- I think we might</p> <p>20 switch to some of the questions? Okay. Go ahead.</p> <p>21 MS. MCCABE: I have a question. I noticed that</p> <p>22 the question on what proportion of consumers have third-</p> <p>23 party charges that you posed at the beginning of the</p> <p>24 panel hasn't been answered. And I'm wondering if anybody</p> <p>25 knows on the panel what that number might be.</p>

<p style="text-align: right;">57</p> <p>1 MS. BUNGO: Can anyone speak to that? 2 MR. ALTSCHUL: I have no visibility into that. 3 MR. GREENWELL: I don't know that number. 4 MR. BREYAULT: Yeah, I don't think you can -- I 5 don't know that there's necessarily a number and a 6 percentage of people that have the charges on their 7 bills. I think what we do know is, for example, that out 8 of 34.89 million wireless subscribers in California in 9 2011, the carriers reported \$171 million in third-party 10 charges. So, you can do the math on that. I think it 11 works out to around \$4 per subscriber in third-party 12 charges. 13 Ms. MCCABE: I think it's an interesting -- it 14 would be an interesting number to know from a consumer 15 perspective because it helps people understand how likely 16 it is that they are affected by this problem. And, so, 17 if the FTC is able to get to the bottom of that, I'd be 18 very interested to know what that number is. 19 MR. MANIS: Well, it's -- I think it is -- I 20 think you do have to paint the landscape. It does define 21 what the overall picture is. I'm not sure that I would 22 define that -- as the problem isn't third-party billing; 23 the problem is that billing that occurs outside of the 24 real, very stringent standards and best practices and 25 technology that have been put in place to actually</p>	<p style="text-align: right;">59</p> <p>1 to us, particularly during the Haiti situation, to 2 understand when someone -- when a consumer calls with a 3 -- with a refund request, we try to capture that 4 information. So, I want to know what it is that they're 5 -- what are they saying? Why are they asking for the 6 money back? And that's an interesting -- that's an 7 interesting process. 8 MS. MCCABE: And I agree with you about the 9 limitations of the refund rate as a metric to measure the 10 problem. And part of the reason is that a part of that 11 fraction is how much money consumers are getting back, 12 and even in Wise Media we learned from the FTC filing 13 that consumers only got back 30 to 40 percent of their 14 money. And, so, you know, if that were 100 percent, what 15 would that refund rate have looked like? Would it have 16 been so high that Wise Media would have been cut off 17 before they were? 18 MR. MANIS: Yeah, and in the case, again, not 19 to mix commercial with philanthropy, but in our case, we 20 would advise the carrier, of course, not to refund a 21 charitable donation. Carriers will always refund that 22 when the request comes in. I think it's probably close 23 to 100 percent. And if they ask us as a foundation to 24 also refund, we will refund it right to them directly. 25 So, in essence, the consumer, not only did they get back</p>
<p style="text-align: right;">58</p> <p>1 control that, right? 2 And, like you, I think we have a shared 3 objective over a long period of time. If we're trying to 4 build something that's sustainable, it has to be based on 5 good consumer trust and response. So, to define that is 6 critical. I'm a little -- I've heard refund rates thrown 7 out as kind of a measure of unwanted billing, and I'm not 8 sure that that's even the right number, right? 9 So, I know within carriers oftentimes they look 10 at refund rates as a measure of good content provider, 11 but I can tell you at the Mobile Giving Foundation, you 12 know, we have kind of a standard refund rate that you see 13 on almost every transaction or kind of group of 14 transactions. And ours average something a little bit 15 less than 1 percent in kind of everyday giving. 16 So, I don't know what that means when someone 17 still calls back and asks for a refund on a donation that 18 they made. And I know that that -- and that refund rate 19 blimps up a little bit in terms of high volume traffic in 20 response to emergency relief activities. And when I say 21 blimp up, it may go from less than 1 percent to about 22 maybe less than 1.5 percent. But, so, there's -- from a 23 consumer behavior standpoint, that tells me something, 24 right? 25 And I've personally taken calls that have come</p>	<p style="text-align: right;">60</p> <p>1 their original donation, but they made, you know, 10 2 bucks on top of it, so, right. 3 MR. BREYAULT: And I would just add to that 4 that, you know, in the California PUC's report, I believe 5 the number they found was something on the order of 25 6 percent refund rate for third-party charges. So, take 7 that for what you will. 8 MR. ALTSCHUL: But, again, the refund rate, an 9 awful lot of good will goes into that carrier's -- have 10 announced a very generous policy. As was mentioned 11 earlier, it's important for consumers to review their 12 bills and to call their carriers if there are any charges 13 they don't identify. 14 And we haven't mentioned that family plans in 15 this country are a very popular way for subscribers to 16 obtain service, and unlike, you know, some other 17 financial instruments like, for example, credit cards, 18 you don't have a lot of teenagers running around with 19 credit cards, but you do have them using smartphones. 20 And there is an opportunity, you know, for parents to -- 21 and a responsibility for parents to supervise all the 22 authorized account holders on an account. 23 MS. MCCABE: Mike, I'm glad you said that. 24 I've been waiting for you to say that. 25 MR. ALTSCHUL: Uh-oh.</p>

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1 MS. MCCABE: In addition to the numerical
2 statistics that I've been talking about up here, nearly
3 half of the consumers that responded to our complaints
4 also wrote in a space provided their story. And I
5 encourage you -- I want to assure you that this will
6 become a part of the public record, not only through
7 publication by my office, but by submission of this
8 document through the FTC comment process here shortly.

9 So, it was categorized by our experts, and I
10 thought there were some interesting things that I'd like
11 to tell you here. First of all, the most frequent theme
12 of the comments were words of thanks to the AG. And I
13 say that because my AG is here in the office, so I've
14 just scored some points with my boss. But I will say
15 that the phone number affected is used by child is a
16 narrative. It's not always, oh, Johnny went off the
17 reservation and bought something he wasn't -- you know,
18 he didn't get permission. It's often my child didn't
19 understand, they thought they were signing up for
20 something free. You can read the narratives and see for
21 yourself.

22 But that was -- had a frequency of 29. So, you
23 know, received full refund, frequency, 31; received
24 partial refund, 19; provider helpful, 6; provider not
25 helpful, 6. So, take a look at this document, please,

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1 when it's a part of the public record. And you can judge
2 for yourself how consistent are the stories that
3 consumers are telling, what is the story, and what do we
4 need to do about it.

5 MR. SCHLOSSBERG: Great, thanks, guys. We're
6 going to get into a couple minutes of Q&A from the
7 audience. We have a bunch of questions that we received,
8 and then we'll move on.

9 So, the first question, I'll just throw it out
10 to anyone: Who in the mobile billing ecosystem, the
11 carrier, the aggregator, or content provider, holds the
12 data underlying a consumer's double opt-in? Maybe Mike
13 or Jim Manis?

14 MR. MANIS: Well, in that data resides at the
15 aggregator level, and we hold that the data belongs, if
16 you will, to the content provider in terms of the
17 relationship between the consumer. But that data is
18 stored with us and whoever they're buying from or giving
19 to.

20 MR. ALTSCHUL: And this is one of the evolving
21 practices where the information and the confirmation flow
22 is moving up to the aggregators and carriers.

23 MR. SCHLOSSBERG: Great.

24 MR. MANIS: We offer, by the way, access to the
25 carriers if they want to see data on our platform, that

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1 they can actually look, you know, peek in and see that,
2 but it resides on our platform.

3 MR. SCHLOSSBERG: Great.

4 MS. BUNGO: This is a question for Jim
5 Greenwell: Can you confirm or clarify to your point that
6 the phone may be used as a credit card? The question is
7 is credit issued and, if so, is the carrier issuing
8 credit?

9 MR. GREENWELL: No, it's a great question, and
10 it sorts of converges a number of large meta trends, I
11 would say. So, simply put, no, the carrier does not
12 carry the credit; the merchant or the content provider in
13 legacy terms carries the risk. So, you know, this device
14 that everybody's trying to figure out, this lovely mobile
15 device, everybody is investing, I think, billions of
16 dollars in trying to, you know, you use the wallet, and
17 that's a very loose term, but, you know, the -- if you
18 fast forward 10 years from now, there's no doubt that
19 most of us will use this device in some form of
20 transactions or mobile payments.

21 And the carriers, where their restrictions and
22 the financial industry with their sets of restrictions,
23 the last thing the carriers want to do is get immersed in
24 all the regulations that define the financial community.
25 So, no, they do not extend credit at all. And the

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1 content provider bears all the risk.

2 And by the way, the old PSMS rates, and I
3 remember Puff Daddy or P. Diddy walking around CTIA with
4 his entourage eight years ago, and the reason he was at
5 CTIA was twofold. One, he wanted to launch a virtual
6 mobile network; but, secondly, he was selling his
7 ringtones and all the music he produced for \$1.99, and he
8 was making a mint on it because the carriers would take,
9 I think, 35 percent of that, the aggregator would take, I
10 think 10 percent of that, and he and his company received
11 the rest, and it was all incremental margin. I mean, the
12 music was already produced; it was just, you know,
13 dissemination. He made a fortune off of that. And I
14 think that's the legacy that we continue in.

15 And it's interesting that Kate mentioned 2011
16 as a decline in some of the PSMS. Well, it happens to
17 coincide, also, with the app stores coming in and
18 legitimate, you know, storefronts being established,
19 Apple, Google. And so where perhaps you had on-deck type
20 of content being delivered in the past, you now have
21 these legitimate mainstream content providers giving
22 consumers access to that, so . . .

23 MS. BUNGO: Thank you.

24 MR. SCHLOSSBERG: Great. Another question
25 here, what kind of third-party charges are not premium

65	<p>1 SMS and how does that work?</p> <p>2 MR. GREENWELL: So, perhaps the best way and</p> <p>3 the simplest and shortest way to describe it is if</p> <p>4 there's a short code associated with it, that's typically</p> <p>5 premium SMS. If it's consumed on the phone, that's</p> <p>6 premium SMS. You know, we talked about refund rates</p> <p>7 where we have, for example, on a couple of carriers we</p> <p>8 have refund rates less than 1 percent.</p> <p>9 And I think it's a portion of two things. One,</p> <p>10 it's legitimate merchants; but, two, we have what we call</p> <p>11 two-factor authentication. You know, we shoot a PIN code</p> <p>12 for you to input to make sure that you're doing it. So,</p> <p>13 you know, the refund rates are low, and the way to</p> <p>14 describe PSMS is short code-based, and e-commerce is</p> <p>15 more, you know, transacting without a short code, other</p> <p>16 than a text being delivered for confirmation or for a PIN</p> <p>17 code.</p> <p>18 MR. MANIS: But both are carrier-billed.</p> <p>19 MR. GREENWELL: Both are carrier billing. And</p> <p>20 that's the similarity.</p> <p>21 MS. BUNGO: Okay, a question about -- what</p> <p>22 about sham charities? Are there protections against scam</p> <p>23 artists or commercial, for-profit entities that use</p> <p>24 mobile phone bills to bill consumers?</p> <p>25 MR. MANIS: There are. The Mobile Giving</p>	67	<p>1 giving, if all of a sudden the corporation is giving and</p> <p>2 some other ones, but, you know, in the future, I think</p> <p>3 whether you have a credit card, and ACH, that whole</p> <p>4 notion of being able to transact on your phone is going</p> <p>5 to become more interesting if you have a credit card on</p> <p>6 file and how that's going to be used in the future for</p> <p>7 mobile payments, and it will present a whole other host</p> <p>8 of issues that we're not prepared to discuss.</p> <p>9 MR. MANIS: It will impact the demographics</p> <p>10 that use it, too.</p> <p>11 MR. GREENWELL: Absolutely.</p> <p>12 MS. BUNGO: All right, thank you. I think we</p> <p>13 have time for just one more question.</p> <p>14 MR. SCHLOSSBERG: One more question. This is</p> <p>15 for Mike. Is there a mechanism to monitor consumer</p> <p>16 complaints directly to the carrier?</p> <p>17 MR. ALTSCHUL: There are complaint websites,</p> <p>18 SMS Watch, I'm not sure of additional ones, where</p> <p>19 customers do report. The very best place to ensure</p> <p>20 monitoring, though, once again, is for consumers to</p> <p>21 immediately call their carrier if they have any questions</p> <p>22 or see anything on their bill that they don't recall or</p> <p>23 don't believe has been authorized. The carriers, then,</p> <p>24 are able to track those codes and programs that are</p> <p>25 generating complaints.</p>
66	<p>1 Foundation has a 360-degree view of when the charity</p> <p>2 comes in and when the money goes out. So, protections</p> <p>3 are, you know, kind of the normal policing functions that</p> <p>4 we engage in quite heavily. And then they are mitigated</p> <p>5 by the fact that we require charities to meet standards</p> <p>6 before they even gain access to the system. So, and</p> <p>7 that's part of our partnership with the Council of Better</p> <p>8 Business Bureaus and the BBB Wise Giving Alliance. So,</p> <p>9 you require standards being met, so you know who the</p> <p>10 charity is going into the transaction.</p> <p>11 We also monitor and we also participate in the</p> <p>12 CTIA monitoring in terms of how the charity promotes</p> <p>13 what's out there in the marketplace. And when -- and</p> <p>14 then when the carriers collect and remit, we'll remit</p> <p>15 directly back to the beneficiary charity, so it provides</p> <p>16 us with -- that's where the 360-degree view comes in.</p> <p>17 MS. BUNGO: Okay, thank you, Jim.</p> <p>18 MR. GREENWELL: Just I'd love to do an informal</p> <p>19 poll, because there's so many things converging here.</p> <p>20 How many folks in here pay their mobile phone bill with a</p> <p>21 credit card on file, if you could raise your hand? Okay.</p> <p>22 And of the credit cards on file, are they corporate or</p> <p>23 personal? How many have corporate accounts on file that</p> <p>24 pay for their phone bill? Okay. Thanks.</p> <p>25 And, you know, it's interesting if mobile</p>	68	<p>1 MR. SCHLOSSBERG: Great. Okay, thanks to the</p> <p>2 panel. We'll take a 15-minute break.</p> <p>3 MS. BUNGO: Okay, thank you, everybody.</p> <p>4 (Applause.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 PANEL 2

2 CURRENT STRATEGIES TO REDUCE MOBILE CRAMMING

3 MR. DEITCH: Welcome, everybody. My name is
4 Russell Deitch with the Federal Trade Commission. I'm a
5 veteran of the original cramming forum here at the FTC
6 two years ago. It's almost our anniversary. And we
7 dealt with landline cramming and we raised the issues
8 relating to wireless line cramming.

9 Today we're going to get into current
10 strategies for reducing mobile marketing cramming. We
11 have a lot to talk about, so I'm going to jump right into
12 the panelists and issues. So, take it away, Duane.

13 MR. POZZA: So, I am Duane Pozza. I'm not a
14 panelist; I'm a moderator. I'm at the Federal Trade
15 Commission. We have a lot of great panelists, and
16 they're going to go down the line and introduce
17 themselves. And we've also asked them to give just a
18 brief overview of -- sorry, we have some interference.

19 Sorry about that. So, at the risk of trampling
20 over our panelists, so I am one of the attorneys who's
21 involved in the Wise Media case. We heard that reference
22 various times in the introductory remarks and on the
23 first panel. And this second panel is about the current
24 strategies to combat mobile cramming. So, just as a way
25 of framing this, and rather than going back to it

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1 messages on the lines that were billed. Additionally
2 consumers reported difficulties getting refunds. There
3 is evidence in the record that carriers often sent them
4 to Wise Media to get a refund. Consumers reported that
5 they reached a call center where they were promised a
6 refund by Wise Media representatives; they never got one.

7 Wise Media's monthly refund rates, and this is
8 something we'll talk about on this panel, by short code,
9 reached as high as 30 to 40 percent a month per short
10 code. Carriers reacted in different ways. One carrier
11 in November 2011 saw refunds around 40 percent on
12 different short codes and placed the campaigns on a watch
13 list, meaning if the refund rates persisted for another
14 month, then they would no longer be able to enroll new
15 subscribers. Wise Media continued billing on that
16 carrier through at least the end of 2012.

17 Another carrier also noted in October 2011
18 refunds rates were at 37 to 38 percent and then suspended
19 those short codes, continued billing on some of them for
20 another six months and then cut them off. In May 2012,
21 another carrier terminated all campaigns by Wise Media
22 because it exceeded a refund rate of 8 percent. So, that
23 was the guideline at which they cut them off.

24 Overall, Wise Media was able to collect more
25 than \$6 million in 18 months. The carriers received 30

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1 throughout the questions, I wanted to just point out some
2 of the facts that we learned in that case, because that
3 is a realtime example of a cramming scheme that existed
4 over the last couple of years that sort of caused -- you
5 know, was an issue despite the current efforts to combat
6 mobile cramming.

7 Just as an overview, the FTC sued Wise Media
8 and its two operators in mid April. Wise Media purported
9 to sell recurring subscriptions to regular text messages
10 containing love tips, horoscope tips, billed at 9.99 a
11 month. These are recurring charges.

12 Wise Media claimed that consumers opted in on a
13 website, so the form of double opt-in that they used was
14 consumers go to a website, they input their phone number;
15 Wise Media sends a text message to the consumer with a
16 PIN; and the consumers then input that PIN into the
17 website to complete the sign-up. So, that is what, as we
18 heard on the first panel, would be called a double opt-in
19 -- one version of a double opt-in process.

20 Wise Media then places the charges on
21 consumers' phone bills via arrangements with aggregators.
22 Consumers who noticed the charges widely reported they
23 had never even heard of Wise Media; they'd never been to
24 the website. Some of them reported they don't use text
25 messages. Some reported they were unable to receive text

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1 to 40 percent of the charges. Wise Media was able to
2 place charges on more than 2 million phone bills, and
3 consumers have received, to date, over 190,000 refunds.
4 So, those are some of the numbers as a backdrop of a
5 specific case study of what one of the -- and this is all
6 public information, just to be clear -- this is all
7 public information in the record about what one alleged
8 crammer was able to do.

9 So, with that said, I'd like to turn it back to
10 our panelists, let them introduce themselves and talk
11 about their perspectives on what the current efforts are
12 to address the mobile cramming issue. First up is Jim.

13 MR. CHILSEN: Hi, everybody. I want to thank
14 the Federal Trade Commission for continuing the
15 conversation on mobile cramming. My name is Jim Chilsen.
16 I'm Director of Communications for the Citizens Utility
17 Board or CUB. We are a non-profit consumer watchdog
18 group that has spent the last 30 years fighting for
19 better telecom policy in Illinois. Last year, Governor
20 Pat Quinn used CUB's headquarters to sign one of the
21 nation's toughest laws to combat landline cramming. That
22 bill was championed by Attorney General Lisa Madigan, and
23 it follows in the footsteps of our friends in Vermont.

24 But now that our landline bills are under lock
25 and key, CUB's concern is that scam artists are -- that

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1 scam artists have declared open season on our cell phone
2 bills and that cell phone-related commerce is the new
3 frontier for fraud. And that concern comes out of both
4 experience and analysis. Last December, CUB partnered
5 with wireless research firm Validas to release an
6 analysis of more than 200,000 Illinois cell phone lines.
7 And we found that the number of suspicious charges had
8 nearly doubled on Illinois cell phone bills from one year
9 to the next.

10 Now, Validas took a very conservative approach,
11 only labeling charges as suspicious if it had been -- if
12 it was connected to a company that had been involved in
13 past phone fraud litigation. But our experience at CUB
14 tells us that this analysis may just be the tip of the
15 iceberg. We hold hundreds of phone bill clinics across
16 the State of Illinois and we see these suspicious charges
17 all the time. We see suspicious charges on our cell
18 phone bills.

19 I am not proud to say that I'm a victim of
20 cramming. One of our top lawyers at CUB went three
21 months before she realized she had a 9.99 premium
22 services fee on her bill. It was some type of love tip
23 service called Love Genie. Now, Christie is happily
24 married; she's got a new baby; she had no business and
25 she did not order Love Genie. And by the way, Love Genie

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1 is offered by Wise Media, which the Federal Trade
2 Commission just recently wisely sued.

3 So, it is encouraging to see the steps that the
4 wireless industry has taken to combat cramming, but I do
5 think it's inevitable that we will need tougher
6 regulations to cut down on cramming. And that would
7 include some type of ban on third-party charges with
8 reasonable, common-sense exceptions.

9 Now, no question, there are legitimate third-
10 party charges. I am grateful that I was able to use my
11 cell phone to give to hurricane relief, but I think we
12 need tougher regulations to draw some clear lines between
13 what is appropriate and inappropriate. And I think
14 moving beyond self-regulation is vital, not only to
15 protect customers, but it's vital for the health of the
16 growing cell phone economy. And it's vital for the
17 credibility of the cell phone industry. Thank you.

18 MS. FREY: So, I got excited because Cubs and
19 Illinois, I thought we were talking baseball, but
20 anyways, so my name is Cara Frey, and I am General
21 Counsel of the Mobile Marketing Association. The MMA is
22 a global, not-for-profit trade association whose mission
23 basically is to make mobile an indispensable part of the
24 marketing mix.

25 We represent all players in the industry, so in

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1 the past panel you kind of heard the description of each
2 of the players, so brand marketers or content providers,
3 enabling technology providers, who are the carriers and
4 the aggregators, and then sellers of advertising and
5 marketing services.

6 The reason we wanted to participate in this
7 roundtable, and I thank the FTC for allowing us to do
8 that, is to, first and foremost, state that we believe
9 that mobile cramming is bad, and I know that sounds
10 extremely simplistic and obvious, but from our
11 perspective, if mobile cramming persists and actually,
12 you know, if it actually increases, then at some point
13 the consumer is not going to want to participate in the
14 mobile channel and the industry will shrink. And, again,
15 that's completely opposite of what our mission of the MMA
16 is.

17 I also think we can offer some relevant history
18 regarding our industry's efforts to establish clear
19 guidelines for messaging. You heard Jim Manis talk about
20 -- Jim Manis was the Global Chairperson of the MMA back
21 from I believe 2003 to 2005, but back in 2005 when the
22 mobile industry really was in its infancy, there were no
23 rules for messaging.

24 So, the MMA, seeing the need for this, brought
25 together an industry coalition that established

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1 guidelines for messaging with the kind of three key
2 elements being transparency, control, and choice. Those
3 guidelines became known as the consumer best practice
4 guidelines and were approximately like 14 pages long at
5 that time. By 2009, those 14 pages had grown to about
6 150 pages. And mostly that was because the common rules
7 of the carriers were consolidated into that document, and
8 then each individual carrier's guidelines were attached
9 to that document.

10 In 2012, the CTIA and MMA got together and
11 worked to consolidate that 150-page document into 30
12 rules. And those 30 rules are what the CTIA is auditing
13 against. And it made sense -- I mean, it makes sense for
14 the CTIA to kind of take over those rules, those
15 guidelines, because the MMA has never been an enforcement
16 agency. That's not -- that's not what we are doing.

17 We'll continue to work with our members to
18 articulate best practices in mobile marketing in general.
19 But -- and including, obviously, messaging. And I do
20 want to emphasize that I think that we are in a unique
21 position because we are the only trade association whose
22 sole mission -- or sole focus is on the mobile industry.
23 And because we represent all of the different players, I
24 think we can uniquely influence the industry. And this
25 is a -- I mean, this gives us a perfect opportunity to

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1 try that. So, thank you.
 2 MR. HALLIDAY: Hi, my name is Derek Halliday.
 3 I'm a Product Manager at Lookout Mobile Security. We're
 4 probably best well known for our consumer mobile
 5 applications, one of which runs on Android, one of which
 6 runs on IOS, that let people keep track and keep secure
 7 every aspect of their mobile experience from backing up
 8 sensitive data to finding a lost or stolen device or to
 9 downloading applications or browsing the web without fear
 10 of encountering malicious content. And that last piece
 11 is what, I think, you know, best fits into this
 12 conversation today.

13 But first a little bit of context from our
 14 perspective. We have about over 35 million registered
 15 users at Lookout that span across 170 different countries
 16 and over 300 different operators. And about 50 percent
 17 of those new users we see every day are coming from
 18 international sources. And what does that mean in terms
 19 of mobile apps? Well, we see about roughly 6 million
 20 unique mobile applications out there, and I think the
 21 current system currently, about 20,000 new applications
 22 each and every day that we analyze.

23 So, even at a small scale, the task that we're
 24 -- that we sort of task ourself with is figuring out, you
 25 know, which of those are good and which are bad is

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1 somewhat daunting. So, one of the ways we actually do
 2 that is by deeply inspecting the content of an
 3 application for -- you know, the best -- I guess the best
 4 way of thinking about it is thinking about it in terms,
 5 you know, that genomic content of mobile applications out
 6 there and mobile-app genome project.

7 And when we look at things like malware and
 8 spyware, which are the biggest, you know, risks that pose
 9 threats to sort of our user base, you know, the threats
 10 vary significantly by geography. In the U.S. it's really
 11 not a massive, massive risk of encountering malware.
 12 Just over 1 percent of U.S. Android users encountered
 13 malware. Compare that with about 4 in 10 people who
 14 click on a phishing link, for instance, on their mobile
 15 device. It's pretty small, but we could -- we continued
 16 to do this trending upwards, and we see that, you know,
 17 fraudsters definitely recognize mobile as a major
 18 opportunity for monetizing, you know, their wares.

19 If you compare the sort of rate encountering
 20 malware in the U.S. with places like China and Russia,
 21 for instance, there's a pretty stark contrast. The
 22 actual percentages of encountering threats there are 20
 23 percent in China and around 40 percent in Russia. So,
 24 it's pretty stark. But when you look at what's
 25 responsible for that overall trend of malware in

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1 particular, we actually see that over 78 percent of
 2 malware threats are oriented around toll fraud. And that
 3 is essentially the lowest hanging fruit for some of these
 4 fraudsters.

5 And in particular, they're really not too
 6 sophisticated threats. They essentially worm their way
 7 onto your device by purporting to be a free game or
 8 service that may be normally a premium service, say I
 9 offered you a free Angry Birds space that you normally
 10 have to pay \$2 for, you might try that out. What
 11 actually happens is it might actually be a legitimate
 12 game that's fully functional, but behind the scenes, it's
 13 sending text messages to premium short codes without your
 14 knowledge. And actually it can be able or is able to
 15 intercept the response or double confirmation codes
 16 without your knowledge and responding in the affirmative
 17 to those. So, they're very specifically designed to get
 18 around some of these safeguards that we have in place to
 19 protect users from this type of fraud.

20 You know, in terms of how big of a draw this
 21 can be for some of these fraudsters, we estimated that on
 22 the conservative side one single family of malware that
 23 really was designed to commit premium SMS toll fraud
 24 netted upwards of \$10 million over the course of nine
 25 months. You know, when you look at the scale that mobile

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1 is operating at right now, it doesn't take much to really
 2 get those kinds of returns.

3 When we look at -- you know, we look forward at
 4 2013, we very much feel that this is going to continue to
 5 be the top threat globally facing mobile users in terms
 6 of, you know, what can harm their devices or their
 7 wallets. You know, it remains an effective monetization
 8 scheme, especially in some of these areas where there's
 9 not nearly the kinds of regulations that there are in the
 10 U.S. And there actually have been changes in the
 11 underlying platforms, for instance on Android, that have
 12 been designed to prevent this type of fraud, but those
 13 really aren't going to see sort of the light of day in
 14 terms of mainstream adoption or penetration, at least for
 15 the next year or so.

16 So, we're really glad to see, you know, people
 17 like MMA and the FTC get folks together to talk about
 18 this issue because when we look at the threats facing
 19 mobile consumers this is really first and foremost among
 20 them.

21 MR. BRUNER: Good morning, and thank you for
 22 having us here today. I'm John Bruner. I'm the Chief
 23 Operating Officer of Aegis Mobile. Aegis Mobile is a
 24 compliance and testing company that provides policing
 25 activities for the carrier PSMS market. Over the six

81	<p>1 years -- seven years that we've been in business since 2 2006, we've developed a life cycle approach to monitoring 3 PSMS activity on carrier networks.</p> <p>4 Mike spoke earlier from CTIA about the up-front 5 vetting process. The first thing we do is we do a 6 background check on the companies that are intending to 7 come on to a carrier's network for PSMS. We've amassed a 8 database over the years that we've been doing that of 9 good players and bad players that we're aware of. We 10 then move into functionally testing the product before 11 it's released onto the network to ensure that it's 12 compliant.</p> <p>13 What's nice about this phase of the process is 14 that, you know, there are a lot of content providers that 15 want to do this as a valid business. And oftentimes what 16 we will do with them is be helping them ensure that their 17 program is compliant before it goes out onto the network. 18 Once it's released into the network, it's -- we've 19 started with a baseline. The baseline says this content 20 provider can get it right and is compliant with all of 21 the requirements. But once it goes into the market, then 22 we provide the media monitoring, we provide the 23 functional testing in the market, all of the things that 24 are done to ensure that the activation of the carrier's 25 networks is staying compliant.</p>	83	<p>1 today.</p> <p>2 But part of the reason I'm on this panel is 3 that in 2011 our office filed a lawsuit against an 4 Arizona-based company, Eye Level Holdings, that did 5 business as Jawa, and several related entities and 6 individuals. And essentially we alleged a highly 7 sophisticated, multi-million-dollar, mobile cramming 8 operation.</p> <p>9 To give you a little perspective, these are 10 some Texas numbers. In 2010, the full year before we 11 filed suit, Jawa collected revenue from Texans in the 12 neighborhood of \$20 million with hundreds of thousands of 13 subscribers in Texas alone. In their court filings, they 14 repeatedly asserted that they were making revenues in the 15 neighborhood of a million dollars a day through PSMS 16 billing. And they described themselves quite frequently 17 as a billion-dollar company.</p> <p>18 Many of my comments today are going to refer 19 back to that case, in large part because I think we 20 learned a great deal about how some of this stuff is 21 happening in the real world through that case. And we 22 learned a number of lessons about the MMA guidelines and 23 compliance standards. And one of the reasons is that the 24 company repeatedly asserted, and even post-resolution of 25 that case repeatedly asserted, that they were always and</p>
82	<p>1 The third phase is that we pull post-revenue 2 data, and we pull data on refunds and revenue spikes, as 3 well as customer care data. And we bring that into an 4 integrated data warehouse that has all of our in-market 5 testing and all of our pre-launch testing and background 6 check. And we analyze that for activities that help us 7 pinpoint and target bad behavior and, in addition, to go 8 out and find it based on that data.</p> <p>9 In every instance of our process, we're 10 gathering documentation of everything that we do. All of 11 that data is stored, and all that data is then presented 12 to regulatory agencies and carriers to help prosecute and 13 remove these bad content players from the market.</p> <p>14 MR. POZZA: And just to remind everyone to 15 speak into the microphone because the folks watching on 16 the webcast, that's how they hear.</p> <p>17 MR. SINGER: Good morning. My name is Paul 18 Singer. I'm an Assistant Attorney General in the 19 Consumer Protection Division at the Texas Attorney 20 General's Office. I also thank the FTC for allowing me 21 to be on the panel today.</p> <p>22 Real quick I'll say that any views expressed 23 are mine and not necessarily those of the Office of the 24 Texas Attorney General of Attorney General Greg Abbott, 25 and nothing that I say should be taken as legal advice</p>	84	<p>1 have always been MMA-compliant. And I can touch on some 2 of the interesting arguments that they made about the MMA 3 guides and what they actually require.</p> <p>4 And part of it is, and this is sort of a nice 5 segue from the last panel, part of it is because CTIA 6 talked about, you know, requirements for price 7 disclosure, recurring nature of the subscription, and 8 obtaining an affirmative opt-in from the consumer. All 9 of those happened with Jawa, and I've asked for a few 10 minutes to walk through some slides and show exactly how 11 it was happening so you get a sense of what was happening 12 in the real world.</p> <p>13 Okay, so, this is a sample program brief. This 14 would be what was submitted to the cell phone carriers as 15 a representation of what Jawa intended to be putting out 16 publicly and advertising. Now, one thing I should note, 17 Jawa had hundreds of corporations that they registered 18 using various employees within the company designated as 19 the principal stakeholder for those corporations. And 20 they set up mailboxes, private mailboxes, throughout the 21 country as the registered address of each of those 22 entities.</p> <p>23 So, from an application standpoint, every time 24 they were obtaining a short code and submitting a brief 25 to a carrier, it was through a different entity with a</p>

<p style="text-align: right;">85</p> <p>1 different individual and an address that was, you know, 2 randomly placed throughout the country. And you'll see 3 in this program brief there are, you know, some clear 4 designations of what the price is going to be for the 5 service, the short code is identified repeatedly on the 6 brief itself.</p> <p>7 So, this is what happens in the real world. 8 Consumers would get to a Jawa website first by doing an 9 Internet search for something that typically was offered 10 for free, so things like a movie show time or weather or, 11 in this case, funny jokes. And typically one of the 12 first paid links that would show up would be a Jawa-run 13 website. So, once a consumer clicks through, this is a 14 sample landing page of what they would get to. Obviously 15 there's a very prominent call to action, asking for a 16 consumer to enter their cell phone number, and there's 17 little or no significant disclosure that occurs 18 surrounding it.</p> <p>19 And, you know, this is one of these little 20 examples where, you know, MMA requires a disclosure of 21 the price to get into some of the nitty-gritty. It needs 22 to be 125 pixels from the entry of the cell phone field. 23 Well, in this case, you'll see that there is a reference 24 here to monthly 9.99. It's buried in the background; 25 it's blended in with this image, but on many of these</p>	<p style="text-align: right;">87</p> <p>1 the cell phone bill, when it identified what this charge 2 was, it read as Standard Rate Plan.</p> <p>3 Now, one other quick note on how Jawa worked, 4 if a consumer ever went back and said, hmm, I want to see 5 what that webpage looked like that I first got taken to. 6 If they typed in the actual URL of the website, they 7 would be taken to an entirely different page, and it 8 would look something in the neighborhood of this a lot of 9 times, which is just a non-PSMS, generic page.</p> <p>10 And one thing John may want to comment on as 11 well, but Jawa used fairly sophisticated cloaking 12 technology, where it would gather the IP addresses of the 13 auditors, and when auditors would try to go through and 14 check these sites, it would serve up a page that looked 15 similar to this to the auditors, as opposed to seeing 16 what was happening to consumers.</p> <p>17 This is another quick example of an advertised 18 webpage, which you'll see on the left, and then a -- what 19 we call a direct-entry page where the consumer or user 20 would type in the actual address. And this was sort of 21 another tactic that they used, where you'll see that the 22 pages themselves, very similar, but you'll see on the 23 right the page where the consumer might go back and 24 double check that at some point it has far more prominent 25 disclosures, many more price points. It includes a far</p>
<p style="text-align: right;">86</p> <p>1 sites, when you measure the distance between that and the 2 cell phone field, it falls within the 125 pixels.</p> <p>3 Once a consumer enters their cell phone number, 4 as was described in the last panel, that serves as a 5 first opt-in for the double opt-in process. Consumer was 6 sent to a page that looks similar to this, asking them to 7 enter the PIN code that would be sent to them. 8 Meanwhile, they would receive a text message. One of the 9 tricks that Jawa used was to insert large gaps of spacing 10 in the text messages themselves. So, this is a sample of 11 an iPhone screen shot, and you'll see that when you open 12 the message, this is what would show up because it starts 13 from the bottom of the text message, this is the language 14 that you see, and all you see is the passcode down there 15 at the bottom.</p> <p>16 If you go to the top of the message, you see 17 the same thing, passcode, and then it's only if you 18 actually scrolled to the middle that you saw any 19 reference to a price, and you'll see sub monthly 9.99 20 there.</p> <p>21 One other thing that I'd note, because this 22 came up on the last panel, too, you'll see this reference 23 to standard rate plan in the text. That was actually the 24 corporate entity that registered this short code and that 25 was billing on the consumers' cell phone bills. So, on</p>	<p style="text-align: right;">88</p> <p>1 more prominent check box at the bottom.</p> <p>2 One final note on check boxes, using this 3 example, you'll see this is the actual consumer 4 advertised site. You'll see that there's a check box 5 under that sell submit field with very difficult-to-read 6 language that was coloring blended into the background. 7 If a consumer entered their cell phone number and failed 8 to check the box, a little popup came up like this that 9 said select okay to go to the maps. And if you click 10 okay, it clicks the check box and takes you to the next 11 step and it would actually treat it as your first opt-in.</p> <p>12 By comparison, the page when a consumer would 13 directly type in the website, if you didn't check the 14 box, you got this alert that told you you have to go back 15 and accept the terms and conditions and it would simply 16 take you back to the initial page in order to require you 17 to physically check the box.</p> <p>18 So, I mean, that's just my quick demonstration. 19 Like I said, I'll be referencing back some of the lessons 20 that we learned in this case and some of the examples 21 from it.</p> <p>22 MR. POZZA: Right, plenty more to explore 23 there. Our last panelist is actually participating by 24 phone. It's Chris Witteman, Senior Staff Counsel with 25 the California Public Utilities Commission. And hold on</p>

89	<p>1 a second, I'll get him on the phone.</p> <p>2 MR. WITTEMAN: I'm here.</p> <p>3 MR. POZZA: You there, Chris?</p> <p>4 MR. WITTEMAN: Can you hear me now?</p> <p>5 MR. POZZA: Yes. We'll let you know if there's</p> <p>6 any feedback, but you might have to mute your webcast.</p> <p>7 MR. WITTEMAN: Okay. So, my name is Chris</p> <p>8 Witteman. I'm an attorney with the California Public</p> <p>9 Utilities Commission, and I should follow immediately</p> <p>10 with the same disclaimer that Mr. Singer made. I am here</p> <p>11 speaking for myself and not for the California Public</p> <p>12 Utilities Commission. I have participated in a number of</p> <p>13 proceedings, though, that involve cramming, so I have</p> <p>14 some idea about this subject. And I do want to thank the</p> <p>15 FTC for having this panel and for having me on the panel.</p> <p>16 We, out in California, very much appreciate the FTC's</p> <p>17 efforts in the cramming area, particularly the INC21 case</p> <p>18 in the Northern District of California was a seminal case</p> <p>19 for us out on the West Coast.</p> <p>20 The second substantive point I'd make is that</p> <p>21 -- is how little we know. As the first -- referenced in</p> <p>22 the first panel, the mobile and wireline third-party</p> <p>23 billing ecology is a three-legged stool. You have the</p> <p>24 billing telephone companies; you have the aggregators;</p> <p>25 and you have the service or content providers. And this</p>	91	<p>1 And, finally, we require billing telephone</p> <p>2 corporations to resolve complaints and to terminate bad</p> <p>3 actors. Just in the area of complaint reporting, I</p> <p>4 understand that our letter to the Senate Committee</p> <p>5 reporting refunds in the wireless space will become part</p> <p>6 of the record. And you see there that we're -- what the</p> <p>7 carriers are reporting to us is a refund rate in the area</p> <p>8 of 12 or 13 percent, so this begs the question of what is</p> <p>9 the threshold for terminating bad actors in this space.</p> <p>10 Is it 8 percent as we heard in the previous panel, or is</p> <p>11 it something else?</p> <p>12 The other thing that you can read out of that</p> <p>13 letter in the data provided there is how small the</p> <p>14 complaint numbers to us an agency are in relation to the</p> <p>15 refund rates. And we suspect that the refund rates</p> <p>16 themselves are small in relation to the total volume.</p> <p>17 I was interested to hear Mr. Singer's</p> <p>18 discussion of his recent case. We, in California, have</p> <p>19 been litigating and are still in the process of</p> <p>20 litigating a case against Telseven and Calling 10. In</p> <p>21 that case, there were 2 to 3 million Californians who</p> <p>22 were charged \$7.70 roughly for supposedly directory</p> <p>23 assistance. We did not find one customer, could not find</p> <p>24 one customer, who admitted authorizing that directory</p> <p>25 assistance charge. That appeared on bills. There was an</p>
90	<p>1 dispersion of roles leads to, from my perception, some</p> <p>2 lack of accountability on the part of each of the</p> <p>3 carriers, and as the Vermont Attorney General said, a gap</p> <p>4 between rules and reality.</p> <p>5 What we have done in California to address that</p> <p>6 issue is a decision in rules issued in 2010 around</p> <p>7 cramming and the life motif of that decision is this</p> <p>8 sentence: The billing telephone corporation bears</p> <p>9 ultimate responsibility for all items presented in a</p> <p>10 subscriber's bill. With that principle, we have required</p> <p>11 billing telephone companies to conduct a reasonable</p> <p>12 inquiry before they sign on a service or content</p> <p>13 provider, before they give billing privileges, if you</p> <p>14 will, to a service or content provider.</p> <p>15 We require the billing telephone corporation to</p> <p>16 disclose third-party -- the possibility of blocking</p> <p>17 third-party charges. We require the billing telephone</p> <p>18 corporation to report refunds to us. And we use refunds</p> <p>19 as a proxy for complaints because when we had complaint</p> <p>20 reporting we would end up in endless semantic digressions</p> <p>21 around the meaning of the world complaint. So, refund is</p> <p>22 something a little more tangible and we assume that in</p> <p>23 most cases refunds are not made out of the blue but in</p> <p>24 relation to some expression of dissatisfaction by the</p> <p>25 customer.</p>	92	<p>1 opt-in there or a nominal opt-in by virtue of the</p> <p>2 consumer calling supposedly to get this directory</p> <p>3 assistance, but we believe that that was induced, you</p> <p>4 might say fraudulently or by misleading statements, in</p> <p>5 the context of the call.</p> <p>6 So, the final thing I'd like to discuss in</p> <p>7 terms of strategies to reduce mobile cramming is the bill</p> <p>8 blocking option. That is one of the things that we</p> <p>9 require of billing telephone corporations, that they</p> <p>10 disclose that and that there is that option. The</p> <p>11 question then becomes how well do they disclose it, and</p> <p>12 our preliminary investigation of this leads us to the</p> <p>13 conclusion not very well, at least not in all cases.</p> <p>14 In many cases, consumer service reps are</p> <p>15 unaware that there is a bill block option. It's not</p> <p>16 prominently featured on websites. And if the mechanisms</p> <p>17 of adding and removing the block, which should be free</p> <p>18 per our rules and should be easily added and removed,</p> <p>19 those mechanisms are not always clearly described. So,</p> <p>20 that's the landscape from our perspective.</p> <p>21 MR. POZZA: Thanks, Chris. So, turning to some</p> <p>22 open-ended questions, one topic that we want to drill</p> <p>23 down is the vetting of content providers. We heard on</p> <p>24 the last panel and then in the introductory remarks about</p> <p>25 the efforts that different players in the industry make</p>

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1 to vet the content providers, and these again are the
2 companies actually providing the horoscope or the content
3 or the ringtones or whatever, you know, and placing the
4 billable event on the bill.

5 So, just to kick off the discussion, how much
6 up-front vetting is really done before a content provider
7 can start billing a consumer and how robust is it? And
8 then, you know, the second half of that is once it goes
9 live, how much follow-up is done. I know on the first
10 panel Mike Altschul wrote -- said something to the effect
11 of that carriers touch every code every month or
12 something, not to misquote you, Mike, but just drill down
13 on, you know, how often and how robust is the vetting
14 once these companies are actually putting charges on the
15 bill. Maybe we could start with John?

16 MR. BRUNER: Sure. I'll stay on the microphone
17 this time. So, to define vetting first, because I think
18 Duane and I when we first started talking vetting, we
19 were using it differently. Vetting is actually doing a
20 background check on the content provider that wishes to
21 come onto a carrier's network or wishes to purchase a
22 short code through CTIA first. The vetting process is
23 essentially a background check, much as you would do a
24 background check on an individual for a credit card. We
25 seek databases that we pay for as a company, but we also

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1 do a number of other data sources, which I'm not going to
2 disclose all those data sources at this time, simply
3 because it is part of the secret sauce of protecting this
4 industry.

5 But, so, up front we do that complete check,
6 and if we find anything that, number one, associates that
7 content provider with any bad behavior in the past
8 related to cramming, any open lawsuits, any kind of
9 articles talking about that company, but in addition any
10 relationships of any of the people within that company
11 that play key roles or any of the other features of that
12 company that they submit, and I'll say very vaguely bank
13 accounts, addresses, at the highest level, we can connect
14 those to people that we've vetted in the past and more
15 importantly people -- companies that we have removed with
16 our carriers from the network.

17 I have a slide that I show sometimes that
18 pictorially shows groupings of bad players, how they come
19 back as different companies and turn bad, but you'll see
20 when we plot them on a point diagram that you have
21 clusters of good players that have relationships to each
22 other, and then you have clusters of bad players. And
23 sometimes what we find is we'll find clusters of bad
24 players and we'll find a few not-yet bad players related
25 to them. And, so, in terms of going beyond the vetting,

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1 that's one of the indicators that we use to more closely
2 monitor those companies that seem to have relationships
3 with other companies that we've found in the past.

4 When Paul talked about the Arizona-based
5 company earlier, they had hundreds of companies
6 associated, and they were playing the shell game. You
7 know, you play bad this week and we'll send it over to
8 another company to play bad next week. For that reason,
9 when we do our vetting, we're looking at all of the
10 doing-business-as names and all of the relationships of
11 all companies that are associated with the company
12 applying. And, again, that's all stored in a relational
13 database and we use it and we leverage that data as
14 another source of identifying bad behavior.

15 MR. POZZA: And how much of the monitoring is
16 ongoing in terms of compliance with the MMA guidelines?
17 And is that the touchstone for monitoring content
18 providers once they go live? And is that enough to
19 ensure that there isn't, you know, that these content
20 providers are not engaged in deceptive or cramming
21 behavior?

22 MR. BRUNER: We actually believe that the full
23 life cycle approach is critical and the ability to join
24 the data across the full life cycle is important. One of
25 the things that I probably failed to mention in the first

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1 answer is that, you know, companies change, so just
2 because you vetted them once to let them onto the network
3 doesn't mean that they acquire a new CEO or they acquire,
4 you know, another company. And, so, revetting is also a
5 very important thing.

6 You know, a couple of things that we will do is
7 we'll put crawlers out looking for changes that are
8 occurring to companies. One of the things that we will
9 do is we will revet on an annual basis. One of the
10 things that we will do is when we find advertising or any
11 sort of information out on the network that tells us that
12 a company is coming to risk because of some change in the
13 company, then we go back to our customers and recommend a
14 revet, just to make sure that, you know, that they stay
15 good players.

16 In terms of jumping into the market, yes, it's
17 very important, because that's the other side of it.
18 Companies, you know, will change potentially after being
19 vetted, and they change all the time. And, so, to say
20 that they can get through and get on the network, you
21 know, and pass the vetting process doesn't mean that they
22 won't then start doing deceptive advertising, stacked
23 marketing or anything they can do to get people to buy
24 their products without them necessarily understanding
25 what they've done.

97	<p>1 So, the monitoring is very important. The</p> <p>2 monitoring all of the advertising and ways that link into</p> <p>3 the process of purchasing on PSMS, as well as the</p> <p>4 functional testing and the content testing, as well as</p> <p>5 then analyzing the billing that comes in to ensure that</p> <p>6 the bill space descriptors are accurate, as well as</p> <p>7 looking at refund rates, which we've heard a lot, as well</p> <p>8 as looking at revenue spikes, as well as looking at</p> <p>9 activities when, for example, a catastrophic risk occurs,</p> <p>10 because bad guys come out of the woodwork when there's,</p> <p>11 you know, an opportunity, when everybody's willing to</p> <p>12 donate money, then that might be a bigger opportunity for</p> <p>13 them to get things. I'm not saying that charities aren't</p> <p>14 the safest things that we see in the PSMS market, but</p> <p>15 what I'm saying is it's another opportunity.</p> <p>16 So, all of these have to be taken into</p> <p>17 consideration. One of the things that Paul said earlier</p> <p>18 about these -- some of these bad guys are using the</p> <p>19 alternative good site when they know who you are coming</p> <p>20 in as an auditor versus the site for the unsuspecting,</p> <p>21 that's true. That's a fact, it happens. As a matter of</p> <p>22 fact, we prefer when they do that because we can find</p> <p>23 both, and that's direct evidence that they know what</p> <p>24 they're doing. We can show that they have one site</p> <p>25 that's fully compliant and another site that's not.</p>	99	<p>1 hearing talk of bad actors, and really at some point,</p> <p>2 it's obviously -- it's fraudulent behavior. And, so, I</p> <p>3 encourage, you know, and from the MMA's perspective, we</p> <p>4 would encourage that these entities, and there are</p> <p>5 multiple entities out there, be prosecuted. And I love,</p> <p>6 personally, hearing about these prosecutions, because I</p> <p>7 think that's going to -- that's going to be what</p> <p>8 inevitably has to happen.</p> <p>9 MS. DEITCH: John, if everybody adopted more</p> <p>10 aggressive procedures and if the carriers ratcheted down</p> <p>11 thresholds for refunds or chargebacks and shared</p> <p>12 information, do you think there would be an impact on</p> <p>13 cramming?</p> <p>14 MR. BRUNER: That's kind of outside of my</p> <p>15 purview, though, because I really leave it to the</p> <p>16 carriers to determine how they want to manage their</p> <p>17 refund rates. I'll say more generally that you probably</p> <p>18 need to look at the amount of revenue before you look at</p> <p>19 the refund rate as a relationship, because you could have</p> <p>20 something that launches that's got \$100 coming on it and</p> <p>21 it's got three refunds and so they're at 30 percent.</p> <p>22 I think you need to take a little more in</p> <p>23 account than refund rate, which is kind of like we like</p> <p>24 to take into account the data regarding customer</p> <p>25 complaints, the help desk, as well as the refund and</p>
98	<p>1 So, you know, part of the tactic obviously,</p> <p>2 though, is these are smart technology companies, so, you</p> <p>3 know, the best thing for us to do as a company is to stay</p> <p>4 ahead of them technically, which means we're continually</p> <p>5 evolving what we do to monitor their behavior.</p> <p>6 MR. DEITCH: One of my favorite terms is room</p> <p>7 for improvement, and I've heard situations where</p> <p>8 different carriers have different refund and chargeback</p> <p>9 rates. I'm wondering if the cramming problem could be</p> <p>10 improved if there were an adoption of lower threshold</p> <p>11 rates by all carriers or sharing of bad actors between</p> <p>12 carriers so one could not jump just to the other. What</p> <p>13 do the panelists think about those types of approaches to</p> <p>14 reduce cramming and what kind of impact that would have.</p> <p>15 Cara, do you want to start with some initial thoughts?</p> <p>16 MS. FREY: You know, in all honesty, that's</p> <p>17 really kind of -- I don't have much information on that</p> <p>18 issue. I mean, I think in all honesty, that's probably</p> <p>19 the best asked of Mike Altschul.</p> <p>20 So, again, from the MMA's perspective, you</p> <p>21 know, I think as -- I think John just said technology is</p> <p>22 evolving at such a quick rate and the industry really has</p> <p>23 to keep up with it. So, anything that I think we can do</p> <p>24 to, you know, to try to keep up with that and really</p> <p>25 address these bad actors. I mean, this is -- I keep</p>	100	<p>1 revenue data, as well as, you know, looking at the bill</p> <p>2 face descriptors, as well as doing the in-market</p> <p>3 monitoring. I'm kind of dodging it, but to me that's</p> <p>4 really a carrier that should be answering that.</p> <p>5 MR. POZZA: Well, what do other folks on the</p> <p>6 panel think about what would be a good refund rate that</p> <p>7 would seem like it would signal that's a potential bad</p> <p>8 actor that some action should be taken against? And I'll</p> <p>9 just note, as one benchmark, I believe Jim Manis said on</p> <p>10 the first panel that they saw a refund rate of around 1</p> <p>11 to 1.5 percent on the -- on the charitable side. And the</p> <p>12 credit card context is generally below 1 percent as the</p> <p>13 threshold for fraud.</p> <p>14 MR. WITTEMAN: This is Chris Witteman out in</p> <p>15 California. In the Telseven case, we saw a refund rate</p> <p>16 really very low, about 5 percent, and that gets to the</p> <p>17 point made earlier that 80 percent of customers may not</p> <p>18 even be aware that they're potentially being billed by</p> <p>19 third-parties. So, I think we need to look very closely</p> <p>20 at this question and I think that the rate should be on</p> <p>21 the low side, 5 percent would definitely send warning</p> <p>22 signals.</p> <p>23 Also on the question of vetting, we've heard</p> <p>24 for years from the industry that they are vetting. And</p> <p>25 when you actually see the documentation of the vetting,</p>

101	<p>1 and I look forward to seeing documentation from Aegis and</p> <p>2 groups like that, but the documentation we've seen has</p> <p>3 been a pro forma, boilerplate, check-the-boxes form that</p> <p>4 the content provider will fill out and provide to the</p> <p>5 aggregator who then provides it to the billing telephone</p> <p>6 company.</p> <p>7 So, I'm skeptical about the up-front vetting</p> <p>8 and I am skeptical about the refund or complaint</p> <p>9 threshold required to trigger serious scrutiny.</p> <p>10 MR. SINGER: I want to say two things real</p> <p>11 quick about refunds. I mean, one, you obviously have the</p> <p>12 risk of a Jawa-like situation, right, where you had</p> <p>13 multiple entities set up in large part to keep refund</p> <p>14 rates at an incredibly low threshold. And, so, it was</p> <p>15 very easy for them to just transition the exact same</p> <p>16 program from one entity, one short code, and, you know,</p> <p>17 and escalating refund rate to a brand new one, where, you</p> <p>18 know, you now have this seemingly new entity that's sort</p> <p>19 of starting from scratch.</p> <p>20 The other issue, I think, is that refund rate</p> <p>21 necessarily implies that people are actually successful</p> <p>22 in getting refunds. And I think that the Vermont survey,</p> <p>23 consumer complaints, they all reflect a lot of varied</p> <p>24 experiences on consumers actually obtaining meaningful</p> <p>25 refunds.</p>	103	<p>1 with, I think. And that's one big problem is that good</p> <p>2 guidelines, I think, are no replacement for, you know,</p> <p>3 tough, reasonable regulations.</p> <p>4 MR. DEITCH: We have a question from email.</p> <p>5 We're part of the high-tech group here, we might as well</p> <p>6 get high-tech questions. It deals with the overlap</p> <p>7 between landline and wireless billing. As they say,</p> <p>8 those who forget history are doomed to repeat it. When</p> <p>9 we had our cramming forum two years ago, I remember some</p> <p>10 of the stories. The Illinois AG talked about credit</p> <p>11 repair charges on a central public library story line,</p> <p>12 which was a prerecorded line. The same credit repair</p> <p>13 charges showed up on the county coroner's office bill.</p> <p>14 And by the time you're at the county coroner's office, I</p> <p>15 can't imagine you're worried about your credit rating.</p> <p>16 And subsequently the FTC filed a comment with</p> <p>17 the FCC on landline cramming. And just the topics are</p> <p>18 abuse of the third-party billing system is widespread;</p> <p>19 there's a scarcity of evidence of legitimate use of</p> <p>20 third-party billing. Disclosures are unlikely to be</p> <p>21 noticed and will not solve the cramming problem. And the</p> <p>22 FCC should ban a required default blocking or some or all</p> <p>23 third-party charges.</p> <p>24 So, the real overwhelming question is what can</p> <p>25 we learn from landline billing. And that's a long lead-</p>
102	<p>1 And just one example from our litigation, you</p> <p>2 know, I'll up Jim a little bit. One of our investigators</p> <p>3 in our Jawa case, six weeks into the investigation he</p> <p>4 comes in my office with his head hung low and realized</p> <p>5 that he'd been crammed for 11 months by them. And it</p> <p>6 took him that long to even realize it after we had been</p> <p>7 looking at them.</p> <p>8 And he had multiple calls with his carrier,</p> <p>9 attempting to get a refund. First was told, no, he can't</p> <p>10 get any refund; next, he was given either a two or three-</p> <p>11 month refund. Ultimately, the only way he got a full</p> <p>12 refund was to go to Jawa directly, who maintained a</p> <p>13 money-back -- a full, no-questions-asked, full refund</p> <p>14 policy and issued him a full refund.</p> <p>15 MR. POZZA: I'll give Kristy's -- maybe we can</p> <p>16 get his number and Kristy and him can cry on each other's</p> <p>17 shoulder.</p> <p>18 MR. SINGER: They can swap text messages.</p> <p>19 MR. CHILSEN: It does feel like it's just one</p> <p>20 big game of high-tech Whac-A-Mole, you know? And I read</p> <p>21 -- there was a New York Times article which was</p> <p>22 referenced in the first panel, which, you know, talked</p> <p>23 about, you know, double opt-in and all these great</p> <p>24 guidelines, which are excellent. But, you know,</p> <p>25 guidelines work best when the players are honest to begin</p>	104	<p>1 up to the question is when there's vetting in the mobile</p> <p>2 billing space are vendors asked about their history, if</p> <p>3 any, in landline billing. If so, what is asked of them?</p> <p>4 So, John, you'd probably be the first person to</p> <p>5 respond to that.</p> <p>6 MR. BRUNER: I'll say the answer is no, we're</p> <p>7 not asking them specifically if they were ever associated</p> <p>8 with any landline cramming. Our investigations, though,</p> <p>9 of the 40 to 50 data sources that we check has revealed</p> <p>10 content providers that were associated with cramming on</p> <p>11 other types of channels.</p> <p>12 MR. DEITCH: And the bigger question for the</p> <p>13 panelists are what lessons can we learn from the</p> <p>14 experience with landline cramming.</p> <p>15 MR. SINGER: Well, I think you hit on it</p> <p>16 earlier, right? One of the questions has to be what's</p> <p>17 the actual content that's being billed for. Is this</p> <p>18 content that consumers are likely to be knowingly</p> <p>19 choosing to purchase? Or is this something that's widely</p> <p>20 available for free and it's very unlikely that they would</p> <p>21 be purchasing this?</p> <p>22 You know, I ran through some of the different</p> <p>23 categories of things that Jawa was marketing. All of</p> <p>24 them were widely available for free and, in fact, in</p> <p>25 their customer service calls that they wanted to use as</p>

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1 evidence of, you know, their very generous refund policy,
2 there were repeated references from consumers saying,
3 well, I would have never paid for this, why would I pay
4 for this service that's available for free.

5 So, I mean, I think those are legitimate
6 questions to be asking because it's certainly something
7 that happened historically on the landline side.

8 MR. HALLIDAY: And, well, at the same time,
9 that's -- I mean, that's somewhat complicated by the fact
10 that there are so many types of new services that are
11 embedded on mobile that don't exist on landline. The
12 entire app ecosystem, for instance, doesn't have any kind
13 of corollary in the landline space. And, so, there is,
14 however farfetched, a very legitimate use case where
15 someone is paying 1.99, 2.99 a month for a horoscope
16 that's delivered via an app on their mobile device. As
17 much as I think people in this room probably wouldn't be
18 subscribing to that kind of service, it is a legitimate
19 use case with things like premium apps. So, that, I
20 think, provides an additional level of complexity to this
21 issue, you know, in mobile specifically.

22 I think that, you know, going back to some of
23 the things that we just talked about in the last
24 question, I mean, there are a bunch of different options
25 we can use to actually correlate some of these bad actors

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1 in the mobile ecosystem that help us sort of cordon off
2 potential bad actors, including things like reputation.
3 So, while the issues become more complex when you throw
4 things like applications into the mix, it does provide us
5 a number of different additional levers to correlate and
6 identify, say, the same bad actor playing the shell game,
7 jumping from developer to developer, for instance.

8 MR. POZZA: I want to ask a follow-up question.
9 A lot of this discussion has been how do you catch the
10 bad actors, which we should talk about more. For the
11 actors who are not just being totally fraudulent and are
12 claiming to respond or to comply with the consumer best
13 practices or the MMA guidelines as we've talked about,
14 what is the process going -- are those guidelines
15 sufficient right now in the world of third-party billing
16 on mobile services and what is the capacity for input to
17 improve them? Is there? Are they evolving, are they
18 flexible, and how will they evolve over the next few
19 years? So, Cara?

20 MS. FREY: Yeah, I'll start. So, again, I
21 think we all refer to them as the MMA guidelines, but, in
22 fact, they really are the consumer best practice
23 guidelines. And as I kind of explained in my opening,
24 what those guidelines became really were the carrier
25 common rules. So, and that one document, the consumer

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1 best practices, really provided one place that people who
2 are running marketing campaigns can go to to access all
3 of the information.

4 And as I explained, in 2012, Version 7 of the
5 CBP guidelines was actually the last version published.
6 And now the CTIA, you know, like I said, the MMA and the
7 CTIA consolidated Version 7 into 30 rules, which I think
8 really is helpful because those are the most sort of
9 basic, necessary rules. And the CTIA now and has been
10 auditing against the guidelines and now those rules and
11 will continue to do so.

12 Obviously, like I said, I mean, I think this is
13 all part of an evolution, but I think the rules are very
14 effective. And I think, you know, to be honest, I don't
15 want to particularly get way into self-regulation versus
16 government regulating, but I do think there is a very
17 positive element of self-regulation that we can act as
18 the industry much faster than the government can act.
19 But I do think that the rules will continue to evolve and
20 the CTIA will continue to audit against those.

21 And I would assume, and again, the MMA has
22 really stepped out of the space of drafting guidelines,
23 so I don't want to speak really totally for the CTIA, but
24 I would imagine that they will continue to monitor the
25 rules and continue to draft more if they're necessary.

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1 MR. POZZA: Other thoughts on the panel?

2 MR. SINGER: So, I think there's a couple of
3 thoughts, right? I mean, one is, you know, in our
4 litigation, we heavily use the rules, and in large part
5 because, you know, we looked at this as, hey, industry is
6 attempting to self-regulate, let's look at those
7 standards and let's see whether or not this company is
8 even compliant with that as a floor to sort of, you know,
9 what should be a proper, clear, and conspicuous
10 disclosure under our state UDAP law. And, you know, I
11 think some of the complications of it are that, one, the
12 MMA guide, CTIA, whoever's monitoring, they do get into
13 the weeds somewhat, right?

14 You have a lot of very detailed, specific -- I
15 mentioned the one before about the price disclosure 125
16 pixels from the cell phone entry field. You know, I
17 think the more detailed you get like that the greater the
18 risk that you lose sight of the big picture, which is
19 that these still need to be clear and conspicuous and
20 they need to be adequately disclosed to consumers so they
21 understand what they're signing up for.

22 And, you know, I think one of the interesting
23 pieces, right, is that MMA historically defined clear and
24 conspicuous as referencing back to the FTC.com
25 disclosures as sort of a good standard and something to

<p style="text-align: right;">109</p> <p>1 look at. And, you know, when we questioned Jawa 2 representatives about those disclosures, they didn't know 3 what they were, they had no idea that those were there. 4 But they certainly knew the detailed auditing 5 requirements about trying to put a price point 125 pixels 6 from a cell phone entry field. 7 I think the other comment I'd like to make 8 about the rules is that there's always room for 9 improvement, right? You know, one of the things that we 10 looked to when we were crafting a final permanent 11 injunction in our Jawa litigation was how can we take the 12 rules and make them clearer and more express so that you 13 don't have companies who can try to use creative 14 interpretations of those rules to get around them. 15 And just another quick example, I showed the 16 text messages that Jawa used. One of the rules says that 17 the PIN has to be after the price in the text message. 18 I'm paraphrasing, but that's generally how that's worded. 19 What it doesn't say is that the PIN can't also be before 20 the price, which is what Jawa was doing. So, you had PIN 21 at the start, PIN at the end, and price somewhere buried 22 in the middle. 23 So, I mean, those are examples of there's 24 always sort of room for improvement and sort of looking 25 at the way companies are creatively interpreting these</p>	<p style="text-align: right;">111</p> <p>1 a security company that scans the apps on your phone to 2 tell you, you know, what you might want to be concerned 3 about. 4 And, so, for companies like ourselves that are 5 there to protect the user and inform them -- and keep 6 them informed, you know, I think that there's a clear 7 need for these types of guidelines. That said, I think 8 it's essential that, you know, a consumer advocate or 9 watchdog is extremely involved in shaping those 10 guidelines, so that they're not done in a vacuum, because 11 certainly you can iterate very quickly at speed on some 12 of these guidelines all you want, but if you're not 13 actually addressing the concerns that are facing users 14 and addressing the right bar of risk for users, you're 15 not going to get anywhere. 16 MR. BRUNER: If I could, the carriers that we 17 represent in the in-market monitoring do also have and 18 have added rules of their own to that. One that comes to 19 mind that's most interesting to me gives our testers the 20 ability to raise issues when they can't necessarily pair 21 a problem directly to an MMA/CTIA rule. And, so, you 22 know, we have seen the behavior where carriers are 23 actually enhancing the rules to get greater opportunity 24 to catch what could be bad behavior. 25 MR. FREY: And, Paul, to your point that the</p>
<p style="text-align: right;">110</p> <p>1 rules. 2 MR. WITTEMAN: And this is Chris Witteman out 3 in California again with a question for MMA or CTIA, if 4 that is the body that's enforcing this. Would they 5 commit to an open-door policy, vis-a-vis state agencies 6 and the FTC and the FCC, so that we could see where their 7 concerns were and what their enforcement efforts were? 8 MS. FREY: Yeah, this is Cara from the MMA, but 9 the MMA has never been an enforcement body, so I can't 10 address that. 11 MR. HALLIDAY: Actually, I wanted to jump in on 12 this one as well. Sort of as -- you know, from a mobile 13 standpoint, as someone who is the consumer advocate from 14 a security and privacy standpoint on consumer devices, 15 having a clearly established set of guidelines such as 16 these is immensely important, and having those guidelines 17 be extremely clear is just as important, because we view 18 ourselves as somewhat of an opt-in enforcer for some of 19 these guidelines themselves. 20 The example that we've been most familiar with 21 in the past year has been very similar to this but 22 working with MMA to figure out, you know, what the right 23 guidelines are for, you know, the collection of PII from 24 mobile devices. So, I think it's very similar to this 25 issue. And then it provides a framework for ourselves as</p>	<p style="text-align: right;">112</p> <p>1 rules really seem like we were getting into the weeds, I 2 mean, you are absolutely correct. I sat in meetings 3 where I can't even begin to describe how many weeds we 4 were in. And that really, I think, in 2012, when we 5 decided to hand it over to CTIA and create just the 30 6 rules, I'm hopeful that that will, you know, kind of get 7 us out of the weeds and be helpful to the industry. But 8 I totally agree with you. 9 MR. CHILSEN: I'd just like to add that I think 10 it's important to say that, you know, good, solid 11 guidelines and government regulation should not be 12 mutually exclusive, that they can work very well 13 together. And when I hear Paul talk about the case in 14 Texas, you know, I hear diversionary software, shell 15 corporations, sophisticated cloaking software, and I 16 think guidelines alone can't meet a formidable foe like 17 that. 18 MR. DEITCH: Let's move in a little bit 19 different direction. There are three big components of 20 any online transaction. There are the disclosures; 21 there's this term that keeps getting bandied about, the 22 double opt-in; and then there's consumers' ability to 23 dispute charges or get refunds. Since we've heard this 24 double opt-in term so often, is there somebody that could 25 explain what it means and the alphabet soup that goes</p>

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1 with it? We hear WAP billing, wireless access protocol,
2 premium SMS. And from there, I'd like to get into issues
3 or problems with double opt-in. So, could somebody
4 educate us on exactly what double opt-in is and how it
5 works?

6 MR. BRUNER: All right, the double opt-in, it's
7 the standard -- it's the point at which a consumer
8 commits to a purchase. The process is designed to ensure
9 that the consumer knows exactly what they are purchasing,
10 and there's the second opt-in is to reconfirm, the text
11 message that goes out to the consumer saying you've
12 agreed to purchase this. It's all designed to ensure
13 that the consumer knows what they're doing.

14 To add to that, though, I would say that what
15 we see in the market is not a violation of the double
16 opt-in where it's being skipped necessarily. What we
17 usually see is that consumers are either, through stacked
18 marketing or deceptive advertising, double opting in and
19 not realizing that they had purchased something. And,
20 so, you know, the process, the physical process itself
21 seems to be a very sound process for purchase. It's more
22 the method leading up to getting a consumer to perform
23 that function.

24 MR. DEITCH: All right. Let's follow up on
25 that. What's your -- giving us a scenario where the

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1 initial disclosures are deceptive prior to the opt-in, if
2 we look at the next component, what does the opt-in
3 actually tell you? Do you get a receipt? Do you know
4 who's with what billing? Usually there's two pushes on a
5 button. Do you know who's actually pushing the button?
6 Could it be the line subscriber, a child or somebody else
7 with your phone? And the same situation with the PIN.
8 Are there issues when it comes to authentication and
9 receipt with the double opt-in? Are there ways to
10 improve that?

11 MR. POZZA: Well, and one question to frame
12 that is -- maybe get some clarity. Who has the records
13 of the opt-ins and who has access to them? And can they
14 be -- can there be an improvement in that regard?

15 MR. DEITCH: And what are they?

16 MR. BRUNER: See, I think you've got the wrong
17 panelists, because that's really an aggregator/carrier/
18 content provider relationship.

19 MR. WITTEMAN: Well, out in California we have
20 looked into that a little bit. And contrary to what was
21 said on the first panel, it's our understanding that
22 those records reside only with the service provider.
23 They're not even provided to the aggregator. So, one
24 possible solution or measure that could be taken would be
25 to make sure that the aggregator had access to those and

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1 that the billing telephone corporation had access to
2 those so that they could look into those records and see,
3 A, if they're there and, B, if they're credible. And
4 like I said earlier, in the Telseven case we had some --
5 the functional equivalent of opt-in evidence and but it
6 was our conclusion at the end of the day that that had
7 been fraudulently obtained.

8 MR. DEITCH: And let me ask another question,
9 getting on to remedies. Are the current remedies
10 available to consumers sufficient? We've heard
11 discussion on how people may not know that charges --
12 third-party charges are even going to be on their cell
13 phone bills. We've heard discussion that the charges may
14 be small, may be difficult to find. There are the whole
15 issues of automatic bill-pay or even prepaid charges.

16 Is there more that can be done to make the
17 refund mechanisms adequate or is the status quo
18 acceptable?

19 MS. FREY: Before we get to that, I did want to
20 respond to what was said over the phone. And, you know,
21 I've heard the suggestion that sort of opt-in management
22 should be, you know, maybe brought in-house or kind of
23 move up the chain, but one thing that I want to put out
24 there is that, you know, these major brands, the content
25 providers see that as a proprietary asset, so, you know,

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1 I would wonder and ask the hard-core lawyers, I don't
2 think of myself as a hard-core lawyer, sort of, you know,
3 what's your response to that? I mean, how do you protect
4 that proprietary asset?

5 You know, and also just to throw out there, you
6 know, I do think there needs to be this balance or this
7 sort of, you know, and I don't know where the balance is,
8 but between, you know, innovation and a lot of
9 regulation, you know, I think we have to sort of really
10 keep that in mind as we discuss all of this, but I am
11 interested on the, you know, proprietary asset question
12 about the opt-ins.

13 MR. POZZA: Going back to Russ' question about
14 remedies, can those -- are those sufficient now that
15 consumers can have a remedy if they discover they're
16 bring crammed? Do they need to be improved? And what is
17 the experience that the panel has with that?

18 MR. SINGER: So, I talked about that some a
19 little bit earlier, right? You know, I think the Vermont
20 survey is sort of the most recent example that's out
21 there that, no, I mean, remedies are often hard to obtain
22 in this field. Consumers report all sorts of varying
23 experiences about their ability to get their money back
24 at the end of the day. And, you know, the Jawa
25 experience that we had is just a really good one where,

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1 you know, carriers were very resistant to the idea of,
2 you know, telling people go to Jawa to get a refund,
3 despite the fact that that really was the only source to
4 get a full refund at the end of the day.

5 And, you know, it, I think, demonstrates that
6 there is just a great deal of variance in what's going on
7 today in the marketplace, you know, and consumers are
8 having varied experiences, often with the result that
9 they find it difficult, if not impossible, to ultimately
10 get their money back.

11 MR. DEITCH: Well, that leads to a follow-up
12 question. What can consumers do to protect themselves in
13 the current environment with wireless billing?

14 MR. HALLIDAY: Well, I would jump in to, you
15 know, what Paul just mentioned as well. You know, we ask
16 ourselves if the options for remediation or refunds are
17 sufficient, and, you know, throughout this entire panel
18 we've been talking about the fact that one of the most
19 difficult parts of this process, the critical parts of
20 this process, is depending on a user to notice in their
21 phone bill that there's an additional charge that they
22 may not be aware of.

23 If you ask me, one of the most critical areas
24 that's broken here is that exact process, is depending on
25 the actual end-users themselves to, oh, yeah, notice, you

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1 know, in the 10-page phone bill they might get that
2 there's something they don't recognize. I think there's
3 plenty of options for notifying users of these types of
4 services beyond just, you know, an SMS-based double opt-
5 in that operators, you know, have at their fingertips.

6 They're in constant communication with these
7 end-users, why not also send them an email notification?
8 Why not go beyond just a simple, you know, SMS
9 transaction to make it very abundantly clear that they're
10 signing up to be charged and not depend on them to
11 actually initiate this process.

12 MR. SINGER: And to add to that, right, it's
13 understanding just fundamentally that you can be billed
14 for third-party charges through this mechanism. And I
15 think the Vermont survey spoke very well about that being
16 a major issue right now, that consumers just don't even
17 understand at the outset that that's possible.

18 MR. POZZA: What are the reactions of others on
19 the panel to this idea that there would be some other
20 notification or even a more -- a different kind of
21 notification on the phone bill or email or something like
22 that to a third-party charge?

23 MR. CHILSEN: I think that's an excellent idea.
24 We've been asking for years is why can't -- or can the
25 cell phone industry create some type of red flag system

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1 like the credit card industry has where, you know, a
2 couple years ago there was this strange purchase on my
3 bill and I got to call right away and wondered -- you
4 know, people wondering -- or the credit card company
5 wondering if that was legitimate, then we would love to
6 see something like that. I mean, right now, the best we
7 can tell consumers is, you know, beware of any websites
8 that ask for your cell phone number, you know, go to
9 SMSwatchdog.com and if you get a strange text to find out
10 what you can do, but oftentimes different people will say
11 different things on that website about, you know, I
12 replied stop and I still got the charge; or I ignored and
13 I got the charge. So, it can be very confusing. I mean,
14 at the top of the list is always for consumers, you know,
15 even in this high-tech era one of the best protections is
16 just to make sure to read your bill, your cell phone
17 bill, you know, every month.

18 MR. BRUNER: I'm not going to claim to be an
19 expert in this space, but I have seen on a phone bill for
20 a landline charge a statement separated out that this is
21 a third-party charge, nonpayment of this charge will not
22 result in termination of your service. And, so, for me
23 that stood out very plain and clear, you know, that that
24 was not a charge from my carrier.

25 MR. POZZA: And just to add to that --

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1 MR. WITTEMAN: One way that customer/consumer
2 awareness might be raised, just to go a little bit beyond
3 the California rule, which requires disclosure of the
4 blocking option and to have an affirmative opt-out, in
5 other words, when the billing telephone corporation signs
6 up a customer, that customer has to check a box or
7 initial a box that says you may be billed by third-party
8 customers, do you agree to that. I think that would be
9 one step that might raise consciousness a little bit.

10 MR. POZZA: Jim?

11 MR. CHILSEN: That's an excellent point. What
12 I was just going to add to what John said is what we tell
13 people is if they find a suspicious charge on their bill
14 is to immediately, you know, call the cell phone company.
15 And we also find that it helps to call some type of
16 government entity, the Illinois Attorney General's Office
17 or the FCC or the FTC, just to be able to tell the cell
18 phone company, you know, I have this strange charge, I've
19 filed a complaint with a government entity.

20 That seems to add, and it might light a fire
21 under the company. And also to tell them I'm not going
22 to pay this charge, it's under dispute, and I won't pay
23 this charge, I'll pay every other part of my bill, and we
24 can agree on the phone what that part is and what I
25 should be paying, but I will not be paying this charge.

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1 MR. POZZA: Just following up on that, do
2 consumers have an understanding and is it the case that
3 they can dispute a third-party charge on their bill
4 without having their phone service cut off?

5 MR. CHILSEN: No, I think that is a big -- and
6 we try to educate people about that, that you're not
7 forced, you know, to pay this fee. And I think that's
8 what happens a lot, and it's not just in the cell phone
9 industry, it's across the -- you know, we deal with
10 charges on gas bills, on -- you know, and on landline
11 telephone bills where people think a charge, you know, is
12 a required charge, it's not optional. And they think
13 they have to pay it and then they call us after paying it
14 for, you know, many months. And then it's much more
15 difficult to get a full refund.

16 MR. SINGER: Can I throw out there, I want to
17 back up to a question you asked earlier, because I'm not
18 sure that there's been really a complete answer about the
19 various ways that the double opting can occur. I think
20 it would be really good -- I mean, John, I'm going to
21 sort of turn to you. I mean, do you mind just sort of
22 running through, because the Jawa example, right, is just
23 one of the various mechanisms in which a double opt-in
24 can occur. That was a web-based cell phone/PIN entry
25 process. I mean, I was hoping you could just sort of run

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1 through the different ways that people can be opted in.

2 MR. BRUNER: Okay, thank you.

3 MR. SINGER: You're welcome.

4 MR. BRUNER: I'd really like to, if I may,
5 refer to an expert on the floor. Jen Sizer is a lead
6 analyst in our organization who was very instrumental in
7 the research and discovery of the Cylon and Jawa
8 investigation. Jen, would you mind giving the various
9 examples?

10 MS. SIZER: Thank you, John. Is it working?

11 MR. POZZA: Yes.

12 MS. SIZER: Okay, so, we have phone opt-in,
13 which is a lot of what the charities use, where you --
14 you have mobile -- the text is originating from your
15 phone, so you send a keyword to the company; the company
16 responds back and asks for you to confirm that with --
17 usually responding with yes or Y. So, that's a phone
18 opt-in.

19 Then we have the web opt-in, which is what we
20 were discussing with Cylon where you enter your phone
21 number on a website, and that's your initial opt-in.
22 They then send you a text message, which would send you
23 either a PIN or you can respond affirmatively with yes or
24 okay.

25 Then we were discussing rap opt-in, which is a

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1 little more outdated at this point, but it is directly on
2 your handset where you double-click, you know, you'll get
3 a popup message that asks if you want to incur these
4 charges, and you click yes twice.

5 Direct carrier billing, which is very similar
6 to rap but generally doesn't involve the PSMS charges.
7 That's more of the Android application/iPhone
8 applications where you're confirming that the bill will
9 go -- or that the charges will go on to to your credit
10 card or iTunes account.

11 Then I guess the last one would be IVR, which
12 is interactive voice response, which is where you call
13 generally a toll-free number and they give you the
14 details of the program on the phone before you then hit a
15 button, generally, you know, you press one to confirm
16 that you want more information. Then they're supposed to
17 give you all the up-front details regarding the pricing,
18 who to call for help, and require a second key press
19 prior to opting you in. And that's more prominent with
20 chat programs and things like that. So, I think that
21 covers everything that you asked.

22 MR. POZZA: Just to clarify, so in that there
23 is the capacity for someone to push something on their
24 smartphone twice, opting in, and the technology pulls the
25 phone number and then off the phone and then bills to the

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1 phone number, or is it more complicated?

2 MS. SIZER: I don't actually know the answer to
3 that. The billing is occurring within the carrier and
4 the aggregator, but I know that the key press generally
5 is -- those are the two opt-ins, so I assume that they
6 have record of that.

7 MR. DEITCH: And just to follow up on that,
8 does it work where you have to push a bye button to do it
9 twice? There's that specificity in MMA's guidelines?

10 MS. SIZER: There has been that specificity.
11 I'm not sure exactly right now, but I know there was very
12 specific terminology at one point that stated that you
13 wanted to buy the product or order the product, not just
14 click okay.

15 MR. POZZA: Okay. Thanks. We appreciate you
16 being put on the spot.

17 MS. SIZER: You're welcome.

18 MR. POZZA: One question from the audience,
19 unless there are more follow-ups to that?

20 One question from the audience is also about
21 this -- the double opt-in process. How do you ensure
22 that it's a consumer who's opting in to the double opt-in
23 and not a content provider that's essentially submitting
24 a charge and fabricating the records? And I would add to
25 that, going back to Derek's example, he said at the

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1 beginning, talking about toll fraud, these apps that I
2 guess can sign you up without you even knowing it by
3 sending a text message from your phone. Is there any
4 technological way to differentiate those kinds of opt-ins
5 that are fraudulent from real opt-ins?

6 MR. BRUNER: Is that question saying that a
7 content provider would take on the identity of a
8 subscriber's telephone and opt in and buy something?

9 MR. POZZA: Is there any technological barrier
10 to that happening, that you see, obviously?

11 MR. BRUNER: So, you know, unfortunately,
12 that's all in the infrastructure between the content
13 provider, the aggregator, and the carrier, that it's not
14 an area that Aegis Mobile touches. We haven't seen that,
15 though. You might have a good answer.

16 MR. HALLIDAY: Yeah, in the case that I
17 referred to at the start of comments here, there -- my
18 understanding is there is no technical way of
19 differentiating from the carrier standpoint, essentially
20 because the way that these threats operate, you know, we
21 all know how mobile apps can ask for permissions, right,
22 so when you download a new app on your Android phone, for
23 instance, you go through a screen that says, This
24 application requires or asks permission to access the
25 Internet or to send text messages, for instance. So, if

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1 an application of this sort asks for these types of
2 specific permissions and you grant them those
3 permissions, they have the ability to send text messages
4 really however they see fit.

5 So, in this specific instance, we've seen cases
6 where malware is designed to recognize specific inbound
7 text messages that look like double opt-in messages and
8 basically get in front of your standard text message
9 application on your phone before you see it and then
10 respond directly from your phone. So, from a carrier
11 standpoint, they can't tell whether this is something
12 that you originated or an application originated.

13 MR. SINGER: Well, and one other example, too,
14 you know, because one of the methods to enroll, you don't
15 need to do anything from your handset, right? I mean,
16 the web-based PIN entry doesn't require the consumer to
17 affirmatively do anything from the actual handset.

18 Well, the folks at Jawa-Cylon had sort of run
19 afoul of this before they developed this system. The
20 first system they developed was when you would get to the
21 PIN entry page they would both send you a text message
22 and then post the PIN on the website, so that whoever was
23 doing it could just write the PIN in directly there. So,
24 there was really no way to verify that it was the actual
25 consumer who was receiving the text message that was

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1 entering it. It could just be anyone who was going to
2 the website. So, there are certainly ways to circumvent
3 the process.

4 MR. HALLIDAY: Yeah, and, I mean, not to get
5 too technical, but in some of those cases you have at
6 least a little bit more evidence that you can potentially
7 correlate, you know, IP addresses that are assigned to
8 given endpoint devices in a network that you can
9 correlate back to specific subscribers' identities. So,
10 there's -- you can do a little bit -- it takes a little
11 bit of effort, but you can get down to the bottom of it.
12 When it comes to just text messages and threats that --
13 or fraud that is actually on your endpoint device, it's
14 impossible to really discern.

15 MR. POZZA: Since this actually involves asking
16 the aggregators, we have a member of our aggregators in
17 -- a representative from an aggregator in our audience
18 who wants to chime in, so, Alan?

19 MR. SEGE: Thank you.

20 MR. POZZA: He's actually on the next panel,
21 but we'll give him the floor.

22 MR. SEGE: Yeah, everyone please stay after
23 lunch if you really want to get the really good stuff.
24 But there were two questions that arose that I believe
25 are properly placed to the aggregator. I'm with a

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1 company called m-Qube, Incorporated, which is one of the
2 larger and longer lasting aggregators for commercial
3 messaging and billing.

4 One question was is it possible to spoof the
5 so-called double opt-in process. What each of the
6 methods that Jennifer outlined have in common is that in
7 security parlance the opt-in for a carrier charge is a
8 two-factor authentication comprised of something that you
9 know and something that you have. And that's quite
10 unique for our industry when compared to most other
11 payment processes. So, that for example, when you swipe
12 your credit card in a store, it's one security factor,
13 single opt-in, something you have. When you use a credit
14 card online, it's generally considered one security
15 factor, single opt-in of something you know.

16 In these billing methods, we have the strength
17 of two-factor authentication, something you know, like
18 entering your phone number or entering a keyword and
19 texting it to a short code. And that's something you
20 have, a message sent back to your cell phone, and a way
21 for you to confirm that actually the message was received
22 at the handset. In terms of ways to spoof that, nothing
23 is invulnerable, and in our next panel we'll discuss any,
24 you know, missing holes that we, in our expertise, see.

25 There was another question about the

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1 transparency of the message logs of the opt-in records.
2 Again, the strength of this billing method is that it has
3 handset authentication comprised of messages to a cell
4 phone. Those message logs are possessed by the consumer
5 on their handset; they're possessed by the merchant on
6 their side; they're possessed by the aggregator that has
7 the complete set of the exchange of messages; and they're
8 also possessed by the carrier.

9 So, it's impossible for any one person in the
10 chain to lie about it if it ever goes into discovery, for
11 example, in litigation because all of those records are
12 always identical.

13 MR. DEITCH: Let me follow up on that. Dealing
14 with authentication, you said there are two parts: what
15 you know and what you have, in the first answer to the
16 question. What you know is a phone number, and what you
17 have includes the PIN that comes back. Couldn't problems
18 arise because, for example, a child could have the phone
19 and the PIN comes back to the child who's too young to
20 contract, or a third-party can have the phone because
21 here we're talking about what you know and what you have,
22 but it's not out-of-pocket type questions that only one
23 person are unique to answer. And I know no method is
24 perfect, but aren't there some potential holes with what
25 you're describing?

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1 MR. SEGE: Yes, I believe that, you know, there
2 are potential holes. I just -- I guess in theory this
3 method is superior to most other payment methods, which
4 are single-factor. In terms of a minor using a cell
5 phone to make charges, you know, this is sort of a larger
6 phenomenon, which is well accepted in our society in many
7 aspects of cellular telephone use. Families use phones;
8 children use phones; and they incur charges when they do
9 that. And this is not exactly an exception.

10 MR. POZZA: Thanks a lot, Alan. Well, we are
11 now out of time. It's time for lunch. This interesting
12 discussion will go on, and I hope everyone comes back
13 after lunch for the third panel, because there's still
14 lots to talk about. And thanks again to all of our
15 panelists. We really appreciate it. It's very
16 informative.

17 MR. DEITCH: Thank you very much.
18 (Applause.)
19
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24
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1 PANEL 3:

2 OTHER POSSIBLE STRATEGIES TO ADDRESS MOBILE CRAMMING

3 MS. MITHAL: Good afternoon. Welcome to the
4 afternoon session of our mobile cramming workshop. We
5 are here to discuss a couple strategies to address mobile
6 cramming, and we're speaking from 1:30 to 2:45. We have
7 seven panelists, as you can see, so we're going to try to
8 move quickly through the introductions. I'm Malini
9 Mithal, and I'm at the FTC.

10 MR. TRILLING: And I'm Jim Trilling, also at
11 the FTC.

12 MR. ALTSCHUL: Mike Altschul with CTIA.

13 MS. MITHAL: And I'm sorry, before the next
14 person speaks, Mike, you can speak for a little longer
15 than that. You can describe a little bit -- I know you
16 were on the earlier panel.

17 MR. ALTSCHUL: I'm a bit of a recidivist today,
18 so, but CTIA both represents the wireless industry and
19 has a key role in this area of short codes and premium
20 messaging, both by administering the short code program
21 and by doing monitoring on behalf of the industry and its
22 300 million-plus consumers.

23 MR. ASHEIM: My name is Dave Asheim. I'm the
24 CEO and founder of a company in San Francisco called Give
25 by Cell, and we are one of the application service

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1 providers that Jim Manis talked about in the first
2 session. We work with thousands of organizations
3 providing mobile services around the world and have, oh,
4 probably 500 to 1,000 different charities here in the
5 U.S. using the premium billing for raising funds.

6 And this is such an important topic to us
7 because every day we receive 20 to 30 phone calls from
8 non-profits who are really struggling in today's economy
9 to try to survive, and this whole mobile giving premium
10 short code has really been tremendous for them. So, we
11 expect that to really be just growing by tenfold over the
12 next four or five years.

13 MS. DERAHSHANI: My name is Delara
14 Derakhshani. I serve as Policy Counsel for Consumers
15 Union, the policy and advocacy arm of Consumer Reports.
16 Our organization has been involved in the issue of
17 cramming since it first emerged as a problem. For years,
18 our subscribers have told us of mystery fees appearing on
19 their landline and wireless bills. And for years we've
20 alerted readers to the practice of cramming and have
21 advised them to be extra vigilant in reviewing their
22 landline and mobile phone bills for unexplained fees. We
23 were glad that the FCC moved forward in its landline
24 cramming proceeding last year, however, we believe more
25 proactive measures are necessary in order to prevent

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1 these charges from ending up on consumers' wireless
2 bills. To that end, we'd like to thank the FTC for its
3 leadership on this issue and for actively participating
4 in last year's proceeding before the FCC and for bringing
5 its first enforcement action against mobile crammers.

6 MS. FOLLANSBEE: Hi, I'm Lynn Follansbee, and
7 I'm an attorney advisor in the Policy Division of the
8 Consumer and Governmental Affairs Bureau of the FCC. The
9 Consumer and Governmental Affairs Bureau is really the
10 branch of the FCC that handles most of the cramming
11 issues. The Commission handles cramming under its truth
12 in billing rules, which since 2005 have required landline
13 and wireless carriers to provide the name of a service
14 provider associated -- with the bill clearly and
15 conspicuously, identify any change in service provider on
16 the bill clearly and conspicuously, provide brief, clear,
17 and non-misleading plain language description on the
18 bill, and for wireline carriers, separate changes have to
19 be separated by service provider and identify amounts
20 that need to be paid to avoid disconnection.

21 Last year, we adopted some new rules that
22 essentially required non-carrier third-party charges to
23 be in a separate and distinct section on the bill and for
24 there to be a separate subtotal. At the time, the
25 Commission decided not to require that of wireless

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1 carriers because we didn't see cramming as as big a
2 problem, but we did note a trend and adopted a further
3 notice, and that proceeding is still ongoing.

4 Also at the time that we adopted the order in
5 2012, we had a lot of carriers that actually -- telephone
6 companies that came to us and voluntarily agreed to stop
7 third-party billing for non-telecommunication services by
8 the end of 2012. So, we've seen a lot of that curbed by
9 the industry on its own.

10 We are still currently handling each cramming
11 complaint individually. They are mediated if
12 appropriate, and the degree of the Commission's
13 involvement essentially depends on whether or not we have
14 jurisdiction over the complaint of company. If the
15 complaint of company is the carrier, then we address the
16 alleged violator and ask them to respond to the FCC and
17 directly to the consumer.

18 We are pleased to be participating in this
19 workshop. We had our own cramming and bill-shock
20 workshop a couple of weeks ago, and we heard from a lot
21 of folks that they thought that wireless cramming was
22 under reported. So, we're happy to continue to look at
23 this issue and see what we can do from here. Thank you.

24 MS. NIEJADLIK: Hi, I'm Martine Niejadlik with
25 Boku Mobile Billing. I'm the Compliance Officer for our

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1 company, and I also am the VP of Customer Support. I
2 come today representing the commercial space, and we are
3 an aggregator of sorts, but a little different from a
4 sort of historical aggregator as you might think about
5 them.

6 And I think, you know, one of the things that's
7 really important about our service and the way we operate
8 is we not only do merchant vetting, but we work with
9 merchants who are the likes of Facebook, Sony, EA,
10 Electronic Arts. These are folks who have existing
11 payment methods on their site today, they accept credit
12 cards, they accept checks, they accept those sorts of
13 things, and they want to accept mobile billing as an
14 option. We provide that service to them.

15 Why do they want to accept mobile billing as an
16 option is because consumers want to use it. We have done
17 some surveys ourselves, and about 50 percent of the
18 people who use our service don't have other good ways to
19 pay. And about 50 percent of the people who use our
20 service use it because they want to. It is private; it
21 is secure; they like it; and we offer that option to
22 them.

23 So, our transactions are always consumer-
24 initiated. These are people looking to buy something.
25 We're not marketing people; we're not Googling -- putting

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1 ourselves in Google search or any of that sort of stuff.
2 They are coming to a website, they want to make a
3 purchase, they're choosing mobile billing as the choice
4 method for making that purchase. And then we are hosting
5 the payment panel and the opt-in.

6 So, merchants who -- the Texas case was very
7 enlightening to me this morning. It seems like a clear
8 case of UDAP violations in my mind, but we do that on the
9 merchant's behalf, so merchants can't decide they're
10 going to put a bunch of blank space in the text messages
11 because we are in control of that. So, that's a little
12 bit about our service, I think.

13 You know, this morning we heard a lot about
14 charities and commercial cramming, and I want to sort of
15 get everybody to think about the commercial business
16 really having different flavors to it as well. There are
17 the folks out there who are doing the types of billing
18 that are getting classified into cramming. We don't like
19 cramming; we don't condone cramming. We feel like, you
20 know, we're getting mixed up a little bit in some of that
21 because our service is quite different, as I described.

22 So, just a little bit about my history quickly,
23 too. My prior three jobs before joining this mobile
24 billing startup thing is I managed the fraud detection
25 function at Paypal, and prior to that ebay, and prior to

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1 that Amazon. So, I am all about protecting consumers and
2 preventing fraud. It's not an easy job, but I think we
3 need to all work at it. So, we'll talk more about that
4 today. So, thanks very much.

5 MS. TIANO: I'd like to start by thanking the
6 FTC for hosting this workshop and for continuing to focus
7 attention on this issue. Chairman Rockefeller remains
8 very focused on this issue, and I know that he is
9 appreciative of all of your efforts.

10 My name is Melanie Tiano. I'm Investigative
11 Counsel to the Senate Commerce Committee. And in 2009,
12 when Senator Rockefeller took over as Chairman of the
13 Commerce Committee he created an office of oversight and
14 investigations, which is where I work. And he wanted to
15 create an office with a team that was dedicated to
16 identifying and investigating instances of waste, fraud,
17 and abuse in the public sector and also of consumer harm
18 in the private sector. And I think that we can all agree
19 that cramming falls squarely within this mandate.

20 After years of consumers frequently complaining
21 about unauthorized charges on their telephone bills and
22 state and federal law enforcement agencies, especially
23 the FTC, for years had been bringing cases against
24 companies engaged in cramming, but the problem didn't
25 seem to be going away. So, in 2010, Chairman Rockefeller

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1 opened an investigation into cramming on wireline
2 telephone bills. And through that investigation we found
3 that third-party billing on the wireline telephone bills
4 was a multibillion-dollar industry, and a large
5 percentage of the third-party charges that were placed on
6 consumers' telephone bills were, in fact, unauthorized.
7 Further, we saw that the majority of the companies that
8 were providing these so-called services to consumers, and
9 the services I think we all know consisted of enhanced
10 voicemail, email accounts that also sent you weekly
11 emails with fashion tips and celebrity gossip updates,
12 were illegitimate and appeared to be created solely to
13 exploit the third-party billing system.

14 In response to our findings, the major wireline
15 providers did take positive steps to attempt to curtail
16 cramming on the wireline bills. At the time of our
17 investigation, it made sense for us to focus on wireline
18 cramming as opposed to wireline and wireless because
19 there was such an extensive history of cramming on the
20 wireline side and there were distinct differences between
21 the technologies of wireline and wireless.

22 However, throughout and following our
23 investigation, our office saw increasing indications that
24 cramming was affecting wireless consumers as well. So,
25 to examine this issue more closely, Chairman Rockefeller

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1 sent letters to the four major wireless carriers, AT&T,
2 Verizon, Sprint, and T-Mobile, asking them for
3 information about who they allow to place charges on
4 their customers' telephone bills and also any processes
5 and steps that they had in place to curtail cramming on
6 wireless bills.

7 Following continued reports that instances of
8 wireless cramming were increasing, this year the Chairman
9 sent follow-up letters to the carriers, this time asking
10 for information related to consumer complaints and also
11 for the information that they submit to the California
12 Public Utilities Commission concerning charges and also
13 refunds. And he also sent letters to five billing
14 aggregators asking them questions related to their role
15 in the industry and any consumer complaints that they
16 receive.

17 This investigation is currently ongoing. Also,
18 last Congress, Chairman Rockefeller introduced the Fair
19 Telephone Billing Act of 2012, and this bill would have
20 prohibited most third-party charges from being placed on
21 wireline telephone bills and would also require the FCC
22 to impose rules protecting wireless consumers.

23 As I said, the investigation into wireless --
24 cramming on wireless telephone bills is currently
25 ongoing, so I won't be able to comment on the specific

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1 information that we're receiving, but I do look forward
2 to contributing what I can to the questions that will be
3 posed on this panel. And I thank the FTC again for
4 inviting us to participate in this very important
5 discussion.

6 MR. SEGE: My name is Alan Sege. I'm with a
7 company called m-Qube, Inc., and we're one of the --
8 we're one of the predominant messaging and carrier
9 billing aggregators in the United States with direct
10 connections to every single mobile operator, most of whom
11 do enable one form or another of carrier billing for
12 third-party charges.

13 Now, I'm here today -- first of all, I'd like
14 to thank the FTC for inviting us. We're very honored to
15 be here. Consumer protection is most of what we do. We
16 are vendors to the carriers, and enforcing the regimen of
17 two-factor authentication and the marketing rules are
18 really the core part of our jobs to them. At the same
19 time, we also serve merchants, so we actually are the
20 ones who administer and supervise this system on a day-
21 to-day basis. So, we do have quite a bit of information
22 about how it works and, you know, we're quite proud of
23 the strengths of it. If there's any way in which
24 consumer protection can be increased, we definitely
25 always are at the forefront of those ideas.

141	<p>1 Over the years, we have tried to assume a 2 leadership position in addition to our role as vendors to 3 the carriers to come up with new ideas and new ways to 4 enforce consumer protection throughout our industry. So, 5 we participated in the formation of the very detailed and 6 also very comprehensive consumer best practices rules. 7 They've been characterized a little bit today, but 8 actually I think what we need to actually, you know, read 9 and familiarize one's self with the rules before -- you 10 know, before opening critiques. 11 The question is how are they implemented. And 12 the question is how are they monitored and enforced. So, 13 another thing that we've introduced in the industry, we 14 performed for many years, is the vetting of merchants, 15 which is something that we've done for many years, we 16 continue to do today, and that's become an industry 17 standard. 18 We also have always performed in-market 19 monitoring, not only of the marketing, but also of the 20 actual messaging and opt-in logs to detect trends in that 21 -- that could be of concern. We act against when we see 22 merchants whose patterns seem to be of concern. 23 Sometimes it's at the initiation of the carriers, and 24 more often it's at our own initiative. 25 We've also -- it's also -- consumer protection</p>	143	<p>1 messaging side the capability, and this is a brand new 2 thing at the carriers, as well, for using short codes in 3 commercial messaging to send not just 164-character text 4 messages, but to send video, audio, long text, so that 5 now advocacy groups, consumer groups, grass roots 6 organizations, will be able to mobilize using a very 7 effective and very prevalent means for all consumers, 8 which is messaging to their cell phones. 9 You know, on the billing side, in addition to 10 the premium SMS billing, we also offer the newer form of 11 carrier billing called direct carrier billing for major 12 organizations who -- for whom carrier billing is 13 critical. So, we offer carrier billing for Skype, so 14 that when you use Skype you can now have it applied onto 15 your phone bill. 16 We offer carrier billing for major news 17 publications whose industry is struggling to remain 18 alive, professional journalism industry, by providing 19 consumers an easy and private way to make quick 20 transactions to make their purchases also through carrier 21 billing. 22 So, this is an exciting new transaction channel 23 for merchants and consumers. For merchants, it provides 24 convenient, verified, and quick transactions. For 25 consumers, it provides strong authentication. And</p>
142	<p>1 is a big part of what we do, and also a big part of our 2 agenda, if we have one, is to advance the use of this 3 channel in our society for all kinds of ways that improve 4 our experience as citizens. So, from early 2010, we were 5 called upon in an emergency basis to process the 6 charitable contributions to the Haiti campaign. We had 7 to unroll high-capacity buy-ins and funding for major 8 charities in a period of a couple of days, including 9 nationwide telethon, telecasts in every single major 10 network. And we did succeed in processing over \$40 11 million in charitable contributions during the 10 days 12 following the Haiti earthquake. 13 Last year we introduced a concept at the 14 Federal Election Commission to permit citizens for the 15 first time to support the candidates of their choice by 16 texting a keyword to the candidate's short code. It's a 17 program that permits federal political committees to take 18 all of their marketing and turn it into mass fund 19 raising. The program was very successful. Again, we had 20 very broad support from the carriers who had to act 21 quickly in a regulatory environment that was new for 22 them. And that program was a great success, and we 23 continue to have great interest from the political 24 community in that program. 25 In addition, now we're -- we've added in our</p>	144	<p>1 premium SMS also is strong authentication because it's 2 two-factor authentication, verifying not just that 3 someone knows their account information, but that someone 4 has an authenticated object present at the time of the 5 transaction, which is their handset. 6 So, I also come equipped to make an 7 announcement about an improvement in policy that we've 8 now decided to publicize today with respect to premium 9 SMS especially. I will touch upon a couple of things 10 from the previous sessions. There was a lot of 11 discussion of refund rates. To us, refund rates are not 12 indicative of cramming necessarily. So, I don't know 13 that much about the Wise Media case, but for example, a 14 refund rate of 30 to 40 percent indicates to us that 15 consumers were receiving messages telling them that 16 they'd been billed, causing them to call up for refunds. 17 So, I'm sure that Wise Media is a horrible case; on the 18 other hand, in a sense it's a success case if the refund 19 rates were that high. Our channel was used, and billing 20 was married to messages, and consumers were aware and 21 demanded refunds. 22 So, there are other reasons why refund rates 23 are not necessarily the best indication to us in our 24 experience on a day-to-day basis. First of all, when a 25 consumer -- as I mentioned, when a consumer actually</p>

<p style="text-align: right;">145</p> <p>1 receives their premium SMS PIN message and the welcome 2 messages, those are times when they ask for refunds, so 3 those are supported by high refund rates. Whereas if 4 they were not to see those or those were not properly 5 configured, one could see lower refund rates. 6 Most of these programs come, like many Internet 7 programs, with a money-back guarantee, in which people 8 are encouraged to essentially try before they buy. Also, 9 other channels for mobile media just do not permit 10 refunds, so purchasing on the various operating system 11 stores, there's no way to get a refund, whereas in our 12 channel refunds are liberally granted. 13 And all of the rules and mechanisms we have are 14 premised on our concept that we offer a payment means, 15 which is much more authentic than other payment means, 16 like a credit card, either credit card not present or 17 credit card present transactions. Our channel is much 18 more authentic. But the problem -- the issue that we 19 must address and which we always try to address is the 20 fact that consumers may not be familiar with the fact 21 that their cell phone bills can be charged for -- you 22 know, for these kinds of purchases. So, that puts us in 23 a position where we always favor much higher, much 24 greater degree of disclosure than a normal online or 25 credit card transaction.</p>	<p style="text-align: right;">147</p> <p>1 I've seen is contained in a ex parte letter that the 2 California Public Utilities Commission filed with the FCC 3 earlier this year comparing the refund levels from 4 wireless carriers reported to them under their state 5 rules between 2011 and 2012 calendar years. In 2012, the 6 refund rates had dropped in half. 7 MS. MITHAL: And another question, just to add 8 to this topic, is should there be some kind of national 9 requirement of reporting regarding refund rates. I know 10 that California has that registry that you're talking 11 about. So, if anyone wants to answer either of these 12 questions about whether refund rates are meaningful and 13 whether they should be reported nationally. 14 MS. NIEJADLIK: I have a few comments, 15 actually. And I'm going to use a little bit of 16 experience from sort of the credit card space to talk 17 about this a little bit. First of all, one of the things 18 that is pretty clear from what we see in our data is 19 that, as Mike alluded to, there are not consistent 20 policies that are being implemented at the carrier level, 21 nor at the aggregator level today. 22 And, so, I mean, this is like real, real 23 discrepancies, to the extent of one being, you know, 4X 24 the other one, very huge numbers. And, so, if you -- I 25 think one of the first things we have to do is we have to</p>
<p style="text-align: right;">146</p> <p>1 MS. MITHAL: And, actually, Alan, you're 2 bringing up a topic that I think some other panelists 3 want to discuss, that's the topic of refund rates. So, 4 I'm actually going to dive right into that. 5 So, we are, as we know, talking about, you 6 know, general additional strategies that could be used to 7 reduce mobile cramming. And a topic that earlier 8 panelists touched on is the idea of using refund rates to 9 see if it's appropriate to suspend or terminate certain 10 content providers with high refund rates. Does anyone 11 have any comments about that? Mike? 12 MR. ALTSCHUL: Well, I can report, the carriers 13 are doing exactly that. They do monitor the consumer 14 complaints and refunds and use it as a trigger. 15 Different carriers, I understand, have different 16 thresholds, but in talking about refund rates, we also 17 have to remember this is a metric that's uniquely within 18 the carrier's control. A carrier can be very, very 19 generous in providing customers with refunds and 20 extending those refunds over very large numbers of months 21 if charges have been on a bill for some time, increasing 22 the refund rate, being consumer-friendly, having a larger 23 number, a larger refund number than a carrier that is not 24 as generous in providing refunds. 25 Probably the most significant real data that</p>	<p style="text-align: right;">148</p> <p>1 sort of figure out what an appropriate refund policy 2 looks like, and that doesn't mean every time the customer 3 calls they're going to get a refund either. I think it 4 really does need to balance potential abuse of the system 5 with, you know, giving the consumer refund when it's 6 warranted. I mean, they absolutely should be protected 7 when it's warranted and shouldn't be getting refunds when 8 it's not warranted. So, that would be the first thing, I 9 think the policies are inconsistent. 10 Secondly, one of the things that works really 11 well in the credit card space that I don't see as much of 12 in the mobile billing space today is clear reason codes 13 as to why the consumer is being refunded. That's 14 something that, you know, is always categorized and goes 15 through a very different process. If you call up your 16 credit card and you tell them that fraud's been 17 committed, you will have a different process than if a 18 merchant didn't deliver you some good that you purchased. 19 I think we need to get there here as well. 20 And then the third thing I'm seeing is an 21 inconsistency, also, and perhaps an incorrect, I would 22 argue, measurement of refunds. And what I mean by that 23 is that I'm seeing providers who are looking at refunds 24 in a particular month as the numerator of the transaction 25 -- of the equation and dividing that by the activity in</p>

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1 that month. And the reason that's problematic is because
2 a lot of the people who are using the system to conduct
3 the billing have changes in volumes from month to month.

4 And, so, if my volume is going up, and I'm
5 using volume from, I'll just argue March, and I'm
6 comparing it against refunds for March, which are
7 arguably, many of which from transactions that are in
8 January, I now have an understated refund rate and vice
9 versa if my business is going down, I have an overstated
10 refund rate, which could cause, you know, red flags to go
11 off when it's not warranted. And, so, I think the
12 calculation there also needs a bit of work.

13 Once we fix all that stuff and, you know, and
14 also really educate consumers properly to call, where to
15 call, and how to get a refund and all that sort of stuff,
16 and they get it when it's appropriate. That might be the
17 point at which we consider, you know, what's in
18 inappropriate refund rate. I don't think we're there
19 yet, frankly, to be able to come up with that number.

20 MR. SEGE: I would also say that in terms of
21 refund rate, you know, it definitely is a metric that,
22 you know, an operator, someone who actually conducts the
23 business, can use in conjunction with other data to reach
24 conclusions. There's no doubt about it. However, it's
25 really unregulable, because businesses will make their

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1 own decisions based on any number of factors about their
2 refund polices, so that what it means for one business or
3 one carrier means something entirely different for
4 another business or another carrier.

5 If it were regulable, I don't believe it's
6 something that could be done by government regulation. I
7 think it's the kind of thing that maybe could be with
8 cross-carrier or industry regulation, but even there I
9 wonder whether there will be unfair trade, you know,
10 concerns about the companies collaborating on an economic
11 metric like refund rates.

12 So, yes, we do use it as data in our analysis
13 in our investigations and in our decisions about
14 suspending and terminating and imposing liquidated
15 damages on a commercial level, but it doesn't seem to be
16 useful either for government regulation or for industry
17 self-regulation too much.

18 MS. MITHAL: And Delara?

19 MS. DERAKHSHANI: Sure. So, we actually do
20 think that refund rates do inform the discussion of just
21 how widespread the problem of mobile cramming is. We do
22 think that more needs to be done, but one thing that I
23 will note is that this -- the refund rate mechanism
24 really only identifies the problem after it has occurred.
25 And we really strongly believe that more proactive

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1 measures need to be taken to address the issue before it
2 happens, before consumers are hit with those charges.
3 So, I will put that.

4 MS. MITHAL: And Dave?

5 MR. ASHEIM: In the non-profit space, I think
6 Jim mentioned earlier this morning that refund rates are
7 1 to 1.5 percent. And there are many reasons for that,
8 but one or two reasons that come up, the charities, of
9 course, are trying to maintain a strong relationship with
10 their prospective donor, so they are really going out of
11 their way to make sure everybody knows what this is
12 about. They will put the terms and conditions on their
13 website, on all printed material, and even many live
14 events where they're raising money, they'll actually read
15 this, this long four or five sentences of terms and
16 conditions to make sure that when you get your bill
17 you'll see this on the charge. So, I think one thing
18 that's made them so successful in this is their full
19 disclosure.

20 MS. MITHAL: Okay, and I'm actually going to
21 move on to the next question. Jim, did you want to --

22 MR. TRILLING: We want to continue to talk
23 about refund rates but maybe with a little bit of a
24 different angle. Mike, you've mentioned that the
25 carriers, and Martine alluded to this, different carriers

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1 and different aggregators may have different refund rate
2 thresholds before they take action against a content
3 provider.

4 Once an aggregator or a content provider does
5 terminate billing -- I'm sorry, once a carrier or an
6 aggregator terminates billing for a content provider, do
7 the carriers reach out to the consumers who've been
8 charged in the past to let them know that that's
9 happened? And in doing so, do they offer them a refund
10 for all the months they've been charged? And, if not, is
11 that something that they should be doing?

12 MR. ALTSCHUL: Well, I can't give you an
13 authoritative answer across all the carriers and all the
14 customers, but carriers have reported that when they do
15 detect out-and-out fraudulent cramming, and I mean, can
16 identify the pattern, yes, they do go back, they look at
17 the premium SMS charges on consumers' bills who have not
18 come forward and do proactively, in appropriate cases,
19 act to remove and reverse those charges, not in every
20 case, but in proactive cases.

21 Just one quick word, though, about different
22 carriers and different thresholds. Much as in the retail
23 space, there is competition on refund friendliness.
24 Everybody knows that Nordstrom's and L.L. Bean are very
25 proud of a no-questions-asked refund policy. You hear

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1 this maybe apocryphal story they even take back goods
2 that they've never sold with a smile to keep customers
3 happy.

4 Different carriers use this as a method of
5 competition as well. And a carrier with a very generous
6 refund and a very good consumer-facing policy is going to
7 have a higher refund rate than a carrier that may hold
8 consumers to a higher standard in granting refunds. And
9 you certainly wouldn't want the unintended consequence of
10 making this a key metric in dampening those carriers and
11 those business practices which actually are consumer-
12 friendly but lead to higher refund rates such as what you
13 were suggesting, Jim.

14 MR. TRILLING: And, Melanie, did you have
15 something to add?

16 MS. TIANO: Yeah, and I would just like to
17 quickly go back to the original refund rate discussion
18 that we were having. I know that there's a lot of talk,
19 has been a lot of talk, about percentages, and I know in
20 the last panel someone mentioned that credit cards, once
21 you've exceeded a 1 percent refund rate, that they start
22 to suspect fraud. And, you know, we examined the
23 California data and we saw that around 13 percent of all
24 third-party charges that were being placed were being
25 refunded.

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1 And, you know, everyone argues that they can't
2 say for sure that each one of those is a cramming
3 instance, but, you know, when you look at it as
4 percentages, even 13 percent may not sound that high, but
5 when you look at the actual numbers, hundreds of
6 thousands of complaint -- of refunds were being made each
7 month in one state. And, so, even if you don't think
8 that 13 percent is an alarming percentage, it's a lot of
9 refunds that are being made. And if you look at \$10 per
10 charge, which is the average, that's a lot of money that
11 is being refunded to consumers each month.

12 MR. TRILLING: Alan, did you have something to
13 add?

14 MR. SEGE: Oh, yeah, we should bear in mind
15 that quite a number of these programs in their actual,
16 you know, terms and summary terms very blatantly disclose
17 to consumers is that this is a 30-day or 60-day money-
18 back guarantee kind of situation, and this is, you know,
19 part of how they market. Maybe that marketing could be
20 criticized, but it does give rise to people taking
21 advantage of those offers and availing themselves of the
22 money-back guarantee.

23 Also, I'm not sure about the credit card
24 analogy. And there's different kinds of refunds and
25 chargebacks on credit card bills. But I wonder whether

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1 anyone has looked even at the 13 percent number and
2 compared it to credit card world purchases of software or
3 content or soft goods to determine is 13 percent
4 unusually high in a similar situation through other
5 billing mechanisms. I don't know the answer, but I'm
6 willing to bet that it wouldn't be so very different.

7 MS. MITHAL: And does anyone have any thoughts
8 about whether the credit card industry is a good
9 comparison? I mean, is there a reason that consumers are
10 more or less aware of charges on their credit card bills
11 versus phone bills? Mike?

12 MR. ALTSCHUL: Well, one big difference is
13 there aren't many, you know, teenagers with credit cards
14 that their parents have given them, but there are on
15 family plans authorized users of the family plan account
16 who are in their teens and may not have the same judgment
17 that their parents upon receiving a bill may have in
18 second guessing their children's judgment. That doesn't
19 happen in the credit card world.

20 MS. MITHAL: And Martine.

21 MS. NIEJADLIK: Yeah, I mean, I don't think you
22 can compare the -- people get credit cards because they
23 want to use them as a billing device. That's necessarily
24 the reason why people get their mobile phones. Now, many
25 people may want to use them as a billing device, but it

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1 doesn't necessarily equate. And, so, there's no doubt
2 that consumers are not as aware, certainly today, that
3 their mobile phone is a billing device. And I think
4 there's a lot more consumer education that needs to
5 happen.

6 I also think there's a lot more analysis that
7 needs to happen as I was sort of alluding to before.
8 Another thing that the credit card companies do is they
9 classify merchants into codes, and they look at rates via
10 codes. And there's different expectations if you are,
11 you know, an Internet merchant selling books than if you
12 are a, you know, physical goods merchant and you have a
13 storefront. It's just very different.

14 And I don't think we've really segmented our
15 industry enough. We don't even have enough experience,
16 frankly, yet, but certainly we haven't segmented it
17 enough to really understand that problem well, as I sort
18 of alluded to before. I mean, I think the types of
19 commercial, you know, merchants that we work with, I
20 mean, we're not shutting down Facebook, for example,
21 because they have too many refunds because they're
22 cramming on people's bills. Like that's just not
23 happening.

24 And, so, even if they have refunds that are
25 occurring, which, by the way, to Alan's point, like maybe

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1 a good thing, it would be worse if there were no refunds
 2 occurring and people were unhappy with the charges that
 3 were on their bills. But I don't think that's necessary
 4 -- I mean, I do agree completely. It's a great
 5 indicator, and people should be watching it. Anybody in
 6 this space should be watching it and should be taking
 7 action and at least looking at it as an indicator to
 8 whether an investigation needs to be conducted, you know,
 9 further than that. But I don't think an automatic, you
 10 know, 8 percent or 13 percent or whatever the numbers are
 11 we're throwing out there right now would be appropriate
 12 at this time.

13 MS. MITHAL: So, is there a better way to
 14 calculate the refund rate? Should content providers be
 15 providing this information to carriers? Should carriers
 16 be providing this information to law enforcement?

17 MS. NIEJADLIK: Let me address that quickly,
 18 actually, because, by the way, Boku operates in 68
 19 countries on over 260-something, I think, carriers now.
 20 One of the things that we've done in the U.S. over the
 21 past few years is we've established these direct
 22 connections to carriers, and so we bill via the direct
 23 connect as opposed to billing via premium SMS.

24 And one of the features that offers us is the
 25 access to a refund API. And, so, instead of having to go

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1 out of band and issue refunds via, you know, a check and
 2 you give me your bank account and all those types of
 3 things, we can actually issue refunds directly back to
 4 the carrier bill now. I've just got a little tool, I can
 5 push a button, and a refund shows up on the consumer's
 6 carrier bill. And what that does is it gives the carrier
 7 also visibility into the fact that these refunds are
 8 occurring.

9 Now, whether they should be reported outside of
 10 that, potentially, but, you know, I think at least now
 11 the carrier's got a full picture, when those types of
 12 tools are being used, and we're seeing a lot of advances
 13 like that in the space. I mean, we're just still -- we
 14 believe -- Jeff Bezos sort of used to say to us it's
 15 still day one, it's still day one. And I was like,
 16 please, can it be day two one day. But like we actually
 17 still believe that, you know, this industry is in its
 18 infancy, and those types of things are, you know, over
 19 time, just getting better and better and better.

20 MS. MITHAL: And Delara?

21 MS. DERAKHSHANI: So, while I won't get into
 22 the specifics of exactly which entity should be
 23 responsible to whom and for what purpose, I will say that
 24 we strongly believe that all entities in the marketing
 25 and billing chain do have a role to play in ensuring the

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1 integrity of the third-party marketing and billing
 2 process. You know, nobody should be let off the hook,
 3 especially when all these entities are deriving money
 4 from the process.

5 MR. ALTSCHUL: I just wanted to answer the
 6 portion of your question that went to carriers providing
 7 -- carriers and everybody in the system here providing
 8 information to law enforcement. What we're talking about
 9 in many of the instances that you've heard today is just
 10 out-and-out fraud. These are crimes. And carriers and
 11 aggregators have been cooperating with both federal and
 12 state consumer protection authorities who do have the
 13 resources to bring and prosecute these fraudsters and
 14 continue to support those investigations wherever they
 15 identify them and can be of help.

16 MR. TRILLING: And, Alan, maybe we can weave
 17 your comment into sort of adding this to the
 18 conversation. Martine, you indicated that there may be
 19 better metrics that can be used than the metrics that are
 20 currently being used. You alluded to comparing refunds
 21 in a particular month to the charges in that particular
 22 month. What other types of measures should be used and
 23 where should those measures be reported in order to help
 24 control cramming?

25 MS. NIEJADLIK: Again, I just would reiterate I

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1 think it's important to segment the population. That's
 2 an important aspect of looking at the actual rate. You
 3 know, should there be other vehicles for consumers to
 4 report? I mean, we, for example will look at contact
 5 ratios, so these are just instances of consumers
 6 contacting us with any sort of complaint. It may end up
 7 in a refund case; it may not.

8 I would say, you know, one other thing in the
 9 credit card space that I find to be very misleading is
 10 that what tends to get reported, particularly from public
 11 companies, is their chargeback rate or their loss rate.
 12 And, so, what's not getting reported is all of the fraud
 13 that's attempted on their platform that's being
 14 prevented, which is what my previous three teams used to
 15 literally spend our entire lives doing. And, so, the
 16 fraud rate on credit cards is actually significantly
 17 higher than what you'll see in the actual chargeback
 18 rate, and that's because much of the fraud is being
 19 prevented.

20 I think in mobile billing, and one of the
 21 reasons I joined Boku is because -- and Alan's talked
 22 about this a couple of times -- the type of
 23 authentication that's occurring in mobile billing is a
 24 step function better than in other at least online
 25 payment methods. I'm not going to speak to proximity

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1 payments where people are standing in front of a
2 merchant, but certainly online.

3 You know, when you use your credit card, or
4 let's say somebody uses your credit card today to buy
5 something, your credit card doesn't light up in your
6 wallet and start beeping and require you to push a
7 button. It doesn't do that. But when the mobile billing
8 is occurring, your phone is lighting up, and it is
9 requiring you to do something. And that is a very unique
10 aspect of the system that really does make it more
11 secure. And I think consumers actually really like that,
12 as well. I mean, security is definitely something that
13 we want from them, also.

14 So, nothing is bulletproof. I mean, we should
15 never strive, I think, to have a 0 percent fraud rate in
16 anything. You know, there's counterfeit cash out there
17 and counterfeit checks, and with any payment method you
18 have there's going to be some level of fraud occurring,
19 but certainly we should figure out exactly where the
20 problems are occurring and target rules to address those
21 problems while allowing the legitimate business to go
22 through. I think that really should be everybody's goal.

23 MR. TRILLING: Alan, did you have a comment
24 before we switch topics?

25 MR. SEGE: Yeah, there was one question about

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1 reporting suspicious activity to law enforcement. That
2 is something that we do. And when we've had -- we've had
3 a good degree of success with that. In terms of other
4 metrics besides refund, you know, really we have two
5 kinds of security techniques, like I guess any company
6 who's a payment processor, you know, like us. We have
7 security techniques that -- we have security techniques
8 that whose strength comes from the fact that they're well
9 known.

10 And double opt-in is really -- is really that.
11 And then we have security techniques whose strength comes
12 from the fact that they arise out of our rich data and
13 our ability to analyze it, detect trends. Now, that
14 second one is really like all of these other things, like
15 refund rates, like monitoring, like auditing, it's post
16 fact, it's after bad activity has taken place, then
17 we're very good at identifying it and stopping it.

18 So, I was kind of hoping for this panel to also
19 be able to discuss any way of improving our security
20 techniques before transactions initiate. And that -- to
21 us, that's valuable. That's valuable turf. And we have
22 techniques that are available to us in this industry that
23 we believe are not exploited right now which we're
24 prepared to announce a new policy on.

25 MR. TRILLING: Perhaps we can work that into

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1 talking a little bit more specifically about the double
2 opt-in process. We talked this morning about the
3 different modes of handling the double opt-in process.
4 Are they all equally effective? And what can be done to
5 improve any of them?

6 MR. ALTSCHUL: Well, from some of the examples
7 we saw, we're constantly learning how to be better and
8 more effective in our vetting, media monitoring, because
9 obviously to opt in you have to be knowledgeable and
10 informed and the information particularly on the web
11 disclosures needs to be clear and conspicuous as the best
12 standards require.

13 Just as an aside, where there's a little
14 snickering in the audience on the last panel about the
15 125-pixel requirement, which was a technical requirement,
16 we saw how easy it was to evade or deceive. That came
17 from a state attorneys general consent decree with the
18 industry as the floor, so the industry has done through
19 learning the vulnerabilities and going back and improving
20 our protections for consumers is to go beyond and
21 actually not just measure pixels but look to make sure it
22 really is clear and conspicuous. It's this constant
23 improvement of our knowledge and tailoring our processes
24 that will best protect consumers in this space.

25 MR. TRILLING: Melanie, did you have a comment?

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1 MS. TIANO: Yeah, I just wanted to -- there's
2 been a lot of talk on this panel so far that the double
3 opt-in process is a far more secure process than using
4 your credit card online. And what we saw in the wireline
5 investigation, and that point still holds true in the
6 wireless, is that people don't protect their telephone
7 numbers.

8 And, so, even though there are policies in
9 place that require these companies to use the double opt-
10 in process, we've seen plenty of complaints, and the
11 Chairman highlighted some of them in the letters that he
12 sent out, where this process isn't being followed. And,
13 so, if since there are actors out there that aren't going
14 to follow the process, your phone number is so widely
15 available. And credit card numbers just aren't.

16 And if you buy something online with your
17 credit card, you need your unique credit card number; you
18 also need that little three-digit number that's on the
19 back. With your phone number, I mean, your phone number
20 is everywhere.

21 MR. TRILLING: Did you have a comment, Dave?

22 MR. ASHEIM: Yes, in the non-profit space, the
23 double opt-in has been in existence since that started,
24 but also one of the things that has made that I think
25 less subject to fraud is the set of documents and the

165	<p>1 requirements that a non-profit has to go through. There 2 are something like nine or 10 different documents that 3 have to be submitted to the Mobile Giving Foundation. 4 There are carrier rules on who can play and who can't 5 play. So, that does keep a lot of the bad actors out of 6 the whole game.</p> <p>7 MS. DERAKHSHANI: I was just going to reiterate 8 that we agree with what Melanie said. Oftentimes all a 9 crammer needs is an active cell phone number. And, so, 10 text spamming really, this is a big problem that's unique 11 to the wireless context, the issue of text spamming and 12 the fact that crammers, all they need is a phone number.</p> <p>13 MS. NIEJADLIK: Can I comment on that quickly? 14 MS. MITHAL: Yes. 15 MS. NIEJADLIK: I think if the rules are 16 implemented properly then obviously that you can have a 17 phone number, it's not going to work because you have to 18 have that second opt-in. I was, you know, not pleased to 19 hear about the negative opt-in sort of practices that, 20 you know, are being used, and I don't imagine anybody in 21 the room would condone that. I think it would be 22 important to figure out, you know, how to get any biller 23 to comply with the rules that do exist today. Part of my 24 role, you know, in compliance is to not only deal with 25 the regulatory compliance, the variety of rules out there</p>	167	<p>1 Witteman from the CPUC earlier today, where he said that 2 one things that frustrates their own investigation is the 3 concept of diffused responsibility for verifying 4 transactions through a channel.</p> <p>5 Actually, it is a criticism, if true, it would 6 be a fair criticism. And one thing that we've been 7 advocating for for quite some time is that when it comes 8 to carrier bill transactions, our strength is this 9 handset authentication, and that operational 10 responsibility for that handset authentication should be 11 very well protected and it should be in a single, 12 attributable source: the carrier and its vendor.</p> <p>13 In our case, you know, we are -- we feel that 14 we are responsible for that. We feel that we are 15 responsible for that consumer protection. And for quite 16 some time we've rejected merchants who refused to permit 17 us and only us to host the authentication itself. And 18 today, and most of -- throughout most of the carrier 19 ecosystem by now, over the course of the past year or 20 year and a half, have, you know, come into agreement on 21 this principle that aggregators should host the 22 authentication.</p> <p>23 There is a marginal phenomenon left and not so 24 much in our system at all but in other systems where an 25 aggregator does not host the authentication and it can</p>
166	<p>1 that we have to comply with, but also all the CTIA and 2 MMA, you know, rules as well.</p> <p>3 And as I mentioned before, I think, you know, 4 for folks like us, hopefully we're the good guys, you 5 know, who are on-boarding merchants. You would not be 6 able to come through our platform and do negative opt-in. 7 It wouldn't work that way. And, so, you know, maybe it 8 behooves us to spend a little bit of time and figure out 9 how to enforce making sure that the rules that have been 10 established, which I think, by the way, are a very great 11 set of rules, are actually being utilized.</p> <p>12 MR. ALTSCHUL: And just to be clear, negative 13 opt-in is not compliant with the industry best practices 14 and the monitoring of all the -- every premium SMS code 15 and the message flows has, again, been set up and now 16 looks at each of these premium subscription codes for the 17 message flow on a monthly basis to make sure that the 18 opt-in is an affirmative opt-in, not an opt-out or a 19 negative opt-in.</p> <p>20 MR. TRILLING: We want to go back to Alan to 21 expand on what you alluded to in terms of changes that 22 industry can take to make the double opt-in process even 23 more secure.</p> <p>24 MR. SEGE: Well, actually, I think that this 25 also -- a jumping-off point is a comment by Chris</p>	168	<p>1 very often be for very reputable merchants, and there are 2 good reasons why an aggregator will not host, but from 3 this day forward, we've made the decision that we will 4 not be offering transactions through our system where we 5 do not host the opt-in.</p> <p>6 MR. TRILLING: Okay, thank you. So, we've 7 talked about the double opt-in process and industry's 8 role in enforcing the double opt-in rules. Is there 9 anything about the double opt-in process that should be 10 enshrined into a rule on a national basis or into law?</p> <p>11 MR. ALTSCHUL: Well, once again, the problem 12 with rules is they become an inflexible rule. The 125- 13 pixel requirement from the Florida State AG consent 14 decree is a good example of a rule or a requirement that 15 was imposed through government regulation that was very 16 well intentioned at the time but just was a springboard 17 to the next level of deceptive practices by those who 18 affirmatively want to go out and deceive consumers.</p> <p>19 So, the industry at all levels should protect 20 consumers and to make this a trusted environment has to 21 go beyond those rules and constantly evolve its 22 monitoring in the way it protects consumers to make sure 23 that the protections are state-of-the-art as the threats 24 evolve accordingly.</p> <p>25 MS. DERAKHSHANI: So, we actually disagree that</p>

169	<p>1 rules would be inappropriate. Our experience in the</p> <p>2 landline context taught us that self-regulatory measures</p> <p>3 are not enough. And while we recognize that there are</p> <p>4 very many valuable uses for these third-party services,</p> <p>5 we at Consumer Reports and Consumers Union believe that a</p> <p>6 regulatory mechanism is necessary to help distinguish</p> <p>7 between these services that consumers actually want</p> <p>8 versus unauthorized charges that consumers did not ask</p> <p>9 for and may not even be aware of.</p> <p>10 MS. MITHAL: Okay. And, Alan, if you just want</p> <p>11 to make one last comment, and then we're going to move to</p> <p>12 the next topic.</p> <p>13 MR. SEGE: I did want to comment that, you</p> <p>14 know, the advantage that we have in industry self-</p> <p>15 regulation is most of what we do is prior restraints on</p> <p>16 speech. Most of what we do is requiring vendors to</p> <p>17 market things in certain ways and not market things in</p> <p>18 other ways. And we do that preemptively before they</p> <p>19 engage in the speech. So, it's a form of regulation</p> <p>20 which is swifter, but also it is a tool that a government</p> <p>21 cannot wield that we can.</p> <p>22 MS. MITHAL: Okay, so we actually have an</p> <p>23 audience question that is a nice segue into our next</p> <p>24 topic, and that's about blocking third-party charges. An</p> <p>25 audience member has asked: Why not change the default</p>	171	<p>1 mobile billing space, I can send the stop command to a</p> <p>2 short code at any point in time. I don't even have to be</p> <p>3 in the middle of a transaction, and it will automatically</p> <p>4 cancel anything that's in progress. This is something</p> <p>5 that's completely in the consumer's hands today, and we</p> <p>6 think, by the way, probably if we educated more,</p> <p>7 consumers may leverage more.</p> <p>8 But, no, I don't think blocks would be the</p> <p>9 appropriate answer. We are -- we're trying to really</p> <p>10 create a competitive environment where consumers have</p> <p>11 choices and options for payments, and we believe that the</p> <p>12 alternatives to mobile billing, particularly for those</p> <p>13 folks who don't have access to other payment vehicles,</p> <p>14 are things such as go to the store and buy a prepaid card</p> <p>15 and use that prepaid card online, which then, by the way,</p> <p>16 has a bunch of fees associated with it and your funds are</p> <p>17 going to expire after a certain amount of time, and all</p> <p>18 sorts of other negative implications. And, so, let's</p> <p>19 think about the alternatives for those folks before we</p> <p>20 decide what their default option should be.</p> <p>21 MS. MITHAL: And, Melanie --</p> <p>22 MR. ALTSCHUL: And just to be clear, carriers</p> <p>23 do offer blocks as an option for those customers who want</p> <p>24 to block either all charges on a family account or block</p> <p>25 charges on a specific device. And many carriers you need</p>
170	<p>1 for commercial third-party charges over PSMS so that</p> <p>2 there is a default block? Mike?</p> <p>3 MR. ALTSCHUL: Well, there is a default block,</p> <p>4 and that's what this double opt-in is all about. No</p> <p>5 premium charge can be placed on a customer's bill until</p> <p>6 they have affirmatively opted in at the time they are</p> <p>7 purchasing or seeking that service. So, the default is</p> <p>8 no charge can be placed on a consumer's bill until the</p> <p>9 consumer has affirmatively responded by texting, not just</p> <p>10 reading and opening an email, but affirmatively</p> <p>11 responding with an opt-in text.</p> <p>12 MS. MITHAL: And, Martine, did you have</p> <p>13 something to add?</p> <p>14 MS. NIEJADLIK: Yeah, I mean, we are -- we</p> <p>15 don't believe blocks is the answer. I think generally,</p> <p>16 by the way, when you're managing risks, blocks is</p> <p>17 something that is a pretty extreme action to take. The</p> <p>18 beauty of mobile billing in addition to the double opt-</p> <p>19 in, particularly with the type of implementation that we</p> <p>20 use, which is the proper type of authentication, is that</p> <p>21 consumers also have other controls in their hand.</p> <p>22 One of the things that's unique about mobile</p> <p>23 billing is the stop command. So, you know, in between an</p> <p>24 auth. and a settlement on my credit card, I don't get the</p> <p>25 opportunity to stop the charge from occurring. In the</p>	172	<p>1 to check with your own carrier also provide the ability</p> <p>2 to block specific short code, premium SMS codes, and</p> <p>3 campaigns.</p> <p>4 MS. MITHAL: And, Melanie, I think you had your</p> <p>5 card up.</p> <p>6 MS. TIANO: Yes. So, I would wholeheartedly</p> <p>7 like to disagree with the suggestion that the double opt-</p> <p>8 in process is a default block system. I think that there</p> <p>9 have been enough examples of the double opt-in process</p> <p>10 not working that that can't be considered a reliable</p> <p>11 blocking mechanism when there are this many ways to work</p> <p>12 around that system.</p> <p>13 As far as whether or not the default should be</p> <p>14 a block, I'm not at a place where I can say what the</p> <p>15 Chairman feels is the appropriate measure for that, but I</p> <p>16 will say that throughout the wireline investigation we</p> <p>17 saw repeatedly that, one, even if customers requested</p> <p>18 that a block be put in place after the fact it often</p> <p>19 didn't happen, and there were lots of problems with</p> <p>20 consumers repeatedly getting charged for things that they</p> <p>21 had requested being blocked; and, two, the purpose of --</p> <p>22 the whole idea of blocking after the fact depends on the</p> <p>23 consumer to check their bills and to notice that they've</p> <p>24 been charged and to call and request the block.</p> <p>25 And what I think we've heard a lot of today is</p>

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1 that consumers aren't noticing these charges on their
2 bills and they're not recognizing that they can call the
3 carrier and request a block, so that the process as it's
4 being set up, as it is set up right now, is not working.

5 MS. MITHAL: I'm going to add a part to this
6 question, and then I'll call on the people who have their
7 cards up, just to make it complicated for you. So, I
8 think Mike was mentioning that blocks are already offered
9 as an optional block. Is this option clearly disclosed
10 to consumers, and if not, should it be? So, I think Alan
11 had his card up. Why don't we start with you?

12 MR. SEGE: You know, I can easily imagine a
13 different panel in which we're talking about card-not-
14 present transactions online or some type of topic, and
15 then one of the discussion questions would be something
16 like what about encouraging two-factor authenticated
17 transactions using mobile phones.

18 The concept of putting a block on this industry
19 over a payment method which in its conception is much
20 more authenticated than any other payment means, a
21 payment mechanism which is widely deployed throughout the
22 world as a major payment mechanism for banked and
23 unbanked in many developed and undeveloped countries, to
24 actually eliminate it in this country it really is, you
25 know, throwing away, you know, something which is very

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1 beneficial for industry, for innovation, and most of all
2 to consumers, like me, by the way, who would prefer to
3 have an authenticated transaction as opposed to
4 inauthentic transaction.

5 MS. MITHAL: And Delara?

6 MS. DERAKHSHANI: So, we do as a general policy
7 believe that consumers should be given the option to
8 either block or not block. We're generally in favor of
9 giving consumers choice, depending on their unique needs.
10 But I was going to mention, to your stop command control
11 point, you mentioned that this is something great that's
12 in the wireless industry that isn't present in the credit
13 card industry.

14 We've actually heard stories where actively
15 responding "stop" to a text message has been interpreted
16 by perhaps a bad actor but has been interpreted by a
17 crammer as affirmative consent or has confirmed to the
18 crammer that that phone number exists. And as I said
19 before, all you need in order for cramming is to know
20 that an active phone number exists. So, I wouldn't say
21 that this is like a foolproof measure.

22 MS. NIEJADLIK: Yeah, I mean, look, again, the
23 industry is in its infancy. There are rules. I think if
24 people are following the rules, those things don't
25 happen. The stop command is a requirement from the CTIA

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1 that when you get a stop command there are certain
2 actions as a biller that you have to take, and canceling
3 the transactions is one of them.

4 If there are people out there who are not
5 following those rules, then we should go after those
6 people. And I'm completely supportive of every case that
7 I've heard about today, and please go get those people
8 and shut them down, because they are creating a bad name
9 for the industry and they're not following the rules.
10 And as anybody who's -- be it law or not, if you're not
11 following the rules, you should be getting in trouble for
12 that.

13 So, you know, the rules that we have in place
14 today and, Mike, maybe you want to speak to it more, but,
15 you know, the CTIA just recently took over this set of
16 rules from the MMA, and I think has done a lot of work to
17 simplify them and make them easier to understand and
18 easier to comply with, and that's a relatively recent
19 change that that occurred.

20 MS. MITHAL: So, just to clarify, then, do the
21 CTIA guidelines require all carriers to offer the option
22 of a block?

23 MR. ALTSCHUL: Do our rules require it? I
24 don't believe our rules do. Maybe that the FCC's Truth
25 in Billing Rules do. It is enshrined in the industry

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1 practices.

2 MS. MITHAL: So, Lynn -- oh, sorry.

3 MS. FOLLANSBEE: No, blocks are not required,
4 but if they do -- you know, if a customer enquires and
5 they're available, then the -- for landline presently,
6 the carriers are obligated to notify -- to notify a
7 customer in their point of sale and website and their
8 bills. In the current further notice, one of the
9 questions is whether that should be expanded to wireless.

10 MS. MITHAL: Okay.

11 MS. NIEJADLIK: I just wanted to distinguish
12 between stop and block for a minute, because they
13 actually are two very different functions. So, a block
14 means I call up my carrier, or by the way, you can call
15 up Boku, we're happy to put a block on your account as
16 well, and we, by the way, do instruct people to call
17 their carrier, if they do call us, just to make sure if
18 there's other providers out there that they have a
19 complete block. But that would mean nobody is texting
20 you at all, you're not getting any transactions, you
21 can't do any transactions.

22 A stop command is canceling anything that's in
23 progress or negatively sort of responding to a charge
24 that somebody is attempting. So, there -- I believe the
25 stop command is one of the CTIA rules.

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1 MR. ALTSCHUL: Right.
 2 MS. NIEJADLIK: The block is different.
 3 MS. MITHAL: Okay. And I think --
 4 MR. ALTSCHUL: And that's why I had raised my
 5 card, just to make clear, our monitoring every month the
 6 message flows are checked so that our monitoring sends
 7 stop to the premium SMS programs that they have opted
 8 into and looks for the appropriate response, the
 9 subscription gets stopped. They text help and look for a
 10 response, that what are your questions, can I answer
 11 them. So, a crammer who goes out of their way to ignore
 12 a stop will be picked up by the monthly touchpoint that
 13 we monitor for.
 14 MS. MITHAL: Right, and going back to blocks,
 15 you mentioned that certain carriers are offering blocks.
 16 Are they disclosing that option to consumers?
 17 MR. ALTSCHUL: Well, all of the carriers we're
 18 familiar with offer blocks. They offer, as I said, a
 19 total block on third-party charges; they also offer
 20 blocks by individual devices or phone numbers within a
 21 family plan. And many, if not all, the carriers have
 22 additional services where individual programs themselves
 23 can be blocked.
 24 I was thinking, Alan talked about contrasting
 25 this to some other debates that you have, but there's

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1 been a national debate in the communications field about
 2 net neutrality. And we've been defining premium SMS as
 3 third-party charges. One of the larger policy issues
 4 associated with considering a default block on third-
 5 party charges is that those advocates for net neutrality
 6 would find that carriers would be discriminating against
 7 third-party content that is billed through third-party
 8 charges while carrier-sponsored content would come in
 9 because it wouldn't be a third-party charge.
 10 So, this gets complicated. It's a little bit
 11 like that movie title.
 12 MS. MITHAL: Okay, we're actually going to move
 13 on to another topic, but, Alan, gets to respond first if
 14 he wants on the next topic.
 15 Jim, did you want to ask your question?
 16 MR. TRILLING: Did you want to respond, Alan?
 17 MR. SEGE: Oh, I just wanted to say part of our
 18 hosting authentication means when the word "stop" comes
 19 through on any merchant in our system it's just stopped.
 20 A stop confirmation message goes out and billing is
 21 stopped.
 22 MS. DERAKHSHANI: Assuming you're a good actor,
 23 but not for bad actors. Thank you.
 24 MR. TRILLING: Okay, apparently we have a
 25 malfunctioning card that's doing acrobats.

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1 MR. SEGE: Whether we're good or we're bad, I
 2 mean, you know, it is what we do. I mean, we can --
 3 we're willing to, you know, stand up behind it and I
 4 don't know how to respond to that. I didn't say that
 5 we're good or bad; I just said that this is what we do.
 6 MS. NIEJADLIK: I do think it's one of the
 7 benefits of having aggregators, though, very similar to a
 8 payment service provider in the credit card space. You
 9 know, you don't go to Visa and get yourself an account.
 10 You go to a processor who has to on-board you and do
 11 vetting and get you an account. And, you know, I think
 12 m-Qube and Boku and services like ours are providing that
 13 service and helping to ensure that the rules are being
 14 complied with.
 15 MS. MITHAL: And this is a good point for us to
 16 ask the audience question, that will help us with the
 17 next topic. How do you protect the huge and growing
 18 prepaid wireless market who never see a wireless bill?
 19 MR. ALTSCHUL: I think the media marketing and
 20 the monitoring of the message flows is the best way of
 21 protecting the prepaid market because that detects any
 22 problems before consumers can experience it and gives the
 23 industry an opportunity to cut off abuses.
 24 MR. SEGE: Generally speaking, the prepaid
 25 operators do not have premium SMS. There could be

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1 exceptions, and I don't want to be completely quoted, but
 2 I do know that predominantly to be true.
 3 MR. TRILLING: In the Wise Media case, many
 4 consumers complained that the charges were buried in
 5 their phone bills. For example, one consumer complained
 6 that the charge appeared on page 18 of a lengthy phone
 7 bill. And on a related note, this morning we heard from
 8 Paul Singer that billing descriptors, if consumers
 9 actually located the charge on their bill, in the Eye
 10 Level Holdings matter may have been as opaque as standard
 11 rate plan.
 12 Is self-regulation working when it comes to the
 13 way that charges are disclosed on bills. And, if not,
 14 what should we be doing differently?
 15 MR. ALTSCHUL: This is another lesson learned
 16 that the industry has proactively gone back and, you
 17 know, protected consumers against misleading descriptors
 18 so that when a premium SMS program applies for a short
 19 code, the bill descriptor is included in the information
 20 they provide the registry, which is provided to the
 21 carriers for their review to make sure that the
 22 descriptor is clear, conspicuous, and not misleading to
 23 consumers in how it describes the actual service.
 24 This was not something that the industry
 25 originally had done, and when it was clear that people

45 (Pages 177 to 180)

181	<p>1 were abusing the system, it's something the industry went 2 back and did.</p> <p>3 With respect to the billing again, this is the 4 unintended consequences of people with all the best 5 intentions. I think all of us as consumers and 6 regulators and lawyers who practice in this space are 7 aware of the lengthy history of billing and bill 8 displays, which turns out to be a very highly regulated 9 part of how carriers present their bills to consumers.</p> <p>10 And already charges are separated from 11 government-mandated fees, which are separated from non- 12 government-regulated fees, such as 911 charges and the 13 like, which are separated from premium content charges, 14 so that when consumers complain that they have a lot of 15 bills and a lot of sections on their bills and their 16 bills run many, many pages, that's true, and it's true 17 because there are regulations that require separating and 18 breaking out each of these charges.</p> <p>19 Carriers do compete. They spent a fair amount 20 of time with focus groups and designing bills with cover 21 pages that try to display information in a clear and 22 conspicuous way. And then there are all the pages that 23 follow. The better carriers are with the cover page, 24 maybe the less likely consumers are to go back and look 25 at page by page. And we all know again as consumers</p>	183	<p>1 the merchant and have it show up on the bill. And 2 that's, again, relatively new functionality that's come 3 out in the past couple years.</p> <p>4 MS. MITHAL: Okay, we're actually running out 5 of time, but I want to ask a quick question about the 6 complaint process. So, do carriers have or does a 7 particular carrier have a refund policy that all its 8 employees are expected to follow, so that, for example, 9 if a consumer calls, they're not at the mercy of one 10 sales representative versus another? Martine, do you 11 have your card up?</p> <p>12 MS. NIEJADLIK: No.</p> <p>13 MS. MITHAL: Oh, okay. And I'll broaden this 14 question in case someone might be able to answer this, 15 also. If a consumer disputes a charge, should the 16 consumer be allowed to delay payment without cutting off 17 phone service or negatively affecting the consumer's 18 credit? Why don't we start with Delara, and then we'll 19 go to Martine.</p> <p>20 MS. DERAKHSHANI: Okay, so two points. First, 21 we will note that many consumers are still confused about 22 who to contact in order to resolve a billing dispute. 23 So, we believe that straightforward, standard dispute 24 resolution practices are necessary to clearly spell out 25 refund policies and explain to consumers who to contact</p>
182	<p>1 there are very many of us who no longer opt to get a 2 paper bill and will use the convenience of getting billed 3 online.</p> <p>4 And what all this means is that the information 5 is provided to consumers, but there is a responsibility 6 for consumers to monitor their bill, just as we've all 7 learned with credit cards that that's something we need 8 to do.</p> <p>9 MR. TRILLING: Martine?</p> <p>10 MS. NIEJADLIK: Yeah, I just want to add, I 11 sort of alluded before to the fact that the industry is, 12 you know, making headway and improvements. One of the 13 things that we've seen also get better over the past few 14 years is the opportunity to put what we call a dynamic 15 billing descriptor out there, and so we want to describe 16 the charge as best as we can, right? Again, we're 17 managing customer support. Our phone number is on the 18 bill. Our phone number is in the SMS messages. It's in 19 our best interest to make sure that the consumer 20 recognizes the charge when they see it and they're not 21 calling up just because it says whatever that thing is 22 you said it said before.</p> <p>23 So, that's something that we follow, and as an 24 aggregator, if you will, we will always pass through 25 specific descriptions of exactly what they bought from</p>	184	<p>1 in the event of an unauthorized charge.</p> <p>2 Secondly, what was the other point of your 3 question?</p> <p>4 MS. MITHAL: The other point was the credit. 5 The point was whether they should be allowed to delay a 6 charge and it not affect their credit and --</p> <p>7 MS. DERAKHSHANI: Yes, I think the obvious 8 answer is that service should not be cut off, if there's, 9 you know, in the midst of a billing dispute, so, yeah.</p> <p>10 MS. MITHAL: I think Martine was next.</p> <p>11 MS. NIEJADLIK: Yeah, the one point I want to 12 add to that is as I mentioned before the types of 13 merchants that we work with, we're seeing a lot of 14 interest from various types of verticals, as we call 15 them, to use this type of billing. And when you think 16 about other types of verticals, and these are things such 17 as video streaming, movie streaming, parking, there's 18 pizza companies who want to be able to sell a pizza and, 19 you know, put the charge on your mobile. If you don't 20 pay for the pizza, you've consumed the pizza, and, so, 21 you probably -- you know, that probably shouldn't be 22 allowed that you just get to not pay for your pizza.</p> <p>23 And, you know, I think obviously with respect 24 to cram-type charges, you would not want the consumer to 25 have to pay, but again, there's got to be a reasonable</p>

185	<p>1 approach to figuring out, you know, what do you do in 2 that situation. I don't -- I wouldn't want to sort of 3 condone allowing consumers to actually go, initiate 4 charges, you know, authorize charges, buy things and 5 consume a pizza and then not pay for it and have no 6 consequences for that.</p> <p>7 MS. MITHAL: Right, and should that cut off 8 their phone service. That's just the --</p> <p>9 MS. NIEJADLIK: I don't know, actually. I 10 mean, perhaps not, perhaps not. I would say it probably 11 is somewhat separate, but there should be some 12 consequences, I guess, to not paying, maybe cutting off 13 your phone service is not the answer, but certainly 14 something.</p> <p>15 MS. MITHAL: Okay. And then we'll just let 16 Mike, Melanie, and Alan give quick responses, and then 17 we'll wrap up.</p> <p>18 MR. ALTSCHUL: Well, carriers want to be 19 perfectly clear. If there is a charge on their bill to 20 their customer, the customer should call them, call their 21 toll-free or free customer care number. And carriers 22 will be responsible for addressing whatever charges are 23 placed on the carrier bill. That's number one.</p> <p>24 Number two, all the major carriers have adopted 25 a policy known in the industry as one-and-done, so this</p>	187	<p>1 consumers complain that they don't all get treated the 2 same. So, the policy may be one-and-done, but what we're 3 hearing is that that isn't necessarily what the consumers 4 are experiencing.</p> <p>5 MS. MITHAL: And Alan.</p> <p>6 MR. SEGE: I can say that, you know, especially 7 for the newer billing interface, like what Boku operates, 8 it is our number that goes onto the bill. We're required 9 to handle, you know, customer care and things like this. 10 And that there is a liberal refund policy. It's pushed 11 down to the merchants. It doesn't affect, as much as I 12 understand from our contracts, it doesn't affect the 13 status of the person's account at the wireless carrier.</p> <p>14 I also wanted to mention one thing, which is, 15 you know, the topic of this panel is future measures and, 16 you know, we've described how premium SMS, when there's a 17 singular point of responsibility and you know the double 18 opt-in process is being done, is very strong. One 19 potential threat to that that has come up in 2011 and we 20 believe that we solved it technologically is that certain 21 of the smartphone operating systems have calls in them 22 which are -- which create a vulnerability. And Lookout 23 Mobile described them, publishing the phone number to 24 developer, giving the ability to send SMS, receive SMS, 25 edit SMS, and delete SMS.</p>
186	<p>1 is not like credit card companies that need 30, 60, 90 2 days to investigate a charge, but one call to the 3 carrier, the customer service representative is empowered 4 and is trained to be empowered to address the customer's 5 concern.</p> <p>6 Obviously not every customer will be pleased 7 with every answer. There then are vehicles to complain 8 through either better business bureaus or the various 9 federal and state consumer protection agencies. We 10 talked earlier about the number of complaints and whether 11 they're valid or not. One number that I think is valid, 12 the Better Business Bureau reports that for wireless 13 complaints more than 98 percent are successfully resolved 14 to the satisfaction of the consumer.</p> <p>15 So, there isn't a need for a lengthy process 16 while these charges are investigated. The customer 17 service representative has the information needed 18 consistent with the company's policy to address the 19 consumer right there on the spot.</p> <p>20 MS. MITHAL: And then Melanie.</p> <p>21 MS. TIANO: I would just like to say that 22 through the course of the wireline investigation I have 23 spent a great deal of time talking to hundreds of 24 consumers, just on my own, and regardless of what 25 policies are on paper for the carriers to refund,</p>	188	<p>1 One major operating system does not have any of 2 these calls. One major operating system does. I know 3 that things have been done on that side of things to 4 contain this threat, but I believe that, you know, 5 scrutiny should be paid to the smartphone system to make 6 sure that if developments have any kind of capability of 7 simulating a human user effectively that that should 8 really be a subject of very, very strict scrutiny.</p> <p>9 MS. MITHAL: Okay.</p> <p>10 MR. TRILLING: Well, we, unfortunately, are out 11 of time. We had a large panel and a lot of ground to 12 cover, so we're going to have to let some of the topics 13 we would have liked to cover go. Alan's comments are a 14 nice segue to mention that the FTC will be having a 15 separate workshop on mobile security threats in June. 16 Information is available on our website.</p> <p>17 And with that, I want to thank everybody who 18 participated on panel three. 19 (Applause.) 20 21 22 23 24 25</p>

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1 CLOSING REMARKS

2 MS. RICH: So, my name's Jessica Rich. I head
3 up the division that hosted this workshop, and I'm just
4 going to do a brief sum-up. And I'm not going to thank
5 you for staying through the long, long day, because
6 everyone is lucky, we made this a nice, short workshop.
7 It was really good, but it was short.

8 So, I want to thank everyone for participating
9 and making it such an interesting discussion. There's
10 obviously a lot of concern among our panelists and in the
11 audience, a pretty good crowd here, about mobile
12 cramming, and I think this roundtable summed up the
13 issues nicely.

14 We discussed the opportunities that mobile
15 third-party billing provides consumers, such as easy
16 charitable giving, convenient payment, alternative
17 payment methods for the underbanked and the unbanked, but
18 as we also learned, we're seeing more and more complaints
19 from consumers in the commercial space about mobile
20 cramming. And we think these complaints are likely to
21 increase as -- with the rise of mobile payments and the
22 increasing popularity.

23 As many panelists discussed today, these
24 complaints are likely to grossly understate the problem
25 because many people are unaware they've been crammed.

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1 Vermont's recent study, which made news today, shows that
2 80 percent of the consumers surveyed didn't even know
3 they could be charged for third-party services on their
4 mobile bills. Their data also showed that although
5 Vermont has only received a few dozen complaints in this
6 area over the past few years, when consumers were
7 surveyed, 60 percent of those who responded, this is if I
8 took good notes, of those who responded then realized
9 they had been crammed, even though they hadn't even
10 complained. And more dramatically, in one of the
11 landline cases that the FTC did, called INC21, 95 percent
12 of the consumers who had been charged for the products
13 were unaware they had been charged before the case.

14 We also heard about the current industry
15 policy. We heard about it in every panel of double opt-
16 in for charges, which largely places this responsibility
17 on the content providers. As a number of panelists
18 noted, however, records of consumer consent can be easily
19 fabricated. Further, as our Wise Media case illustrates,
20 the double opt-in policy has not protected many consumers
21 from cramming as it actually happens on the ground.

22 In Wise Media, thousands of consumers were
23 billed for services they'd never heard of or that they'd
24 expressly declined. One consumer's charge appeared on
25 page 18 of her lengthy bill. Some consumers didn't even

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1 get the text message subscriptions that they supposedly
2 signed up for and supposedly wanted. And many consumers
3 had difficulty getting refunds, whether it was from Wise
4 Media or the carriers.

5 The discussion today, in our view, highlighted
6 the need for additional safeguards to protect consumers
7 from mobile cramming. The FTC has previously advocated
8 for certain baseline protections in this area. In a
9 comment to the FCC in a report we recently issued we said
10 consumers should have an easily accessible option to
11 block all third-party charges on their mobile phone
12 bills; that carriers should inform consumers that third
13 parties can place charges on their phone bills and should
14 clearly disclose that consumers can block such charges;
15 and also that carriers should establish clear and
16 consistent procedures for consumers to dispute charges
17 and obtain reimbursement.

18 Today, we discussed those approaches, as well
19 as some potential additional ones. For example, carriers
20 could contractually require aggregators and content
21 providers to maintain records of opt-ins and could review
22 them periodically. Or carriers could keep those records
23 themselves.

24 We heard today that some carriers are taking
25 steps to exercise more control of the opt-in process.

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1 That really sounds promising, but we'd like to know more
2 about exactly what they're going to do.

3 Other ideas, carriers and aggregators could
4 stop working with content providers with high refund
5 rates. Some have; some do, but there's different levels
6 that they use to determine when they cut off content
7 providers and sometimes they do it quickly and sometimes
8 they do it -- they take a longer time.

9 There was discussion about potentially lowering
10 the threshold for termination. We also have concerns
11 about when providers are cut off the individuals that are
12 working with those providers could come back in the form
13 of, you know, under the name of other companies. So, we
14 think it's important to maintain records of the
15 individuals associated with the content providers who are
16 cut off so they can't just come back in.

17 There was also discussion of third-party
18 charges appearing more prominently on bills, perhaps it
19 could be on the first page or even next to the total
20 dollar amount listed on the invoice. And there was
21 discussion of the need for the telephone number so you
22 can contact the provider, and some do and some don't
23 provide that information.

24 Carriers could also publicize refund rates to
25 provide more transparency about the problems encountered

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1 with a particular content provider. And another idea was
2 that for recurring charges content providers could seek
3 consent prior to each charge.

4 And of course we discussed ways to implement
5 these strategies without sacrificing innovation or
6 preventing charitable giving or the legitimate billing,
7 and that's going to be -- that will always be a challenge
8 going forward that we need to figure out the balance
9 there.

10 So, we hope this has been as interesting for
11 you as it's been to us. In terms of next steps, FTC
12 staff, we're going to examine what we learned. We'll
13 examine the comments. We got a lot of comments in, and
14 as we've said, our comment period is open -- continues to
15 be open for -- how long is it open for? A month.

16 And we're going to figure out whether there is
17 additional recommendations we're going to make. We'll do
18 a report on the workshop. And hopefully we'll do that
19 really soon.

20 We're also going to continue to monitor
21 developments, especially bad actors that are breaking the
22 law in this space, and we're going to bring enforcement
23 along the lines of the Wise Media case.

24 So, in closing, I'd like to thank the fantastic
25 team that put this together, this workshop. I'll name

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1 them all, and if I leave somebody out, I apologize:
2 Stephanie Rosenthal, Andrew Schlossberg, Duane Pozza, Jim
3 Trilling, Russ Deitch, Larissa Bungo, Malini Mithal,
4 Samantha Konstandt, Carrie Gelula, T.J. Peeler, Wayne
5 Abramovich, Cheryl Hackley, Bruce Jennings, Khouryanna
6 DiPrima, Laura Brandon, and Emma Johnston. It takes a
7 village to put together a workshop.

8 So, thanks for joining us.
9 (Applause.)

10 (Whereupon, at 2:57 p.m., the workshop was
11 concluded.)
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1 CERTIFICATION OF REPORTER

2
3 MATTER NUMBER: P134803

4 CASE TITLE: MOBILE CRAMMING ROUNDTABLE

5 DATE: MAY 8, 2013
6

7 I HEREBY CERTIFY that the transcript contained
8 herein is a full and accurate transcript of the notes
9 taken by me at the hearing on the above cause before the
10 FEDERAL TRADE COMMISSION to the best of my knowledge and
11 belief.
12

13 DATED: MAY 17, 2013
1415 LINDA METCALF
16

17 CERTIFICATION OF PROOFREADER

18 I HEREBY CERTIFY that I proofread the transcript for
19 accuracy in spelling, hyphenation, punctuation and
20 format.
21
22
23

24 SARA J. VANCE
25

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